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**Brexit Done:
A Second Draft of History**

Martin Davison

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On 31 January 2020 the United Kingdom left the European Union after 47 years of membership. As everyone knows, the relationship between the parties had seldom been entirely harmonious. Perhaps understandably, it became downright fractious in the final three and a half years of Brexit negotiations. And the fractiousness was catching; in that period, domestic UK politics was also at its most turbulent for decades, as the Government sought to implement the June 2016 referendum decision.

Many commentators and observers became increasingly, and furiously, obsessed by the whole Brexit process. They followed every diplomatic twist and political turn on the agonising journey which culminated in Boris Johnson's decisive election victory on 12 December 2019. Brexit, seven weeks later, then became a formality.

But not everyone will have followed the events with the ardour of the Brexit nerds. Expatriates, some traditionally eurosceptic, others instinctively Remainers, and members of the foreign media, rather more detached from the mayhem in the UK, might have concluded by July 2019 that Brexit was never going to happen after all. They will, accordingly, have been utterly baffled by the dramatic dénouement in the second half of the year.

This article is written for them.

It describes the nature of Johnson's politics, to some ruthless and unprincipled, to others pragmatic and flexible, and shows how that combined with some startling concessions made by his opponents to "get Brexit done."

Notwithstanding a transition period of at least eleven months during which very little will change, the moment of departure on 31 January 2020 was unquestionably historic. But the first potentially historic Brexit moment was, of course, on 23 June 2016. Only potentially, however, because, if powerful forces in both the UK and the EU had prevailed, the referendum vote would have been no more than a footnote to history.

Journalism is often described as the first rough draft of history and much drafting has been done by many journalists. This article is an attempt at a second draft of the history of how the referendum vote actually became historic, when, three and a half years later, it was finally heeded by the politicians.

The inheritance from Theresa May

Johnson, a leading Brexiteer from the commencement of the referendum campaign, became Prime Minister on 24 July 2019. As far as Brexit is concerned, and that was really all that mattered during his predecessor's tenure, Theresa May had failed in humiliating fashion in her three years in Downing Street. One year into her premiership, she recklessly threw away her inherited parliamentary majority, and as a result - but also due to a combination of bad advice and incompetence - was from the outset overpowered by disciplined and ruthless EU negotiators.

In Parliament, Johnson was confronted by the opposition parties, most members of which had campaigned for Remain and were unreconciled to Brexit. In addition, he, like his hapless predecessor, had to deal with a small but obdurate group of senior Conservative MPs, convinced that the referendum voters had erred over Brexit and that it was their constitutional duty to prevent it.

To make life even more difficult, there was a much larger and equally intransigent bloc of ideological Brexit purists on the Tory backbenches. It is fair to say that the European Research Group, appalled by the timidity, as they saw it, of May's Brexit policy, had caused her just as many difficulties in Parliament as the die-hard Remainers. Johnson would at least have been confident of a fairer wind from this quarter.

Beyond Parliament, but in alliance with the parliamentary rejectionists, a ferocious rearguard action was still being fought against Brexit by elements of what might loosely be called the Liberal Establishment. The actions of this broadly progressive élite seemed to be based on a conviction that their own better-informed judgement was entitled to outweigh the vote of those misled by an unprincipled Leave campaign.

It is not, however, the history of that audacious campaign of obstruction fought in Parliament, academe, the liberal media and the courts that I wish to write. But its ultimate defeat on 12 December 2019 is certainly part of my story: an account of precisely how the tables came to be turned so decisively to Johnson's advantage in the five months after 24 July 2019.

Johnson, of course, inherited a Brexit deal from his predecessor. However, in spite of supportive clarifications and reassurances from the EU, not to mention increasingly desperate cross-party overtures and concessions, Theresa May had never won anything approaching parliamentary support for the deal. As a result, Brexit day had had to be postponed from 29 March to 31 October 2019.

New policy, old humiliation

This was Johnson's inheritance. He then immediately put the cat amongst the pigeons by appointing as his chief special adviser Dominic Cummings, the eccentric mastermind of Vote Leave's June 2016 triumph. He also announced that his absolute priority was to honour the result of the referendum and renegotiate the Brexit deal.

His unmistakable intention was, come hell or high water, to take the UK out of the EU on the new Brexit day. If necessary, he was perfectly prepared to do this without an agreed deal. And he had absolutely no intention of holding another referendum to check whether the British people might have changed their mind about Brexit in the intervening three years.

However, any hope he and Cummings might have had that the days of prime ministerial humiliation were over swiftly evaporated. Johnson's tiny parliamentary majority was entirely dependent on a precarious confidence and supply agreement with the DUP. But within weeks, even before he had, as we will see, cut his Northern Irish partners adrift, the flimsy fig-leaf of this majority was torn away in dramatic fashion.¹ There now followed a succession of parliamentary debacles.

¹ <https://www.bbc.co.uk/news/uk-politics-49570682>

Predictably, Johnson also endured the indignity of being slighted and snubbed in Europe. Finally, his impotence was emphasised in the most sensational manner by the Supreme Court's contemptuous striking-down of his prorogation of Parliament. He found himself encircled by powerful factions determined to frustrate him and, if possible, ensure that the UK, despite the 2016 vote, remained a member of the EU.

Winning the war

But remarkably, having lost so many battles, Johnson ultimately won the war. It would be an exaggeration to say that with one bound he was free but there was undeniably something shockingly unexpected about the reversal of fortune culminating in the rout of his opponents.

Towards the end of October, despite Johnson having blindsided the sceptics by successfully renegotiating the Brexit deal, his plans still seemed to be hopelessly stymied in Parliament. But just six weeks later, at 10pm on 12 December, he could survey the final battlefield and see it littered with the corpses of all those who had not only dedicated themselves to his frustration but also, in the case of many of them, been set on reversing the outcome of the referendum, whether overtly or covertly.

In the EU, there were the twin Presidents, Donald Tusk and Jean-Claude Juncker, the chief Brexit negotiator, Michel Barnier, and the Parliament's Guy de Verhofstadt; in the Commons, to name just the spikiest of many thorns in Johnson's side, the Speaker John Bercow, Sir Oliver Letwin, Dominic Grieve and Hilary Benn; in the courts, Gina Miller and Lady Hale; in the academic world, seemingly all the experts; in the media, too many editors and commentators to name but including, to the great irritation of Johnson's government, some of the BBC's; and in, or perhaps out of, political retirement, Sir John Major and Tony Blair.

How on earth did this extraordinary turn-around come about? Johnson's chameleon character, allied with Cummings' notorious mastery of the darker political arts, was the essential context. In particular, there was what could politely be termed Johnson's flexibility over what had hitherto seemed to be non-negotiable matters of principle.

But the inescapable political explanation, against that background, is to be found in a series of surprising concessions made by Johnson's opponents. First there was the willingness of the EU to reopen the November 2018 Withdrawal Agreement in spite of everything it had said hitherto. This was followed by the apparent volte-face of the Irish government on the indispensability of the Northern Ireland backstop. And finally there was the eventual acquiescence of the opposition parties in Johnson's desire for a general election. Each of these deserves close examination.

Reopening the Withdrawal Agreement

In granting the extension to 31 October, the EU had formally stated that "this extension excludes any reopening of the Withdrawal Agreement." Presumably this was to disabuse the UK of any idea that the purpose of the extension was to allow it time to get a better deal. And of course this message that the Withdrawal Agreement, as opposed to the Political Declaration, could not be reopened had been repeated *ad nauseam* by the EU ever since May had first encountered her difficulties in getting it through Parliament. In view of this, one might have expected the bullish challenge issued by the new Prime Minister in July 2019 to have elicited a terse reminder from the EU that the November 2018 Withdrawal Agreement simply could

not be reopened.

But in fact, the response from the EU was very different. In the words of Tusk himself, “I immediately invited him [Johnson] to discuss – in detail – our future cooperation. We needed operational, realistic ideas acceptable to all States including Ireland.” This invitation issued by the President of the European Council was understandably seen by Johnson as a coded message that the Withdrawal Agreement could after all be reopened. Moreover, with its specific reference to Ireland, it even hinted that the 'undemocratic backstop', as Johnson called it, might be up for renegotiation.

So, why this change of heart? As stated above, the EU had consistently and adamantly refused to revisit the text of the backstop in response to May's pleas.² The extent of the assistance on the backstop proffered to the desperate former Prime Minister was very limited. It certainly didn't embrace replacement, or indeed any amendment at all, of the text of the backstop as set out in the Protocol to the Withdrawal Agreement.

One answer might be that, somewhat paradoxically given Johnson's notorious reputation in his own country, he was actually being taken seriously by the EU. Tusk, Juncker and Barnier, as well as Angela Merkel and Emmanuel Macron, might all have taken Johnson at his word, when he insisted that the UK would be leaving on 31 October 2019, if possible with an improved and ratified deal but, if necessary, without any deal at all. Could they afford to risk the latter outcome?

And yet all the evidence is that these EU leaders were well aware of the parliamentary situation in the UK, where Bercow, a self-proclaimed Remainer, was creatively facilitating the erection by anti-Brexit MPs of procedural and legislative obstacles in the way of government Brexit policy.

It is, therefore, much more likely that these key EU decision-makers simply discounted Johnson's firmly stated intent as no more than bluster and bluff. The bluster about renegotiating the deal by 31 October would over the coming weeks be revealed as no more than that, and the fall-back bluff about a no deal exit would be called in Parliament.

Given the inevitable blame game that would in those circumstances ensue, prudence would have dictated that the EU should not lay itself open to the accusation that it had simply slammed the door in Johnson's face. The EU leaders had to appear cooperative, even if they never genuinely expected to have to cooperate with Johnson in delivering Brexit.

In fact, when Merkel met Johnson in Berlin on 21 August, rather more than a chink was opened in that unslammed door, as she raised eyebrows by announcing that an alternative to the Irish border backstop could indeed be found and set a period of 30 days for Johnson to come up with one. Unsurprisingly, he welcomed this challenge, although he described it as a “very blistering timetable”.

Merkel's apparent openness to the idea of renegotiation was, however, not immediately supported by Macron. His uncompromising initial response was: “Renegotiation of the terms currently proposed by the British is not an option that exists, and that has always been made clear by President Tusk.” He then elaborated his position after his own meeting with Johnson the following day, describing the backstop as an “indispensable guarantee”.³ Nevertheless, speaking with somewhat forked tongue, he too seemed to accept

² https://ec.europa.eu/commission/sites/beta-political/files/letter_to_prime_minister_may.pdf

³ <https://www.bbc.co.uk/news/uk-politics-49427007>

the possibility of a revised withdrawal agreement, albeit one not very different from the existing one, and he supported Merkel's 30-day timetable.

All this left Tusk rather exposed as the 'bad cop', on the face of it still restricting himself to trading insults with Johnson over the absence of concrete proposals and the flippant question as to which of them would go down in history as Mr No Deal Brexit.⁴ But in spite of this continuing rancour, there were clear signs that the EU had chosen to ignore its self-imposed constraints on renegotiation and that Johnson, spotting the opportunity, intended to exploit it.

The Good Friday Agreement and the Backstop

There was, however, an Irish fly in the ointment. Leo Varadkar's government was immovably wedded to the backstop as the sacrosanct insurance policy guaranteeing that there could never be a hard border on the island of Ireland or any impediment to the North-South cooperation introduced by the Good Friday Agreement.⁵ And none of the EU leaders had ever given any indication at all that the EU would be prepared to abandon Ireland in the wider interests of ensuring an orderly Brexit.

Was this simply altruistic concern for the security and sensitivity of the Irish people? While solidarity with an EU 27 member undoubtedly played a part, realpolitik was probably more important. The fact is that Barnier and his Task Force had cunningly killed two birds with one stone by devising the backstop.⁶ It was not only the insurance policy demanded by the Irish government. It also impaled the UK government on the horns of an awkward dilemma.

The UK could, if it dared, carve out Northern Ireland from the rest of the UK and leave it within the ambit of the EU institutions. Alternatively, it could accept that, while it was no longer a member of the EU, the UK as a whole would still have to ensure that there was no emergence of regulatory divergence from relevant rules of the Single Market and Customs Union.

Returning to the Irish themselves, from the time of his accession as Taoiseach in June 2017 Varadkar had been in lockstep with the EU on the backstop. Why then did he apparently cut loose on 10 October and give clear encouragement to Johnson's new backstop-free plan, the outlines of which had already been drenched in bucketloads of cold water by the EU?⁷⁸

Just two days earlier a flurry of leaks and briefings had revealed the breadth of the gulf between the negotiating stances of the EU and the UK.⁹ In order to see how this was so suddenly bridged, it is first necessary to understand the sense in which the alternative plan for Northern Ireland that eventually emerged was in fact 'backstop-free'. After all, the backstop objectives of the Protocol in the original Withdrawal Agreement are retained verbatim in Johnson's renegotiated version as "arrangements necessary to address the unique circumstances on the island of Ireland, to maintain the necessary

⁴ <https://www.bbc.co.uk/news/uk-politics-49458293>

⁵ <https://www.bbc.co.uk/news/world-europe-48647656>

⁶ <https://static.rasset.ie/documents/news/2017/11/eu-paper.pdf>

⁷ <https://www.rte.ie/news/brexit-countdown/2019/10/10/1082249-varadkar-johnson/>

⁸ <https://www.theguardian.com/politics/2019/oct/07/revealed-the-eus-point-by-point-rejection-of-johnsons-brexit-plan>

⁹ <https://blogs.spectator.co.uk/article/how-number-10-view-the-state-of-the-negotiations>

conditions for continued North-South cooperation, to avoid a hard border and to protect the 1998 Agreement in all its dimensions.”

The first critical point was that, under the deal that emerged, the arrangements in question no longer involved the creation of a single customs territory comprising the EU and the whole of the UK. Now Northern Ireland alone would effectively remain in the EU Customs Union and, to an extent, in the Single Market. This had more or less been Barnier's initial proposal following the December 2017 Joint Report.

Secondly, under the new deal that was thrashed out in this crucial week, the arrangements could now be terminated in two ways. As under the backstop, this could be done by formal acknowledgement from both parties that they were superseded by alternative arrangements under a subsequent EU/UK agreement. But under the new scheme they could also, crucially, be terminated by “democratic consent in Northern Ireland in a manner consistent with the 1998 Agreement.” In the eyes of the EU, the previous government, desperate for a unilateral termination mechanism, had effectively been demanding that the DUP should have a veto over the backstop arrangements. With this new formulation, Johnson had shot their fox – with the DUP as collateral damage.

It would obviously be extremely awkward for any Irish politician, North or South, to disparage a mechanism for approving the continuation or termination of the special arrangements, which originated in the Good Friday Agreement. Unionists would naturally bridle at the introduction of significant new distinctions, not to mention an enhanced border, between Northern Ireland and the rest of the UK. But they were wrong-footed by this purported democratisation of the backstop. They might well object that, by making democratic consent to the arrangements consistent with the 1998 Agreement, the Irish Nationalists were effectively being given a veto over the termination of arrangements which clearly tended towards Irish unification. However, such objections would inevitably be characterised as narrowly sectarian.

By the same token, apprehension might be anticipated within the EU that the arrangements could in theory be terminated by a Northern Irish mechanism beyond its control, leaving the integrity of its Single Market or Customs Union exposed. However, this would be by no means easy to articulate, given the emphasis that had been placed on the post-1998 Northern Irish settlement throughout the Brexit process.

The EU had always insisted that it was the crucial importance of protecting the GFA and heeding the understandable Brexit apprehensions of the Irish government that formed the rationale for the backstop. But, ironically, it was putting so many eggs in that basket that made Ireland the weakest link in the chain designed to tether post-Brexit Britain to the EU. Johnson's team appear to have realised that applying pressure there was the key to getting Brexit done. And the first step was to persuade Varadkar that all the objectives set out in the original Protocol could actually be achieved without the mechanism of the backstop.

Ruthless and brazen

Johnson and Cummings could only do this if they were prepared to act ruthlessly and throw the Northern Irish Unionists, including the DUP, under the bus. They were effectively conceding that a new economic border, albeit a minimally intrusive one, should be erected in the Irish Sea between Great Britain and Northern Ireland. Clearly this was anathema to Unionists. But it allowed Johnson to offer Varadkar precisely what he had always said he required: a guarantee that the border on the island of Ireland and North-South

cooperation would be unaffected by Brexit.

This was, of course, typically brazen stuff from Johnson. In leaving Northern Ireland behind in the clutches of the EU, he was doing what May had rhetorically said no British Prime Minister could conceivably do. Furthermore, applying the necessary arrangements to Northern Ireland alone rather than the whole of the UK was in line with the original Barnier proposal. And to cap it all, Johnson's customs proposals were not dissimilar to those derided by Brussels in the summer of 2017, when May had suggested them for all UK-EU arrangements.

But fortune favours the brave. Merkel and Macron had opened the door and Varadkar had now flung it wide enough open for Johnson to march through. The Taoiseach had already, for public consumption at least, accepted that the UK had made a constitutional decision to quit the EU; he simply insisted on the backstop guarantee. Now he found himself unable to deny that Johnson's scheme did indeed deliver that guarantee by a different route. Nor, as explained above, was he able to decry the removal of the effective EU veto on termination of the special arrangements. Hence his positive response to Johnson on 10 October.

As for the EU, they could hardly reject the return to the Barnier plan and now found themselves able to accept the complicated customs arrangements which they had considered preposterous when applied more widely. So, it only remained for them to salvage their dignity by claiming that the new plan for Northern Ireland was in fact perfectly compliant with their original Article 50 negotiating Guidelines. Accordingly, one week later, the revised Withdrawal Agreement and Political Declaration were duly agreed.

Lady Hale and Hilary Benn

Even if this was a diplomatic triumph for Johnson, he still needed to get the revised agreements through Parliament and here his hand looked, if anything, weaker than it had in Europe. Even before the eleven Supreme Court justices had, with intriguing unanimity, quashed Johnson's controversial prorogation, Parliament had passed the so-called Benn Act.

Can there ever have been such a remarkable legislative act? Lurid accusations of constitutional outrage had been flung at Johnson himself, but the chutzpah of Benn and his backers was quite extraordinary. The Commons, exploiting Johnson's parliamentary powerlessness to the limit, had not only required him to seek yet another Article 50 extension in diametric opposition to his own stated policy but had gone so far as to dictate the very letter the Prime Minister would have to send to the EU asking for the extension he didn't want.

Johnson's grudging compliance with this unprecedented piece of legislation, was the ultimate proof of his parliamentary impotence. Even with the benefit of ERG support denied to May, he had been outvoted at every step by an alliance of the opposition parties with the arch-Remainers on his own backbenches. His Withdrawal Agreement Bill might have been approved by the Commons but they then rejected his timetable for its passage through Parliament before the end of October. The Remainers' intention was surely to amend the WAB in a manner unacceptable to Johnson during the Benn extension. And the PM's furious protests that the paralysis of minority government demanded a general election in the national interest were repeatedly rejected.

Johnson's humiliation was complete and his helplessness apparent to all. The Supreme Court had ruled his

desperate prorogation unlawful. He had then been obliged to make his supplicatory approach to Brussels. And, as a result, Brexit seemed further away than ever.

Deus ex machina

And then, seemingly out of nowhere, but in fact courtesy of Jo Swinson's Liberal Democrats and the Scottish National Party, Johnson was offered an escape route.

Quite plainly, Parliament had no confidence in Johnson but there had been reluctance to express this in a formal parliamentary vote. Wasn't there a risk that he would manipulate such a vote to force an early general election under the Fixed Term Parliament Act (FTPA) and then fight a successful, if disreputable, people versus Parliament campaign? But what if the Commons could replace him with a more congenial Prime Minister without running the risk of an unpredictable general election?

There had been serious discussions amongst Johnson's Remainer opponents of the possibility of first lining up an alternative Prime Minister, then voting no confidence in Johnson and finally demonstrating that the alternative candidate did enjoy parliamentary confidence in the narrow window allowed by the FTPA before a general election became inevitable. The problem with this was that the natural replacement candidate was the Leader of the Opposition and few MPs seemed to have any more confidence in Jeremy Corbyn than they had in Johnson. And agreeing on any other Remain-inclined MP to fill the breach proved impossible. Accordingly, the idea of using a confidence vote under the FTPA died the death.

The former Speaker has since pointed the finger of blame at the LibDems in particular for their failure to back what he seems to assume would have been a temporary, special-purpose Corbyn premiership. This strongly suggests that, if he had been given the chance by a parliamentary vote of no confidence, Bercow would have done his utmost to ensure that Johnson was replaced without an election, so that Brexit could be stopped.

But why were the parliamentary Remainers even considering these risky options? What advantage was to be gained by holding a general election? Surely they had Johnson exactly where they wanted him. After all, what sort of threat did a demonstrably powerless Prime Minister pose to them? Any legislation which they believed to be in the national interest could be passed, while a Johnsonian Brexit could be voted down. And if the EU was quite happy for Brexit day to be postponed for a third time to 31 January 2020, why, while there was still a possibility of revocation, would they not welcome continuing postponement applications imposed on a helpless Prime Minister by Parliament?

This is all speculation. What actually happened was that suddenly the parliamentary dam burst. Perhaps it was yet more overconfidence. Had the SNP and the LibDems persuaded themselves that their disdain for Johnson and all his works would be shared by an electorate just waiting for the opportunity to pile in and add to his humiliation? Did they discount the possibility that all those Brexit Party voters of May 2019 would see the Conservatives as the real Brexit party this time round? Did they imagine that Johnson's failure to die in his promised ditch would be seen by the voters - as it appeared to be by, for example, the BBC - as a broken promise on his part rather than the result of obstruction by his opponents? The SNP were short-sighted intent on winning in Scotland, as they duly did, but had a deluded Swinson really managed to convince herself that her party's hoovering-up of the anti-Brexit vote in the recent European Parliament election would now be replicated to usher her into No 10?

Above all, what was the Labour Party thinking of? To be dragged unwillingly into an election on the coat-tails of two minor opposition parties was hardly dignified; to fight that election under the leadership of a damaged and utterly implausible prime ministerial candidate was unwise; but to go into what was always bound to be a Brexit election hobbled by their indecisive and widely ridiculed Brexit policy was simply incomprehensible.

Labour policy was, in effect, to offer a second referendum to an electorate that had already participated in one and voted to leave the EU. This time the question would be whether they still wished to leave, in which case the UK would, under a replacement deal which would have been negotiated by Labour, effectively remain part of key EU economic institutions but without any decision-making influence; or alternatively, would the voters perhaps prefer to rethink and remain in the EU after all?

Ludicrously, the party itself was not even able to say how it would answer this question. And unsurprisingly, when it was even understood, the offer was not well-received by traditional Labour voters who had voted to leave in 2016.

The smoke clears

Anyway, with all parties now in favour of an early election, this unruly Parliament ultimately ended with a bathetic whimper. After months of cliff-hanging votes, the Early Parliamentary General Election Act 2019 passed by 438 to 20. And the rest, just like the unsuccessful rearguard action of the Liberal Establishment against the 2016 Leave voters, is history.

Future historians of these events are likely to conclude that the emergence of a majority government on 12 December 2019 restored some much-needed constitutional order to the UK after two and a half years of chaos. They may also judge it to have been important for the country, and especially for relations between different segments of its population, that the government that emerged was one intent on keeping the promise which had been made to the electorate before the 2016 referendum. In truth, provided we are prepared to set aside our party political preferences and our personal views on the merits of Brexit, would we not concur?

About the Author



Martin Davison is a retired international tax consultant who now writes on a number of topics.

He has previously published extensively on the Northern Irish aspects of Brexit, as well as the response to it of the liberal media.

