

Negotiating Independence

By Edward Spalton.

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Whilst independence campaigners of other parties might prefer to use a different phrase, what they hope for is not far off the “amicable divorce” from the EU, advocated by Nigel Farage. Such a settlement will demand clear thinking, strenuous negotiation and unshakeable political will. Whilst many have a deep-seated loathing for our subjection to the EU, we should remember that it has taken nothing from us which was not freely surrendered by our governments of all colours, officials and parliament.

We should reserve our major suspicions for them and approach the institutions and personnel of the EU with steely objectivity and diplomatic courtesy.

To do that, it may be necessary to create an expert task force or “Department of Disentanglement” separate from the Foreign Office which, for two generations, has been stocked entirely with Europhiles.

The EU is an institution of laws – tens of thousands of them – but it will break even the most supposedly sacrosanct to secure its existence. When the euro was introduced, the treaty specified that no member state could ever be made responsible for the debts of another. Yet as soon as crisis struck, the principle was instantly jettisoned before any legal change had been made. We are dealing with an institution which is primarily one of political will, not law. The laws are invoked only in support of the project. So caution is essential and suspicion of Article 50 quite reasonable.

To achieve a new politically independent trading relationship with the EU countries, there are various considerations surrounding Article 50.

Firstly, international law does not generally allow the existing or new internal constitutional requirements of contracting states as a valid reason for non performance of a previously agreed treaty. The article does. Secondly, the Article appears to be a *lex specialis* – an agreed provision of a treaty which therefore takes precedence over general rules such as the Vienna Convention. Thirdly, for an EU document it is remarkably straightforward , specifying a clear procedure, including an obligation to negotiate a future relationship within the not unreasonable period of two years.

It is unrealistic to expect that the member state which has given notice to leave should also be privy to the discussions within the EU institutions on the matter. You cannot expect to sit on both sides of the table at once. You cannot simultaneously be buyer and seller.

We will not be going like *Oliver Twist* to ask the President of the European Council, "Please Sir, may we have our country back?" and then waiting for two years to see what the EU offers. We must go with a well-prepared negotiating position of highly specific, reasonable requirements and keep the initiative at all times.

In extricating the country from foreign bureaucracy, we do have experience from history. The Acts of Praemunire prohibited English subjects from taking cases to foreign courts, Henry VIII 's Act of Supremacy and Act in Restraint of Appeals established beyond peradventure that "The King's Majesty hath the chief power in this Realm of England and other his Dominions... and is not, nor ought to be, subject to any foreign jurisdiction". It was not mere coincidence that these Acts were repealed or rendered dead letters in the run up to our accession to the EEC.

Acts of Parliament still derive their sovereign force from the prerogative power of the Crown in Parliament, "The Queen's Most Excellent Majesty". There should be a comprehensive modern Act with the same effect and intent . Such an Act would

be a deterrent against new EU Regulations or requirements being sprung on us during negotiation. It should also provide dissuasive penalties for anyone, particularly British officials, trying to circumvent it – though probably not quite the same ones as Henry VIII ‘ s !

Armed with such a safeguard at home, capable of being invoked if necessary, negotiations could proceed, more or less on an ex gratia basis, but in outward conformity to the Article – working, as it were, with the grain of the treaties. To tear up a treaty as a claimed sovereign right might be popular in the saloon bar but would not impress at the bar of any international tribunal or indeed overseas public opinion.

Like it or not, international trade is now regulated by myriad rules. Whilst many of them come from bodies like the United Nations or the World Trade Organisation, Britain is contracted to them through the EU because we outsourced our negotiating power to it. As businesses have spent huge sums of money to comply with these rules, they rightly need assurance that Britain’s new arrangements with the EU will not cause them any disruption or place British products and services in a position of dubious international acceptability or disadvantage. Our suppliers and international creditors need to have similar assurance that their interests will be respected and their investments safe. Such considerations are essential, if the divorce is to be amicable and the outcome prosperous.

To win any referendum against the inbuilt advantage of the status quo, people have to be convinced that there is an attractive, credible, working alternative which will secure their jobs. There is no doubt of that. Something like the Norway Option has great presentational advantages. It already exists prosperously. It would not be the end point. Just as the EU project moved from the Coal and Steel Community to the Treaty of Rome, so further advances towards fuller independence can be made from that platform. But we have to

persuade people to take the first step.

Incompetence or treachery at home is more greatly to be feared than the EU. The Romans remarked that slaves came to love their chains . Our civil servants have become very comfortable in EU servitude and out of the habit of drafting primary legislation. The effects of a botched renegotiation, combined with adverse economic circumstances, could see a future government panicked into crawling back by invoking clause 5 of Article 50. Now that really is to be feared!

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