Brexit's hot rentrée – The spectre of collapse or a reasoned outcome?

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While the term 'rentrée', signalling the opening of the new political season after the summer holidays, does not seem to have crossed the Channel yet, for Brussels and London one thing is certain - it will be a hot rentrée for the Brexit process, to say the least.

The mildest scenario is that Theresa May's government and leadership, and some revised version of her Brexit white paper, will scrape through a bitter struggle for survival in the House of Commons in the coming weeks, leaving the 'future relationship' substantially unspecified, to be completed after withdrawal at the end of March 2019.

At the other end of the spectrum of scenarios is the credible possibility that the Brexit process will collapse, through some combination of the fall of the government or its leadership, and the calling of a general election. But in this particular case of Brexit, there is the further scenario where the circumstances would lead to a second referendum, a proposition that is gathering increasing support in public opinion and can also draw support from political theory and analysis (on which more below).

The several contributing factors for a collapse scenario. The first one is that May's White Paper, more than two years after the referendum, is still technically incomplete and problematic for Brussels. The proposal for a customs partnership that would resolve the Northern Ireland border problem is itself not operationally specified, and it has been rejected by Michel Barnier, the EU's chief negotiator, as unworkable. Then the idea of free trade in goods but not services also encounters basic objections. While the case for the indivisibility of the four freedoms is often presented in simple doctrinal language, the argument has recently emerged in more concrete terms. German business organisations and Barnier are both pointing out how far intra-EU trade these days is inescapably bundled with services, which are regulated in the EU's single market. It's not like trading in bananas. The EU side requires the UK to move on these two key issues, but it is not clear how May can do this politically.

This leads into the second, more spectacular problem, namely that May's White Paper is being brutally rubbished by important members of her own party, starting with former Brexit Minister David Davis, former Foreign Minister Boris Johnson, and a group of around 20 Tory MPs who are radical 'no deal' advocates led by Jakob Rees-Mogg. The latter are sufficient in number for May to lose her thin majority in a House of Commons vote. Note that Davis and Johnson are saying explicitly that they will vote

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against the May plan. There is a further unholy alliance between the hardest and softest Brexiters, for both of whom May's attempted middle ground is unacceptable.

The third important fact is that there has now been a major shift in public opinion according to the polls, first of all, on the question whether there should be a second referendum, or 'Peoples Vote' to use the slogan deployed by a highly effective anti-Brexit campaign supported by a consortium of NGOs. Only last year, a large majority of the British public rejected the idea, but this has changed drastically. According to YouGov polls, in April 2017, there was a majority of 48% against, versus 32% for a second referendum. By August 2018, there was a nearly total turnaround, with a 45% majority in favour versus 34% against a second vote. At the same time, voting intentions for a hypothetical second referendum have also turned around. The first referendum saw a 52% majority to leave, versus 48% to remain. Now the polls report a 53% majority to remain, versus 47% to leave, a marginally bigger majority. Further, when the choice is posed between remaining or leaving under 'no deal' conditions, the majority in favour of remaining increases to 56%, versus 44% leaving. The margin of the majority to remain thus rises from 4 to 12 points.

The fourth and latest polling insight is now a matter of even greater, indeed existential significance for the United Kingdom of Great Britain and Northern Ireland itself. Polling in Scotland now shows that in the event of Brexit there would be a 47% majority in favour of independence from Britain, versus 43% wishing to remain.[1] So, the Scottish question, which has been basically dormant since their last negative referendum result in 2014, now re-emerges. The Scottish first minister is consistently reported as considering that a second referendum for Scotland should be postponed until such time as a majority would favour it. And as for the Irish question, what is entirely new is that in reply to the same question about the eventuality of Brexit, there is now a majority of 52% in Northern Ireland in favour of re-unification of Ireland, meaning joining the Republic within the EU, versus 39% to remain in the UK. This majority increases further to 56% when it is specified that there would be a hard border between north and south.

We can expect these trends in public opinion to continue. The change in polling results presumably reflects the unprecedented (for the UK) chaos in the government's management of its affairs in the Brexit process. It also reflects a growing recognition of how the prospect of Brexit is already hurting the country – from the actual or planned re-location of multinational companies through to the shortage of nurses and farm workers, and a myriad of other bad news items on Brexit.

The next pieces of the political drama. These are to be played out at the Labour and Conservative Party annual conferences (respectively 24-27 September and 1-4 October). Both parties are in states of internal political warfare. In the case of Labour, the pressures are mounting to get Corbyn to back a second referendum. Major trade unions already push for this. In the case of the Conservatives there is the prospect of spectacular fights between the Davies/Johnson/Rees-Mogg front and the Remainers or soft Brexit wing, with the Prime Minister stuck in the middle. A crucial moment, no doubt after the conferences, will be when Parliament is called upon to vote on the May plan in whatever state it will have reached by then. The possibility that it will be voted down – with huge political consequences – is real, leading into the scenarios already mentioned.

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[1] "Brexit putting the union at risk, new poll reveals", *The Independent*, 3 September 2018

The second referendum question and Article 50. The momentum in favour of a second referendum has already directed the spotlight on the tricky issue of what the question should be. How should 'Leave' be specified, correcting for the gross fault in the 2016 referendum where no one could say whether it should be hard, or soft or 'no deal'? The menu of options can be easily extended to include the May White Paper, along with 'Norway', 'Canada' or 'WTO'. Political scientists and commentators are now working on these 'questions about the question', which quickly move into complex issues of electoral technique. The simplest proposal would be a two-option questionnaire, e.g. 1) the anticipated political declaration on the future relationship or 2) Remain. But there would be serious arguments in favour, including also 3) 'no deal' and 4) the Norway option in the European Economic Area, etc. In the case of more than two options, there would have to be procedures for taking into account second-order preferences, as is common in elections on the continent and in Ireland, but unheard of in the UK.

This then leads into the timetable question. Various spokespersons of the UK electoral commission say that preparations would need to go well into 2019, way beyond the present cut-off point for negotiations to end this autumn to allow time for ratifications before the 29 March 2019 withdrawal date. The implication is that a second referendum would need agreement from the EU-27 to extend the Article 50 deadline, which requires unanimity. And if the referendum gave a majority to remain, the UK would have to cancel its Article 50 letter, the potential legality of which is questioned by some but not all EU lawyers and experts. At this point, the EU would itself have to confront the question whether it would want to welcome back the prodigal son, or prefers that this difficult country withdraws after all. Both positions can be heard in informal talk in Brussels, with no desire to address the question officially.

So there are problems of substance and timing for a second referendum, which could be overcome if the idea became a political imperative, witnessed by mounting support in public opinion, alongside the inadequacy of the alternatives (change of government, leadership, general election) in the absence of a second referendum. The standard response of a parliamentary democracy to resolve an impasse is indeed to hold a fresh general election, for which the track record in Europe in recent times is not so promising. In this particular case, a general election can hardly be expected to resolve the European question, since both major parties are so confused and divided over it.

A reasoned iterative process called 'deliberative democracy'. If one takes a step back from this complex imbroglio, it is just possible to sketch a more positive model of the underlying political dynamics that we are witnessing. The story seems so far to be one of a catastrophic triumph of political populism. A flawed referendum leads to political chaos and even disintegration of what was supposed to be one of the world's most stable and mature democracies. The positive model is called 'deliberative democracy', an established branch of political theory that allows for an iterative consultative process for handling problems of intractable conflict.[2] According to this model there can be a first consultation on what to do, based on thin information and much pre-conceived emotion. The intended result of the consultation, however, is to sharpen the issue, and lead into a period of intense debate and deeper dissemination of relevant information. After which there is a second consultation, which can provide a different and better-informed result. Interestingly several EU member states, namely France, Ireland

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[2] Carrie Menkel-Meadow, "Deliberative Democracy and Conflict Resolution", HeinOnline, Winter 2006.

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and the Netherlands, have been obliged to through something like this process in recent years, staging repeat referenda to ratify EU treaties, but without dignifying such practice as a reasoned method.

The UK body politic now seems to be heading in this direction, with increasing public support for a second referendum, alongside the recent disastrous attempt by May to use the general election of 2017 to legitimise her management of the Brexit process, now seen as a model experience not to be repeated.

The overall story is one that highlights the hazards of indulging in referenda in the name of 'direct democracy', rather than sticking to the customary parliamentary democracy. The hazards of direct democracy, however, can be overcome by transformation of the process into one of iterative 'deliberative democracy'. Other EU member states have successfully used something akin to this process with repeat referenda. Whether it is too late for the Brexit case, the next few weeks will tell us.