

European Scrutiny Committee

Oral evidence: [UK Exit from the EU](#), HC 1798

Wednesday 16 January 2019

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Members present: Sir William Cash (Chair); Mr Marcus Fysh; Kate Hoey; Kelvin Hopkins; Mr David Jones; Andrew Lewer; Michael Tomlinson; Dr Philippa Whitford.

Questions 1 - 70

Witness

I: Rt Hon Mr David Davis MP, Former Secretary of State for Exiting the European Union.

Examination of Witness

Witness: Rt Hon Mr David Davis MP.

Mr Davis: Good afternoon, Mr Chairman. I see we have filled the public gallery.

Q1 **Chair:** Yes indeed. There is a little bit of competition. There are other attractions today, but you are more than welcome. We are looking forward to hear what you have to say on these important questions, particularly in light of what happened last night in the House. The first question I shall put is this: what impact do you think that the Brexit process and Brexit negotiations have had on public confidence in democratic and parliamentary government? Could or should the Government have done more to inform and explain to the public?

Mr Davis: The answer to the first one is what Zhou Enlai said: "Too soon to tell". He said that about the French Revolution after a couple of centuries. The same is true here. I represent a northern constituency, so I bump into people in the Midlands and north en route home and when I am there. There are a variety of typical responses: "Why is it not done yet?"; "Is it not done yet? Why do you not get on with it?" There is a bit of that, quite understandably. "Why are the Government being so soft?" That is a generic response as well. "Why is the European Union being so unreasonable?" There are a variety of threads there.

The real answer to your question will probably be available in April this year when we have either left or not left, because if we have not left or it is not clear we are in the instant process of leaving through an implementation period, we will see quite visible anger from the public at large, and not just those who might be counted as leavers. Quite a lot of erstwhile remainers have said to me, "I have changed my mind. Next time I will vote leave" or, "Why is this proving such a difficult process?" If they do not see a delivery on the vote of 2016, it will be really serious indeed.

Remind me what the second half of your question was.

Q2 **Chair:** Could or should the Government have done more to inform and explain to the public?

Mr Davis: Yes. The answer is definitely yes. Of course, the problem with that is that we are disentangling ourselves, as you know better than anybody, from 45 years of involvement with the European Union and its legal systems. Inevitably, the tendency of Government is to get sucked into dealing with the detail and the perceived problems. There has been a very large remain campaign against it, as we have recently seen even more clearly, raising problems, some of which do not actually exist.

The tendency of Government has always been to disappear into the mechanics. It was clear at the time but it is certainly clear with hindsight that to some extent that was a mistake. We have been and should keep



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reminding people of the upsides and benefits of departure. Cabinet Ministers have, over time, done that from time to time. The Foreign Secretary did; the Trade Secretary did; I did, but inevitably nine-tenths of what we were doing was what you might term defensive work, rather than putting the case for what we were doing as well, so one got overwhelmed.

The third thing about it is that putting the case did not tend to get reported very much, whereas our defensive work was very often controversial, and it did get reported and dominated the news agenda. I am of the view that we should have done more, inevitably, but I am not sure whether it was capable of being overcome.

Q3 Chair: Is there anything you would like to add in retrospect to the letter of resignation you wrote on 8 July? You will remember what you said in it. You mentioned sequencing and other matters relating to the common rulebook and the rollover laws question. What is your general sense?

Mr Davis: Yes. It is probably worth me spending a couple of minutes on this, if you wish. Can I put one health warning on this? A Minister appearing before you who was still serving as a Minister would have all his papers immediately available to him. I do not have that because of the rules of Whitehall. I have to go back and check, so if anything is very significant and the Committee wants me to go back and check the documentation I am happy to do so. I will flag that from the beginning.

It is probably best if I flesh it out so the Committee can see the sequence. In the letter, I made a number of points that, in my judgment, explicitly said that inside Government at the time strategic errors of negotiation were made. We saw yesterday, quite frankly, the product of those strategic negotiations over the two years. They started most notably with the decision to concede the case on sequencing. This was a decision by No. 10. Some of you may remember during the election campaign I said explicitly and publicly that the "fight of the summer" would be over money and sequencing.

As soon as I got back to the negotiation, the sequencing had been conceded by No. 10. That has proven to be fundamental to the outcome, because had we been doing the two operations in parallel we would be far more advanced on the future partnership than we currently are. We have a vague set of promises at the moment, which are very non-explicit. What is more, I am certain in my mind that we would have tied elements of the £39 billion to progress on that further future partnership negotiation. It would not have been complete, because the Union insisted it could not sign off such a deal until after we ceased to be members, but nevertheless it would have been in sight of completion, which at the moment it is not. That was the first big mistake.

Q4 Kate Hoey: Did that decision initially come from the EU saying, "This is the way we want to do it", to which No. 10 just said, "Fine"?



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Mr Davis: Essentially they laid down the law and No. 10 conceded, to put it bluntly. That is pretty much what happened. When I came back from the election—as you will remember, I was heavily involved in the defensive side of the election campaign—it was done. It had been conceded already, so it was very hard to disentangle without a major public row with No. 10, which I did not think was a good idea after that election result. I had to decide how on earth to make this work better, and I can go into detail on that later.

The second big problem was the concession on the Irish language, the “full alignment” language. It is worth explaining to the Committee why I think we arrived at that point, because it has implications for the way we manage these negotiations. Over the course of the summer, the focus was not on sequencing but it was still on money. There was a great challenge mounted by us to the European Union in its claim for €100 billion. That is what it was bidding for. You will remember that was shown in the *Financial Times*—an obviously planted leak from Brussels—and other places.

Over the summer, we challenged the legal basis of every element of that €100 billion, and I have to say with formidable effectiveness. It is the one time I am going to be complimentary about the Treasury. It was very good at this. The Treasury lawyer was very good. He was a very experienced, capable lawyer, but a very young-looking lawyer, and they got even crosser because he looked so young. They thought we had sent a teenager in to deal with them. It was very effective as a mechanism of argument and negotiation. We basically broke it all down and then allowed them to build it back up, with the intention of using the £39 billion as a way of pulling in the negotiation at a later stage. That was the intention.

October was the first point of making progress. When we came to October, Mr Barnier telegraphed that he wanted to make progress; at each stage, we had to make progress. Essentially, the French President, Mr Macron, intervened. We do not know that formally, but it is just what we picked up through the channels in Brussels. I think, frankly, No. 10 was slightly rattled by that.

That was made worse through the course of October and November when we appeared to be grinding very slowly through the process. No. 10 was very, very concerned that we make progress in December. At the very end, Mr Juncker offered a now rather famous lunch to wrap up the final details. I thought, “Very good, Mr Juncker would not offer such a lunch if he was not intending to wrap it all up. He would not take that risk, so we are pretty much there”.

In the last few days, No. 10 took over the last bit of the negotiation. Fair enough, the Prime Minister is going to be there; she is the lead negotiator, and very suddenly we had conceded this “full alignment” language. I warned against it. The argument from No. 10 said, “This is



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full alignment of outcomes, not full alignment of regulations". In response to that I said, "Are you sure the other side sees it that way?" Since the Balfour declaration, having two sides seeing the same words in different terms leads to problems lasting decades or even centuries. "Oh, yes, oh yes", but as it turned out, of course, that was not the case.

I have driven my old Minister of State away already.

Mr Jones: I will be back.

Mr Davis: It is the Schwarzenegger response.

Chair: He told us before that he would.

Mr Davis: He knows this story. That caused the trail of events that has led to today. The subsequent events are probably better known. There were the questions of the temporary customs area, where we made excessive concessions, in my view, and the open-ended element of it—that is what has become the backstop. There was a semi-public row about that. Then finally, in the Chequers proposal, we made proposals that, in my view, were more than our red lines—certainly the red lines laid out in Lancaster House. Its second anniversary is tomorrow. I did not think, as I said in terms, that they would deliver the response that they wanted from the European Union. Indeed, that has turned out to be the case. That is the fleshing out, if that is helpful.

Chair: That is very helpful.

Q5 **Kate Hoey:** I will ask a little more about the sequencing. Just on the question of keeping the House of Commons and the House of Lords informed, and the process of negotiations, which obviously the European Parliament was involved in, do you think—I am sure you do, because you spent such a lot of time giving evidence and making statements—that the Government could have done any more to keep Parliament informed of progress?

Mr Davis: Not really. You have two difficulties here. I know that, during my time in the job, I appeared in front of the House more times than any other Cabinet Minister, almost monthly at one point in time. That is not including the legislative appearances; it is just statements and the like. We put as much into the public domain as we could, but some of the approach to questions put by Members of the House could almost have been designed to be helpful to the European Commission. You may remember the controversy over the sectoral analyses, which were called impact assessments by some Members of the House. They were not impact assessments; they were sectoral analyses.

"What harm would be done by the absence of a deal?" "What is the upside?" "What are the possible benefits?" This is gold dust to the other side; it allows them to price out the offer they make to you, or the offer they do not make to you. There is a balancing act there. I made a claim to the Brexit Committee and to the House of Lords that I would always



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try to put the national negotiating interest cut-off into that requirement. They did not always respect that, and the fight over sectoral analysis and the humble address argument reflected a lack of respect for that view, but we did, yes, as best we could.

Q6 Kate Hoey: Looking back on your time in that job—I appreciate it probably was not necessarily Downing Street, but were officials given too much string to go off and do things?

Mr Davis: It changed over time. Two things happened. First, it is hardly a secret to say that the majority of Whitehall was not enthusiastically pro-leave. In fact, you can probably count on the fingers of no hands the number of Permanent Secretaries who voted to leave. I am guessing, but I would be surprised if I am wrong. You do not have to accuse them of being anti-patriotic to say that they were not enthusiastic about some of these things. They thought the best interest of the country was to stay in, so you have that for a start, as the backdrop.

Secondly, to some extent, when those in No. 10 got more nervous over the course of that autumn—the battle over money, the hanging back on the approval of the next stage by Macron and so on—they tended to rely on more and more conservative advice, more cautious advice. It is probably true to say that my advice in negotiating terms was—“aggressive” is the wrong word—more forward, and the Whitehall advice was more about risk minimising. The more worried No. 10 got about progress, the more likely it would be to follow that. The result is that we have ended up with what I would describe as a remainer’s Brexit. That is the problem. They are focusing on what they think matters about Brexit rather than what motivated the 17.5 million people.

Q7 Kate Hoey: My question on sequencing has more or less been answered. One of the things we noticed in the Northern Ireland Affairs Committee when we went over to Brussels was the amount of activity from the Irish Government. They were everywhere. They had a huge organisation there, wining and dining, doing all the usual things Irish embassies like to do. Was any thought given, when parts of that were being discussed, to bringing in one of your confidence and supply people, like Sammy Wilson, in terms of the Irish/Northern Ireland dimension? It seemed as if that was being led by people who perhaps did not really understand or want to understand the whole political border issue.

Mr Davis: We were handicapped in that, unpredictably handicapped, in two ways. First—and this is not an excuse; it is just a reason—DExEU is a very small co-ordinating Department, with a few hundred people at that time, a bit more now. It does not have massive amounts of spare resources; it basically worked by using the resources in each Department. What happened in Northern Ireland, you will remember, were two things. First, the Executive collapsed and disappeared, and that is much more important than it may appear from outside, because the Executive were an important instrument of this. Secondly, the then Northern Ireland Secretary, James Brokenshire, became ill and had to go



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in for an operation, so there was a change of Northern Ireland Secretary in the middle of it all, which did not help either. It is a complex and difficult area, as you know better than most, and it takes a bit of time to find your way into it.

If we fault ourselves in this, perhaps we should have put more resource into that when the Executive went, and focused more on it. We did not initially see it as being as big a problem as it turned out to be, because the original Taoiseach, Enda Kenny—and I do not want to put him in difficulties—took a slightly more constructive approach than came later. I may just be taking a coincidence, but the attitude of the Irish Government authorities in the first year was rather different from thereafter. It changed. It might be coincidence that it changed when Mr Varadkar came in, or it might have been his drive, but either way it changed. We probably did not react quickly enough to that.

Without the Northern Ireland Executive sitting on and linking with the Joint Ministerial Committee, there was a blind spot there. It is a fair point. There are not many things I would change, but if I had to go back I would put more resources in that.

Kate Hoey: That is very helpful. Thank you.

Q8 Dr Whitford: It really follows on from that. Also being from Northern Ireland, the Executive being missing and therefore there being no formal voice for Northern Ireland here to represent the entire community has been an absolute hole in this process. I do not remember any campaigning around what Brexit would mean for Northern Ireland before the vote. At the start, the Prime Minister said she would consult across the House, consult with the devolved nations and come up with what the UK was asking for before going to Europe. Do you not think that was part of the problem? A lot of the time, we had been negotiating with ourselves here, and therefore not being able to say, "This is what we are asking for. We are negotiating on that". That appeared in writing in a more solid form very late on.

Mr Davis: It is the case that there was a necessary issue of internal negotiation. To widen it beyond Northern Ireland, we had the Scottish Government, who were plainly against Brexit, but also wanted to have a battle over the division of responsibilities. Fair enough, but that took time. The Welsh Government were slightly different, but nevertheless a similar, rather more dilute version of the same. We would have expected a similar debate with the Northern Ireland Executive, and it sort of vanished in the middle. Yes, it probably slowed things down at the time. More generally, one of the arguments in Government—this is in the public domain, so I am not breaking any confidences—was that I wanted to have a White Paper much earlier than we did, literally a year and a half earlier. There was resistance in Whitehall broadly, and in No. 10 and Treasury specifically, to that for some time.

Q9 Kate Hoey: Why was that? Why did they resist it? What reason was



given?

Mr Davis: Partly, I was trying to resolve some issues that people did not want resolved immediately. The most obvious example is on handling customs. You will remember the two completely different approaches to customs management. My preferred one was called max fac, which is a terrible word for it, but it was an accelerated and simplified customs procedure. Then there was the so-called future customs arrangement, an exotic new invention, which still has never been done anywhere in the world. There were some people in Whitehall who just wanted to keep both in play. There were other arguments as well.

The other thing was a simple procedural one. Since you and I, Mr Cash, first went round these rounds when I was a Europe Minister, the process of decision-making in Whitehall has become much more ponderous. There was an argument, which took some time, with Jeremy Heywood and others that every single chapter of any new White Paper had to go through a full Whitehall write-round process. A Whitehall write-round process is effectively a multiple veto. It takes forever. I said, "No, if you do that, it will take us years and years. Let us get each Department to agree its chapter, and then we will do the collective write-round at the end". So there were procedural issues as well.

Q10 **Dr Whitford:** Before you ask Whitehall to enable, inquire or pull together what you want to do, do you not have to have the more political rough sketch of what you are going to do? Is it not the fact that we had people who are very strong believers in Brexit, people who are utterly against, and people who would have accepted a soft Brexit all in the same lobby? The failure was this belief: "I need to keep my cards close to my chest. I cannot possibly discuss these things". This shutting Parliament out at the start is why we had last night.

Mr Davis: There was a bit of that, but it did not shut Parliament out. That is not true. It was not a question of keeping cards unnecessarily close to the chest. There is a point in what you are saying. The best exemplifier of it is that, when we eventually got to the point of saying, "Right, we are going to have a White Paper", the first stage of it was the February Chequers of last year. This was the so-called SN committee, the strategic negotiating committee, not the big, full Cabinet one. That was in February. The argument in essence was about the right to diverge. You may remember the headlines that came out from it. I was deemed by the tabloid scorers on this to have won the argument, because we got the right to diverge into the phrasing.

On that issue and the extent to which we concede to Europe effective control of harmonisation—at the one end were those who basically want to stay in the single market and those who do not want to leave at all, and at the other end were those who want to see us make the most of the opportunity and deliver more freedom. We may still conform, but at least we have the right to diverge. That was where the battle was. It was not the only one. Customs was another one, and there were others, but



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there were a number of fundamental areas where No. 10 did not want to decide it or we had not got a resolution. We got to an apparent resolution in February, but as subsequent events turned out it was not a real resolution.

Q11 Andrew Lewer: You have touched upon Chequers. There were two, but I am talking about the big Chequers now. The White Paper was published on 12 June, only six days after that whole Cabinet Chequers meeting. To what extent did that White Paper on the UK's future relationship with the EU encapsulate the agreements made by Cabinet at Chequers just those few days earlier? Had large parts of the contents already been agreed?

Mr Davis: Not agreed, no. DExEU was writing its White Paper, in consultation with all sorts of other Departments, or all other Departments, in effect. Chequers was on the Friday. We got to the Monday and I was shown the alternative version of the White Paper, which was basically written in No. 10. I said to the Prime Minister, "This will not work for the following five reasons". I cannot remember all of them now, but I will resurrect them if you want me to. She said, "Well, this is what we have to do. This is the only thing that is negotiable", which I did not agree with. "It is what we have to deliver". I said, "You will not be able to deliver it through Parliament". I am afraid that has been proven altogether too true. "Indeed, it will not deliver for you the negotiating response you want from the other side".

As a point of negotiating theory, if you continually deal with the people across the table—I would not call them opponents, but the people you are negotiating with—and every single time they make a demand you make a concession, and they make another demand, and you make another concession, they do not stop making demands until you start to refuse the concessions. The theory behind the White Paper was to say, "We will make another big concession and that will settle it", which seemed to me likely to have the opposite effect to what was intended. That was part of the argument. It was not unusual for me to have a bilateral with the Prime Minister, literally one on one, with a notetaker, and for me to disagree with her. That was part of my job, to be a devil's advocate and to argue the other case.

This is what normally happened under those circumstances. You never knew about this because—maybe uniquely, I do not know—I have a belief in the Marquess of Queensberry rules. You can ask the press: I do not brief and I do not spin on these things, so you do not know about it. In my role, I then said, "Okay, let me look at it, go away and see if I can make it work: change the wording, put constraints into it, and so on". Broadly speaking, with one big exception, that had worked previously. I said, "I need to see the written version". I saw the written version of these major points, the major chapters. The uncontroversial 70% of the White Paper was the same; it was the controversial 30% that was not.

When I saw that on Wednesday, I wrote back within an hour, saying, "This will not work for the following reasons". As you all know, that will



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become a matter of public record in 30 years' time, or sooner. No. 10 came straight back, because they knew what I was going to say, and said, "We insist on this". That is the document that was put to Chequers on the Friday.

I am very conscious that I have to weigh the ministerial code in my evidence to you, so I probably should not detail who said what, but as plain as a pikestaff I had serious objections to five elements of the White Paper, five clauses. I made that plain, but it is true to say that I lost in the voices by about five to one. As for whether that was an organised or spontaneous five to one, your guess is as good as mine.

- Q12 **Andrew Lewer:** When this paperwork arrived that was not the way you wanted to do this, did you at that stage ask, "Where has all this come from? Who has been doing all this while I have been doing something else?" Was it slightly less unexpected than that?

Mr Davis: The answer to the question is obvious: it was the No. 10 unit, the only other possible source. There would have been influencers in that. I would expect the Treasury and the Business Department, which were the ones that were most on the other side of the argument, to have been influencers, but it came from No. 10. To answer your implicit question, yes, there was a precursor to this as well.

- Q13 **Andrew Lewer:** To what extent would you say, as it turned out, you were involved in the preparation of the White Paper as it appeared prior to your resignation?

Mr Davis: On the critical, controversial areas, I was not. I had five days' notice, effectively.

- Q14 **Chair:** On that question, can I go back to the early days? Oliver Robbins appeared in front of this Committee, after a good deal of determination on our part to make sure that he did. You will probably recall some of that. You had him as your Permanent Secretary when you first arrived as the Secretary of State. He left, and it is generally thought that differences in opinion, attitude or something had emerged out of the relationship there. He then goes off to No. 10. Then you have a situation in which, as you have just described, there was a stand-off at the time of the July Chequers meeting. You were confronted with a number of issues that you quite clearly did not like and you made it clear that that was the case.

To what extent would you ascribe the differences that emerged on that issue to the fact that, as you quite rightly said, there was a unit in No. 10 making these decisions, and they were effectively coming from the influence of Oliver Robbins as the Permanent Secretary inside No. 10, who had previously been the Permanent Secretary to you?

Mr Davis: This, again, requires a bit of context. It will only take 30 seconds. When I was appointed, Mr Robbins was already in place, but he was in place with two jobs. One job was as the Permanent Secretary of DExEU, and the other job was as the Prime Minister's Sherpa. They are



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pretty much equally important jobs. He had two masters. One of them was the Prime Minister, so you can guess who won the arguments on these things. At the time, initially, it seemed to work okay.

Over time, I became less and less happy with the way DExEU was working under that mechanism. DExEU was in effect working as an adjunct to No. 10 and not taking instruction as well as it should do. I will put it as bluntly as that. I talked to the Prime Minister about this. It was round about the time of the election, I think. I can go back and look up the dates. We agreed that we should separate out the functions. I got a new Permanent Secretary, Philip Rycroft, who may have appeared before you. I cannot remember. He has certainly appeared in front of more than one Select Committee.

What I did not expect from that was that a chunk of the decision-making went over. I started off at the beginning by describing why I think the No. 10 unit had a tendency to depend on risk-averse, Civil Service-based advice, rather than more political and, as I think of as it, strategic negotiating advice. That is what happened at that time.

I tend not to focus it on the individual of Mr Robbins, because it was a function of three different things. It was a function of the nature of the Civil Service advice and of the spad advice, which I suspect was in the same direction. Remember, most of these people were in place prior to the referendum, when the Government's strategy and policy was of staying inside the European Union, albeit trying to get reforms, so I suspect the advice reflected that. Thirdly, there was the question of what appeared to No. 10 to be an increasing risk profile.

Q15 Chair: I have heard from a variety of sources that there was a bunker mentality at No. 10. Furthermore, it was very difficult for people to get access to that mentality and to the people in question, because they had their own policy that they were pursuing, which appears to be very consistent with what you said earlier about the differences that emerged with respect to the draft White Paper you were preparing and the White Paper being prepared in No. 10, which we will come on to in a moment.

One of the things I have been concerned about—we wrote a report about it after we had taken evidence on the earlier stages of all this—was the fact that there appeared to be acquiescence in the idea that the EU would lay down the terms of reference, and that the guidelines would be determined by the EU. For those of us acquainted, as I am historically, with what went on even in the 1970 to 1971 period, the EU lays down its own rules and people are expected to conform to them. This is inconsistent with what happened under the Lisbon treaty arrangements, because at that time, back in the 1970 period, there was no question of anyone expecting to leave the European Union. Once they decided to do that—and this is the preamble to what I would like you to answer my question about—the circumstances changed, so that we had an absolute right to decide as equal partners. We are the leaving partner and they are the demanders, if you like. We should not acquiesce in their guidelines



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and their terms of reference.

I want to ask you whether, against that background, you perceived that there was more of a desire to acquiesce in what the EU was saying from within No. 10 than there was in your Department and in your mind.

Mr Davis: It was not in No. 10. It is instinctive in Whitehall to go along with the rules. It was habitual, really, rather than an explicit decision.

Chair: This is my Olly Robbins point.

Mr Davis: I would rail a bit at the time against what I called the supplicant approach. There was an innate excess of gentility in some of the negotiating style; put it that way.

Q16 **Chair:** In other words, they thought diplomacy could override the real, hard politics of what was going on.

Mr Davis: Sometimes, yes.

Chair: Fair enough, thank you very much.

Q17 **Kelvin Hopkins:** I must say, it is refreshing to listen to you speaking today unencumbered by office.

Mr Davis: People forget that, you know. People forget that, when you are a Minister, you have quite strict restrictions on you, and I take them seriously. Not every Minister does, it has to be said, but I take the view that, if you are inside the system and you are on the team, you support the team. It is different when you are not.

Q18 **Kelvin Hopkins:** I understand entirely. My question is really about the Civil Service, and you have dealt with that to an extent already. Could you distinguish the formal role of civil servants from that of Ministers? We have heard some disturbing views that civil servants have taken a much stronger role in these things than they would normally.

Mr Davis: Yes. It is quite interesting. I fear in myself a tendency to have an old man's halcyon view of the old days.

Kelvin Hopkins: Me too.

Mr Davis: Yes. I have to aim off a bit for that. Interestingly, in talking with other Ministers who served in a previous Conservative Administration 15 years previously, I find the same response. The balance of power, speed and reflexiveness of the Civil Service has altered. There is no doubt about that. Take that issue of the White Paper you mentioned before. I had a White Paper when I was a Minister of State—not a Secretary of State, not the fourth-ranking Secretary of State in the country, but a lowly Minister of State. I got a White Paper through without all this enormous, ponderous superstructure of crossing the Ts and dotting the Is. There is a change in procedure. There is a bit of a change in mindset. Maybe it was on this issue; I do not know, but on this issue there was much more resistance to what I thought was a



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reasonably common-sense interpretation of the referendum. It was not opposition; it was more like being in treacle, if you take my distinction.

- Q19 **Chair:** Would I be right in saying, on that subject, that most of them have never known anything other than having a European Union legal framework?

Mr Davis: That is the problem.

Chair: The first thing they have to do on every single thing is to decide how it fits in with the EU. That is the mentality, and up to a point, however critical one may be, it is very difficult if that is the situation you are in.

Mr Davis: I am not critical of them. I take the view that they were doing their national duty to the best of their abilities and the best of their own interpretation. It is the case in DExEU, which I can speak for, that a number of people—I do not know whether they put their careers on the line—certainly took a gamble coming into a brand new Department, one which would have been seen as controversial within Whitehall, to fight for a cause that much of Whitehall did not approve of. Many of them did as well as they could in those circumstances, but you are right. A lot of the reflexes, presumptions and assumptions of what is reasonable were set by 40 years of history.

- Q20 **Chair:** There was also a legal framework, which even as we speak now is still there until 29 March. They would be saying, "How are we going to deal with the situation in terms of policy now when the law says something else?"

I would like to ask this next question quickly, which is whether in fact they were themselves sufficiently aware of the instruction that had been given to the Civil Service, as well as to Parliament, with respect to the question of the outcome of the referendum decision.

Mr Davis: It is a very good question, but it is a very hard question to answer accurately. They all saw it as their duty to deliver on the referendum, but delivering on a referendum has a spectrum of interpretation. I imagine you and I would see it as delivering on exit from the customs union, exit from the single market and taking back control of borders and laws.

- Q21 **Chair:** Yes, and very much the repeal of the 1972 Act, which includes all the laws.

Mr Davis: It is all of that. At the other extreme end, and still within the remit of delivering, is to deliver a deal, full stop, without making a judgment on what the deal might be. Truth be told, that is really where we were yesterday, to some extent. You have that whole spectrum of different interpretations, but the truth of the matter is that history puts much of Whitehall at the "deliver a deal" end, rather than delivering the detail of what the people who voted for Brexit actually wanted. That is what I mean by a remainer's Brexit.



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Q22 **Chair:** But the law of the land, because of the withdrawal Act that was passed on 26 June, when you were still Secretary of State, is quite clear in section 1. It says, "The European Communities Act 1972 is repealed on exit day". That is the law of the land. Did you find that there was any resistance to that from within the Civil Service?

Mr Davis: No, not at all. There are some heroes in this story. The legislative civil servants inside DExEU—I see Mr Jones is nodding—did a pretty heroic job, both on the article 50 Act, which somebody after the event, I think Alex Salmond, said it was the first unamended Act of any significance since 1918 or something, which shocked me, and on the withdrawal Act, which took a formidable amount of thought and work. It was based originally, in part, on work by you, Mr Chairman. They picked that up, ran with it, made it work and did a pretty good job in the face of quite heavy fire. There are elements of this that were really heroic work.

Q23 **Chair:** The late Jeremy Heywood asked me to go and see him. He said, "We have looked at your Bill", which is the one I produced just before the referendum, and he said, "This is the basis on which we think we need to proceed". That was a very good thing. Of course, I heard nothing more until the Prime Minister made the announcement. You knew what was going on, but I did not. At this point, I would like to bring in David Jones, because he has a question to ask, which is to do with what was going on in your former Department.

Q24 **Mr Jones:** In the same vein, you will probably recall that Suella Braverman, shortly after she resigned in November last year, wrote an article for *The Telegraph*.

Mr Davis: I have to say, Mr Jones, that many Ministers have resigned.

Q25 **Mr Jones:** She wrote, "Civil servants would routinely return from Brussels with the fruits of their endeavours, often having strayed beyond Cabinet mandates or setting policy decisions in legally binding text before Ministers had even discussed them". Do you recognise that pattern of behaviour?

Mr Davis: As a pattern of behaviour, no, but I recognise the behaviour. That is a fine distinction, but an important one. The best and worst example I can give you of this relates to the temporary customs area, which was the precursor of the backstop, or our version of the backstop. This was one of those cases where I discussed with the Prime Minister what we could do. When it was first mooted, she presented something to me and I said, "We have to amend it in about five ways". I cannot remember what all the five ways were, but one of them was our unfettered right to decide when it finishes, so we do not leave this to a joint decision between us and the European Union, or allow the European Union to have a veto. This has become very fundamental now.

As a result of this, we eventually had a decision, which accepted my five conditions. A week later, the negotiating team came back and the five conditions did not appear. I had to have a fairly strong discussion with



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the Prime Minister, some of which made the public domain. You can look it up; it was in May or June last year. So it did happen. I would not describe it as a pattern, but it happened on more than one occasion, certainly, or more than two or three occasions.

Q26 Kelvin Hopkins: Over 50 years ago when I was a student, I was taught by a former Treasury official.

Mr Davis: Did you ever recover?

Kelvin Hopkins: He was actually a good guy, but he said that one of the virtues of the British Civil Service was that within it, even though civil servants are officially politically neutral and advise all Governments, you could find a range of views. If they had policy changes, there was always somebody who had been thinking along those lines: "Here's a new policy I made earlier". Policies do change. That seemed to have changed by the time Tony Benn became Secretary of State for Energy. I was quite close to his team. He had a team of spads working for him. He tried to get his own policies through and failed. The Civil Service frustrated him, went to the Prime Minister and stopped him getting his own White Paper on energy policy. It seems to have changed a bit then, but is it not possible within the Civil Service to find people, although not overtly, having a range of views? Could you not have made sure that there were senior people who took your view and, I will say, my view as well?

Mr Davis: I had been in the Department for three weeks. I was with a member of my new private office, which was all brought together at a moment's notice, because none of them expected this outcome. We were walking to a meeting. I never carry ID cards; it is a prejudice of mine, so he would get me through all the security doors. We were chatting. This man had worked in UKRep previously. I should not say too much about him; I might blight his career. As we finished, I was talking about something that was going on, and he said, "Yes, that's why I voted to leave". That was somebody working in UKRep. There was diversity, and a number of our people had a diverse view.

The truth of the matter, Mr Hopkins, is that I actually blame us for some of this. The really obvious, formal version of what you are talking about is when a new Government comes in. There is a formal preparation process, whereby the Civil Service has a worked-up set of plans based on that Government's manifesto. When we have something as significant as a referendum on something as fundamental as our membership of the European Union, there ought to have been a worked-up plan for both outcomes. The fact that there was not a worked-up plan for both outcomes, or not what you and I would call a worked-up plan for terminating 45 years of association, was, in my view, a disgrace. It was not the civil servants' fault, because I cannot imagine that they did not do anything unless they were told not to do it.

I am guessing now, and forgive me, Mr Cash; I wander into guesswork, but I suspect they were told not to do it because it would be



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embarrassing if it got out that the preparation had been made. I bet you that is what happened. I do not blame the Civil Service for that at all. The difficulty is that very, very, very few senior civil servants would have been pro-leave. It does not mean very, very few of them were capable of preparing a plan to leave, but I do not think they were formally asked to do that when they should have been.

Q27 Kelvin Hopkins: Just one of those going along with Olly Robbins as part of the team in Brussels on every occasion might have made a difference.

Mr Davis: Well, do not presume that was not the case. Do not presume that was not the case.

Q28 Chair: Just to carry on that conversation, I have had some pretty vigorous correspondence through the letters columns of various newspapers with former civil servants who have been very clear in their view that we should not leave the European Union. There is a whole stack of them. I remember Lord Butler—he was at Oxford with me, and I have known him for many years—said in the course of the debates that, when he read of the repeal of the 1972 Act, it was like a dagger to his soul. That gives you a flavour of the kind of thing. He was Cabinet Secretary. You have Lord Armstrong, Lord Wilson of Dinton, and so it goes on.

I have made a bit of a study of this, and there is no question. For example, if you read Con O'Neill's memoirs—and I quoted this in a speech the other day—as far as he was concerned the negotiations were more or less a side-line. As far as he was concerned, the main objective was to deliver the political will of the Prime Minister and the Cabinet to get into the European Union, one might say almost at any cost. The question of the role of the Civil Service is quite a historic one, and firmly based at the very highest level. It was definitely, and remains to my mind, in line with the kind of thinking they had. Do you have any observations on that, because it is historically quite well set out?

Mr Davis: To go back to my point, the fact that people may have these views does not make them unpatriotic. It does not mean they are not doing their duty when they try to do it in their own interpretation.

Q29 Chair: They did do project fear.

Mr Davis: Yes, they did, or some of them did. Just over two months ago, I went to Mons for the 100th anniversary of the Armistice. I had a number of people come up to me and ask, "What do you think about this, given you were Brexit Secretary?" It reminded me that the origin of the conventional wisdom of the 1970s, 1980s and to some extent the 1990s was that the European Union was how you prevent another world war or another European war. The motivation behind that tends to override lots of detailed critique and criticism. That is where a lot of this comes from. It is where Ken Clarke's views come from. It is where Ted Heath's views came from. It is where a whole generation of people's views came from.



It was not universal. When I was at the Foreign Office back in the 1990s, my Permanent Secretary was as sceptical as you or I, but my entire European Union Department when I joined was absolute, rock-solid, wall-to-wall Europhiles. They were not when I left, but they were when I joined. This is where we run into this problem of non-preparation for referenda. The nearest to what we are facing today were the post-1979 reforms of the Thatcher Government, which were also very dramatic. There were big changes in trade union law, economic policy and currency policy, some of them very high risk, but there was a preparation process for that, even for people who were probably all signed up to Harold Wilson's approach, or Callaghan's approach, to the world at the time.

There was not the preparation for this. There were not the thought processes. They were in at the deep end, and their own prejudices played into it. You cannot place the entire blame for this on the Civil Service. It is down to the political class, whom they rely on. That is why I made the point about the change of risk perception in No. 10 from October to December. They feared that we would miss the December deadline, as it were.

There was a difference in risk perception between me and No. 10. I took the view that the tougher this got at that stage, the better. Some of you will remember me saying right at the beginning of this process, "The time that will matter is the last three months, not the first two years". I said it over and over again. Journalists now play it back to me. The reason for that is that you have to have a point of pressure in a negotiation; otherwise it never comes to any sort of equilibrium. I was very happy to have the point of pressure be October, December or, if need be, March.

Inside Government, Treasury was arguing that business was losing faith. Business was starting to make decisions to move investments elsewhere. Business was panicking. I do not actually believe it. A lot of noise was coming out of the CBI, and some big corporates were making arguments to that effect, but actually they were holding back on capital investment. They were not moving factories. Look at what happened with the City. We were told thousands and thousands of people would move from each company. Hundreds did in some cases, and they may well come back in due course. I did not think we should let ourselves be panicked by that. The economic and business half of Government was putting pressure in that direction on No. 10, and No. 10 made its judgments accordingly.

Q30 Dr Whitford: I have two points. Would it not also have been incumbent on the leave campaign to have had a White Paper? In Scotland, we were mocked for the size and detail of what was put forward in Scotland. We had a two-year debate, so no one could say they were not told or did not get the chance. The other thing is that, after the snap election in 2017, when the Government lost their majority and clearly this was not going to be easy, would that not have been the time to test what you talked about as a range? The Scottish Government had already put forward their single market compromise; there will have been other people in the



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House. At the end of the day, this process that happened yesterday was always there. The can was just kicked down the line, and now with 72 days the Prime Minister is in the Chamber, talking about reaching out to people. Would March 2017, or whenever we came back, June 2017, not have been the time to test, in principle, heads of terms, what could have got Parliament's support?

Mr Davis: There are two things. First, I cannot really speak for the leave campaign. You would probably need Mr Dominic Cummings here for that purpose.

Q31 **Dr Whitford:** But you were part of the "leave campaign". I do not mean a particular bit of it.

Mr Davis: I was a leave campaigner. I deliberately did not get involved in any of the administration. That was a deliberate decision on my part, because I thought I would differ from them too dramatically in terms of the approach. One of the ways I differed from them was that I wanted to talk about the economic consequences of this, how we would deal with them, how we would mitigate some of the downsides, what the upsides were and so on. The leave campaign's general policy was not to engage on economic arguments. I may be traducing them; you would need to talk to them. We had differences of views there.

In terms of testing things out, you should talk to Mike Russell. We had in JMC quite extensive arguments about some of the proposals. I am not sure what you would call it; it was not really a White Paper, but about two-thirds of the Welsh Government's policy proposal document was picked up. Some parts of the Scottish one were picked up in terms of employment protection, but not the single market.

Q32 **Dr Whitford:** I mean the House itself.

Mr Davis: I see. As I say, I appeared in front of the House many times in that year. My life at one point felt like I was either at the Dispatch Box or preparing to be at the Dispatch Box.

Q33 **Dr Whitford:** I do not mean you did not; you were frequently there, but I mean a mechanism to test the heads of terms before you go to the Civil Service and tell it what you want it to do.

Mr Davis: The only thing I can say to you about that is this. I am probably one of the foremost defenders of the House and the way it works in the last decade or two. I am not the only one, but one of them. But, of course, we have a conflict-based approach to this. I did try a little bit. I will not overdress this up, but you might have noticed that Mr Keir Starmer became a privy counsellor early on in this process. That was at my behest. There was a reason for that. It was so I could brief him as a privy counsellor, so he would be able to talk these things through.

I do not want to make any party political points, but at the time the Labour Party went through about 11 different policy positions. It was not



exactly in a position to debate either. Stephen Gethins was not a privy counsellor but I sort of behaved as though he was—you can ask him—as I did for Mr Blackford. I talked to all of them as much as I could, offstage, outside those standards of procedure where I beat everybody up in the Chamber, which we are all used to, and they beat me up too. I tried to get round the conflict-based nature of our democracy as best I could.

The SNP was different. It had a particular position, and it was not one we found acceptable, but I debated it individually, both formally inside the JMC and informally in discussion outside. With the Labour Party, it was hard to engage. To be fair, I did not engage with the Liberal Democrats, because I took the view that they simply opposed the approach altogether. But that is much as you can do.

Truth be told, I do not want to blight the Prime Minister's attempts in the next days and weeks, but I would be surprised if she finds a majority for any of the particular proposals being put forward. Norway is a shrinking attraction, when people go through the detail of it. After being a Minister, I spent a couple of hours with Mr Boles trying to see whether Norway could be made to run—I do not think it can—and I was criticised for that. A second referendum will not fly for all sorts of constitutional, timing and legal reasons. A customs union will not fly.

The point I am making is that I have been through a large amount of these on as scientific a basis as I could. Early on, I tried to keep it as scientific as possible. That is why I appeared so many times and why I was so ridiculously polite to everybody in the Chamber. I do not think I was rude to anybody for two years. Anyway, I did what I could, but there are limits to what you can do in a parliamentary democracy like ours.

Q34 Chair: I have one question that has arisen out of what you have just said. You mentioned December; 8 December is etched in everybody's mind, certainly in Northern Ireland and certainly in the House of Commons now. That is when the backstop was agreed. Can you throw any light on what actually happened at the moment that backstop was brought in? It came out of the blue as far as everybody else was concerned. How did it happen? To what extent would you like to comment on the manner in which it has worked out?

Mr Davis: In essence, as I have said before, No. 10 took over the last phase of the negotiations directly. Mr Varadkar made his demand. There was a phase they went through when he made a demand for complete harmonisation. They changed the language to "full alignment" rather than "harmonisation". That may be why No. 10 came to the view that it had got an agreement on alignment of outcomes rather than alignment of regulation. I raised my concerns, my Balfour declaration point. But it was plain that the Prime Minister wanted to make progress—"make progress" was the term used—at the December Council. I basically turned my mind to how I could make this work somehow. If you look at my statements in the Commons, I talk about full alignment of outcomes. That is what I was trying to nail down. The reason I made that in the Commons is that it is



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very public, it is very clear and it commits the Government, but I am afraid that bled away.

On the Monday, which was the 4th, we went to Brussels. There was a lunch. We were going through a series of things. We were having arguments about a variety of things that were not this fundamental issue at this stage; we were arguing over one of the other things I was concerned about, which was the eight-year period for European citizens in the UK to have EU-competent rights. Then there was a call from Arlene Foster, I am guessing about half an hour, during which it became plain that the DUP was concerned about that and that we could not make progress, bearing in mind that we were dependent on it for delivering the vote on this subject. We came back. There were three days of discussions with the DUP.

Q35 **Chair:** Is this from the 5th to the 8th?

Mr Davis: Yes, basically. Eventually, the Prime Minister had to say, "We have to come to a conclusion, because the Council is next week". We went back at the crack of dawn on the Friday. I vaguely remember leaving home at about 3.30 in the morning. We signed off on the "full alignment" words.

Q36 **Chair:** Did the idea come from the Prime Minister?

Mr Davis: The idea for the "full alignment" words, you mean.

Chair: I mean the idea for the backstop.

Mr Davis: No.

Q37 **Chair:** That was being said yesterday in some of the debates. I heard one of the Northern Irish MPs say that the idea came from No. 10.

Mr Davis: No, I do not think that is true. I cannot be 100%. I will go back and look at my papers, but I cannot be 100%.

Q38 **Kate Hoey:** One of them said yesterday that, in the current renegotiations recently, no one at Downing Street or in the negotiation team asked to have the backstop put into a legal framework.

Mr Davis: The DUP had been told either by the Irish Government or by the Commission—I am not sure which—that there was no request from the Prime Minister, but I am in no better position to answer that than you are. You may be conflating those two things.

Q39 **Mr Fysh:** To follow up on that to clarify, the backstop appeared as an idea back in December. Where did that originate from?

Mr Davis: It was a mixture of the Commission and the Irish Government. It is very hard to tell the difference sometimes. They co-ordinate their positions very closely. It was those two, but we do not know the origin of the individual case.



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Q40 **Mr Fysh:** In terms of the “full alignment” language and what was eventually done there, was the idea to agree to that a Civil Service idea or a political idea?

Mr Davis: It was the Prime Minister’s decision at the end of the day. The day I was appointed, the Prime Minister said to me, “You must understand, David, that I am going to be the chief negotiator on this, and I want you to support me”. That is fair enough. This is such a big issue that the Prime Minister is the chief negotiator. She is the decision-maker. Of course, she will have brought it back to Cabinet and presented it to Cabinet, but that is a mostly formal process. I cannot remember a time when Cabinet altered one of these things in this Government or indeed, I suspect, in previous Governments. The formal decision is a Cabinet decision, but the effective decision is the Prime Minister’s decision.

Q41 **Mr Fysh:** Yes, but was she advised to make that decision by the Civil Service at the time?

Mr Davis: That I do not know. All I can tell you is my advice, which I have, and the context, which is concern over making progress. I use their term, “making progress”. It is not a very accurate term.

Q42 **Mr Fysh:** In the period after that, was there ever a time that you are aware of when any particular civil servants regarded it as having been a mistake to have conceded that backstop in the joint report?

Mr Davis: There is a spectrum of views within the Civil Service, as a result of both its history and what its task is. Some of them would have viewed it as more difficult than others, undoubtedly. Probably, the closer to the task they were, the more difficult they would have viewed it as, I suspect.

Q43 **Mr Fysh:** You mentioned the temporary customs arrangement that appeared in May/June. Was that in any way an attempt to fix a mistake that had been made with the backstop?

Mr Davis: It might well have been, yes. It might well have been. The temporary customs arrangement came after the Union’s proposal on the backstop, which the Prime Minister said was unacceptable. This was No. 10’s attempt to resolve that. As I said, in my view it went too far. We had a sequence of events. There was my attempt to modify it, which I thought was agreed but the negotiating team rolled back on.

There was then a fairly public argument about it. There were headlines: “David Davis threatens to resign”. That was not true, but nevertheless it is a reflection of a row or an argument going on. That is a typical No. 10 briefing, if you disagree with them. Eventually, there was a conclusion. I have forgotten the wording now. It is something like “best endeavours”, which is where we ended up with this. But at the end of the day my view was and is that an agreement without legal underpinning is not really an agreement.



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Q44 **Mr Fysh:** That temporary customs arrangement was one of the chapters in the proposed White Paper. Was that what it was intended to go into?

Mr Davis: I cannot remember whether it was a chapter. It would have been a part of this. No, no, it would not have been in it. I cannot remember off the top of my head. I doubt it was a chapter.

Q45 **Mr Fysh:** You cannot remember whether it was subject to the write-round provisions you said the Cabinet Secretary had stipulated.

Mr Davis: The eventual White Paper was cleared at Cabinet level, not in a write-round process. That is one of the ironies of this. After having had a big argument about the write-round process, the one that came out had not been written round to me.

Q46 **Mr Fysh:** Indeed, but I am trying to understand exactly that process. Had the TCA been going round as part of a write-round before that?

Mr Davis: No. I first discussed the TCA with the Prime Minister. I suggested five amendments to it. It went to a Cabinet committee. I proposed the five amendments in the Cabinet committee. I was led to believe that they had been accepted, and then they did not turn up later on in the negotiation. That was the process.

Q47 **Mr Fysh:** When you say that the Cabinet Secretary said that the write-round had to happen as part of Whitehall process, did he make any formal change of that process to allow a different thing to happen?

Mr Davis: You are leaping four or five months, because that was a debate about a whole White Paper, not about one element of it. We eventually agreed that I would clear elements of the White Paper with the relevant Departments and then do a complete write-round at the very end. That is what was proposed. We went through a different procedure. That is what happened. This was more part of the ongoing negotiation. The ongoing negotiation was not always subject to write-round, because some of it was a red-line process. As you will remember, the Cabinet has not exactly been leak-proof on some of these things. Going into write-round on the negotiating stance was not necessarily done. The White Paper is different. A White Paper is designed to be published, so the circumstances are not the same.

Q48 **Mr Fysh:** You described the difference between the decisions made about divergence in February, around that time, and the eventual effective decision about divergence that happened at Chequers, which was the opposite.

Mr Davis: It was not optics.

Mr Fysh: No, it was the opposite.

Mr Davis: I am sorry. I thought you said "optics". They are fundamentally different.

Q49 **Mr Fysh:** No. That is interesting, because back in February the other



thing that happened was the release of the information about the sectoral analyses. I wondered what sort of economic analysis was presented at the Chequers Cabinet meeting.

Mr Davis: There was not a lot of economic analysis. This was a question of what in principle we were seeking to achieve. The argument was one between where the grand upside of Brexit is, what it was that the electorate were expecting out of Brexit, and what in principle we were aiming to do with Brexit on the one hand, and what was negotiable on the other. That was the primary tension there.

It is worth just saying a word about economic analysis. One of the reasons I insisted on the sectoral analysis—I did not like the idea of economic predictions, which is what an impact statement is—is that the technology of economic prediction is useless. When I say that, it is worse than useless; it is misleading. It is mathematical guesswork. I speak as a mathematician. I was at London Business School when they devised most of these forecasting techniques there. It is useless and misleading, and it tends to be used in a polemical way, like project fear, as was said earlier. So I deliberately walked away from that.

I said to the Department, “What I want to know is this. This business, let us say chemicals, is distributed around the country like so. There is a lot in the north-east, some in west Wales and so on. It has 70% of its market in the European Union, and it falls under the European Union regulatory structure like this. If we deviated from that regulatory structure, this would be the consequence”. That is about as far as you can go. Beyond that, you start to get into guesswork. But, if you focus on the factual analysis, you are liable to make factually good decisions. If you start introducing a Treasury forecast into it, you will get all sorts of weird decisions. That was the reason for the distinction. It is not an economic forecast. That is why we had this row over language: “sectoral analysis” versus “economic impact analysis”.

Q50 **Mr Fysh:** But you were saying earlier how fear, effectively, has been a changing factor over time, which has affected the type of advice that was listened to within the decision-making process. In that sense, I am interested in whether, at that Chequers meeting, any valid economic analysis was presented, for example by the Treasury, that could have informed what was a very dramatic change in Government policy?

Mr Davis: Do you mean Chequers 1 or Chequers 2? Do you mean the second Chequers meeting?

Q51 **Mr Fysh:** I mean the Chequers meeting at which the decision to go for the new customs partnership was effectively made.

Mr Davis: No. The primary presentation was by the Prime Minister and Mr Lidington, and it was presented in terms of what was achievable, what would be good for the country and so on. But there was not a detailed economic forecast in it. Frankly, it would not have added much to it. We all know where the economic gains and losses might be.



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Q52 Mr Fysh: Were your colleagues, who outvoted you five to one, acting principally out of fear?

Mr Davis: No, I do not think so. I would not accuse them of that. If you want an area where things were affected by nervousness—"nervousness" is a better word than "fear" in this context"—a better example for you would be the management of no-deal preparation. In March last year, there were about 300 projects underway, each one of which covered a range of options, from a completely open option with access to the single market right through to a moderately hostile no-deal option, a worst-case assumption, if you like. Most of them had three scenarios: best, middle, worst. Some of that required preparation, but this was not about forecasting; it was about preparation, getting ready. What do you need to do? To take the scare story that was around not long ago, which was rubbish, do you need to have stocks of insulin?

Some of the preparation required private sector or third-country preparation. A lot of work had been done on that, but right up to the point at which we would go out and notify. You could get some third parties, like local authorities, to sign a non-disclosure agreement, an NDA, and you could engage them. Kent local authority has been heavily engaged in the Dover planning from the beginning. For others, you could not. If you want to deal with 130,000 small businesses, you cannot get them all to sign an NDA; it would not work anyway. When you are dealing with another country, you cannot get it to sign an NDA. Going public with the preparation was a very important stage, which released the next stage.

The original intention was to go public with that in March last year, but in March we also, at the March Council, achieved the implementation period agreement. The Treasury, in particular, BEIS and subsequently No. 10 were all worried that disclosing all or part of the no-deal preparation would put a downer on what otherwise would be an action that would inspire business confidence. There was an argument in-house about this. In that one, nervousness won. We deferred putting this out into the public domain. You ended up putting some of it out into the public domain in August, which meant you lost several months, and in truth that cost the preparation to the tune of three to six months in some areas. That was a very explicit outcome of nervousness about outcomes.

Q53 Mr Fysh: Where we are now is that, in December, we heard from the EU about some of the things it would do in the case of no deal. We are presumably in a state of much more certainty on some of these things and should be much less fearful now.

Mr Davis: Even in March last year, the European Union was announcing some of its preparations. I think it was the wrong decision, but I just wanted to give you an example of how nervousness drove some of the decisions.

Q54 Mr Fysh: In that context, you highlighted in your resignation letter that



you did not have confidence that the mandate of the referendum, in terms of leaving the single market and customs union, would be delivered on. That is where the new customs partnership takes you, because it is effectively a customs union. Was there anything else that you have not already discussed that led you specifically to believe that this was where it was headed?

Mr Davis: Not individually, no. One of the strategic aims both of the Union and of individual member states—most obviously Germany but to some extent France—is to prevent us from having a visible gain from Brexit. It seemed to me that this was designed in that way and that we had played into their game by going down that route. I did not put that in the letter, but it seemed to me that it was a deliberate strategy by the European Commission with some very important member states backing that. We were naïve—that is probably the right word—in going down that route.

Q55 **Mr Fysh:** Are there any ways in which you think the negotiation could have been conducted differently to achieve a different outcome?

Mr Davis: No. There are detail issues, but no. I have made the highlight points. The thing is that you can always fine-tune these things, but the big issues drive the day. Even the big ones are at least in part recoverable. For example, on the sequencing one, if we had chosen to do other things in a different way, we could probably have mitigated some of the sequencing one. In my view, that was the biggest single error.

Q56 **Chair:** We are now moving on to control over laws. As a prelude, one might say that the EU, for the sake of our audience, is a legal framework. Circumstances have been created within which there is an *acquis*, to which people are locked in. There has been a gradual process, all the way through from 1972, certainly through Nice, Amsterdam, Lisbon, Maastricht and so on, to increase its competencies. The framework of the 1972 Act has remained as it was from the beginning, but the competencies have been built up exponentially over all that time.

For those who are concerned about leaving the European Union, it is axiomatic that legislation that affects the UK and its citizens should be made by virtue of the wishes of the electorate in general elections. Through government and through parliamentary government, the laws that are received by our citizens should be made at Westminster and not in the EU. That is the reason we are repealing the European Communities Act 1972 under section 1 of the withdrawal Act. That remains the position as of exit day.

Across the board, what would be the best approach for the UK Government to adopt as far as Brexit is concerned, in order to deliver this outcome? We have to repeal the 1972 Act. It is there; it is the law of the land. Do you have any thoughts about the manner in which the legislation is made? What relevance does that have to your attitude to Brexit? In other words, do you agree with me that the most important objective is not just to give the referendum result implementation in law



but to ensure subsequently that laws are made by the people of this country and not imposed upon us, particularly behind closed doors, without us being involved in the process? We will not be at the table. There is no transcript, no Hansard. For that matter, the votes of the people who are making the legislation are not even disclosed in the Council of Ministers.

Mr Davis: I agree. The structure of the withdrawal Act reflected that. There are a couple of areas where the rubber meets the road in practical terms. One of them was how we dealt with historic EU decisions and EU case law. We ended up giving it the status of Supreme Court case law so it could, in effect, be overturned by the Supreme Court or, indeed, overturned by Parliament. That was one element of it. But this is also why, for me, the Chequers proposal was so lethal, because it talked about a common rulebook. It was not a common rulebook at all; it was a handed-down European rulebook.

We had a lot of argument here about how it does not matter because the industries involved with the regulations are stable, there are not very many new regulations and so on. I made the point there that the law is not an artificial construct that does not have impact. In the case of the common rulebook, it gave the European Union control over regulation of new industries, which would determine how those new industries would develop. It would actually dictate our competitive advantage or disadvantage and so on. This was fundamental all over the place. Indeed, the right to diverge argument at the first Chequers was exactly all about that, too.

Yes, we are in the same place, Mr Cash. I should say Sir William. I keep calling you Mr Cash. I have to get it right. You should have pulled me up.

Chair: It does not worry me, so I am sure it should not worry you.

Mr Davis: You should have pulled me up. It worries me because of courtesy. That is all. Yes, we are in the same place here. That is why, to a very large extent, the withdrawal Act was based on a template very similar to the one you designed some time ago.

Q57 **Chair:** Yes. As regards the question of the manner in which we legislate here in this place, that is done in an open, transparent manner. In the EU, the Council of Ministers operates behind closed doors and it makes decisions—I am asking for your confirmation of this—in a way that is quite often pre-planned. I had an exchange with Ken Clarke during the course of the proceedings on the withdrawal Bill, and he said that it is even worse than I was describing it. He said, “We used to go off to lunch and make the decisions there”. The bottom line is that it is essentially an undemocratic process by the standards of Westminster. Therefore, that is in itself—I am asking you—a reason for leaving the European Union, because the manner in which the legislation is made is not as democratic and transparent as we would regard as being the norm.



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Mr Davis: Yes, that is right. For me, although I am most quoted about economic impacts, the most important reason for leaving was the democratic reason. We are a country that is big enough to make decisions about our own destiny. For us, that would be an optimal approach in other ways, too. Yes, of course that is right. Ken is right. If the Commission wants to separate you from your civil servants and therefore make you a little more pliable, they may think, they have the decision made over the lunch that is just attended by the Ministers and not even by the civil servants. So that is true.

The other thing about it—in this Committee, I feel like I am teaching grandmother to suck eggs—is the irreversibility of European law.

Chair: The *acquis* locks you in.

Mr Davis: The *acquis* locks it in. The Government never change. You cannot sack the Commission. When I sat as the PAC chairman, we had the infamous scandal where the Commission resigned in place after the financial fraud. Can you imagine a Cabinet Minister resigning in place? He has resigned, but he is staying in his job and taking his salary; he is just not doing his job. That is ridiculous. The irreversible nature of the *acquis* and the irremovable nature of the effective European Government are all things that are antithetical to our tradition of democracy.

Q58 **Chair:** That is presumably one of the reasons you would agree that we left the European Union because the British people understood that. I have one last question on that. Have you had the opportunity to read a book by Sir Paul Lever, who used to be the British ambassador to Germany and, before that, was EU policy director in the Foreign Office for 10 years, and then subsequently the head of RUSI and the Joint Intelligence Committee? He is a person of great substance, knowledge and experience. He wrote a book called *Berlin Rules*. I gave a copy to Jeremy Hunt the other day, so that he would be fully acquainted with how it operates.

According to Sir Paul Lever, no decisions are taken either by the Commission or, indeed, by the member states without getting the prior agreement of Germany. He also says that it is a German Europe, which I mentioned in my speech yesterday and which I referred to when I was making my analysis of my reason for opposing the Maastricht treaty. I said I thought we would end up with a German Europe, and he specifically says just that. We are more outvoted, according to our European Scrutiny Committee report a few years ago, than any other country.

Mr Davis: Twice as much, yes.

Chair: Most often, we are outvoted with German participation. So there is a background to this. I wanted to ask you a more general question about that. Not only do we want to get back, I assume from what you have said before, our own democratic decision-making process. Part of the issue is this: when you ask the question about control over laws, if



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we are not making the laws—and we are clearly not and would not have been under this withdrawal agreement until it was killed stone dead yesterday, I hope—who would control those laws?

If it happens to be that caucus dominated largely by the influence of Germany, that is something the British public really deserve to understand, in order to be able to assess the extent to which they want to leave the European Union. We were not making the laws. If, under this proposed withdrawal agreement, we were not even at the table and it was done behind closed doors, would it not be unbelievable that we would end up having laws imposed upon us by other countries, by majority vote, when we could not influence what was going on? What is your reaction to that question?

Mr Davis: I would say two things. Yes, I do have a copy of Paul Lever's book. Paul Lever worked with me once when I ran a counterterrorism COBRA for six months, before he went to Europe. He is a very capable man. Truth be told, I have skimmed it; I have not read it. I have read about half the chapters properly and skimmed the rest. But, yes, his basic argument is that Germany uses its influence to make Europe behave in ways that work to its national advantage. There is no surprise in that.

Chair: No, none at all.

Mr Davis: It is not a crime. But it has long been understood, essentially, that the three dominant influencing factors in the European Union are the Commission, Berlin and Paris. If they are aligned, whatever they are aligned over happens. You had a demonstration today. If you look at the Bavarian press this morning, the deputy head of the CSU said that Berlin should intervene bilaterally in this process now that the British Parliament has thrown out the proposal yesterday. Bavaria is very exposed to Anglo-German trade. They cannot let no deal happen; therefore, they should intervene bilaterally. I would be unsurprised to see that happen.

The second thing in this context is that this has changed. The facts you described have been true for my entire time in Parliament and in my previous time as a Minister in the Foreign Office. What has changed is the method or the mode in which the influence has been exercised. When I was a Foreign Office Minister 20 years ago or so, the Germans were very reticent about being seen to exercise power. That is because of their history, which is understandable. They were very backward about coming forward. A combination of things—including the passing of time and the enlargement of Germany—have all made it feel more confident about exercising that power more publicly, so you see more of it.

Chair: It is even assertive.

Mr Davis: It is possibly assertive, yes. That has been one direction. There has been a slight move back from that since Ms Merkel has become less dominant in her own country. Broadly speaking, Lever is right. This is a truth that is understood in Europe, and it is accepted in Europe as part



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of the price of the peace, stability and, as they see it, the economic success of Europe. I am not entirely sure I subscribe to the last view, but that is how they see it.

Q59 Chair: Thank you very much. I would like to move on now to the ministerial code. The question I would like to put is this: is there a case for arguing that, despite the provisions in the ministerial code and the cabinet manual regarding the confidentiality of legal advice given to Ministers by the law officers—I am now referring to the provisions that relate to the Attorney-General and so forth—the circumstances surrounding Brexit are so extraordinary that any and all of the legal advice from the law officers should be made public through the negotiation process?

Bear in mind that we have had this resolution in the House of Commons in relation to the publication of the Attorney General's advice, which it would appear has not been complied with. Furthermore, you may be interested to know, if you have not seen it already, that we have had some very strong exchanges with the Prime Minister over this subject. We wrote her a letter—it is on our website—and she has replied, in our view rather unsatisfactorily, to say the least. But I would like to get your sense of this. For example, when you went into the Chequers meeting, were you aware that no advice had been taken from the law officers, in defiance of the cabinet manual and the law officers' advice?

Mr Davis: No, I was not necessarily aware of that. Frankly, I was focusing on the five elements, which, in my view, did not require a lawyer to tell you were wrong. My view on the code with respect to legal advice is that it is a sort of national interest consideration. Governments undoubtedly overuse the convention of non-disclosure of legal advice. When you have a convention like that, Governments will always overuse it. I suspect I would myself, in the post. But it seems to me that there are a couple of overarching considerations, and they go in different directions.

Overarching consideration No. 1 is that, just like economic advice, as Mr Fysh asked me about earlier, sometimes the release of the information is deleterious or potentially deleterious to the negotiation. But that is not true at the end. That is not true when a negotiation has concluded, by definition. Secondly, much of Parliament's judgment on a massive treaty change like this has to be driven by the legal realities and the Government's logic about those legal realities. The best way of exposing that is opening up the legal advice at that stage. I was the first person to call for the release of the legal advice a month or two ago. Subject to the time issue, and it seems to me that the time issue evaporates as you get to the end of the negotiation, there is a very strong argument for Parliament having a right of access to that advice.

Q60 Chair: Against the background of the importance of the subject matter and the fact that the legal advice could have enormous bearing, as it quite clearly did, for example, in a different context altogether, in relation



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to the Iraq War when I was Shadow Attorney General, the question of the impact it would have if the Attorney General's legal advice was in conflict with the policy that was being made. As I pointed out in the debate, that could lead to the point where the Attorney General would resign, as suggested by the Bible on this subject by someone called Mr Edwards, who wrote the book on the role of the Attorney General.

Mr Davis: I have not read that.

Chair: Your suggestion to avoid the conflict by ensuring that the advice could be made available at the appropriate time seems to me to make sense, but could you just confirm that?

Mr Davis: I have not read Mr Edwards's book, but I would say that this is particularly true for complex treaty negotiations, because there is an inevitable temptation on a Minister presenting at the Dispatch Box to put the best gloss on the negotiation that he has just concluded. You do need something that disciplines that best gloss. We have seen it down the years. The Prime Minister comes back from a European summit and presents the latest treaty, normally before we have seen the text. Everybody on one side cheers, it goes through and then a little while later you start to unpick things and realise what the reality is. At the end of the negotiation, the argument that the Attorney General is the Government's lawyer and you would not let a lawyer in a trial open their advice up to the other side is a bogus analogy.

Chair: Actually, he is not necessarily just the Government's lawyer; he is the lawyer for Parliament and for the people. We have to pass on now, because David Jones has a question that we would like to hear the answer to.

Q61 **Mr Jones:** Yes, it is in a similar vein. As you know, the Cabinet manual provides that papers should be provided to Cabinet members in a timely manner—Friday before a Tuesday meeting or at least 48 hours for Cabinet committee. You will know there was a strong suggestion that before certain important Cabinet meetings considering the issue of Brexit, papers were delivered rather late. Can you comment on that?

Mr Davis: Yes, it is true in some cases. Sometimes it was deliberate, for an understandable purpose. Because of the internal controversy about Brexit in the Cabinet and having different camps, in the last two years there has been quite a run of things being leaked inappropriately. There have been occasions on which the Cabinet has been asked to come an hour or two hours early and read through the papers in place, and they do not then keep the papers; the papers are taken away. That is the typical behaviour, for example, in the National Security Council too. That has been the case. I had always assumed that, because the Cabinet Secretary has been privy to this process or, indeed, has normally organised it, it meets the Cabinet manual. But, yes, that certainly happened.

Q62 **Mr Jones:** Did that cause difficulties in practice?



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Mr Davis: This is a complex subject. I am sure many Ministers would have preferred to be able to discuss these things with their special advisers, their senior policy advisers in the Department and so on. Obviously, it inhibited that; it curtailed that completely. But that is a balancing act with the need for a degree of confidentiality. I understand your critique, Mr Jones, but you will remember that there were times that I was tearing my hair out at the things the Cabinet chose to leak from time to time, often just before I went off to negotiate.

Chair: I would love to be a fly on the wall in those meetings, but there we are.

Q63 **Mr Jones:** I have a couple more points on this. Would you say that for particularly important meetings, such as Chequers in July, Cabinet members, who were considering what was a very complex set of issues, had sufficient time to digest the papers before the discussions began?

Mr Davis: My instinct is to say no. The reason I am hesitating is that it seemed to me that the positions taken by individual members of the Cabinet—I am not going to detail them for obvious reasons—at that Cabinet meeting were pretty set before they arrived.

Q64 **Mr Jones:** Nothing they read changed those positions.

Mr Davis: Nothing was going to change the positions.

Q65 **Mr Jones:** I have one other point on Chequers. You may not know the answer to this, but it was widely reported that the papers had been sent to the German Chancellor before they were seen by Cabinet members. Do you know anything about that?

Mr Davis: No, I do not know the answer to that. It is quite a difficult call. At one level of propriety, you clearly do not want to disclose things to anybody else until the Cabinet has seen them. I do not think for a second that she would have got all the papers, because there was that much paper. Undoubtedly, at some point in her negotiating round, the Prime Minister has to talk to other Heads of State to feel out whether something is going to fly. Truth be told, if that rumour—it was in the papers—were true, it was not very effective. Within a week or so, the Chequers proposal was rejected by our colleagues around Europe, so it did not work, did it? But I am just guessing; I do not know the answer.

Q66 **Michael Tomlinson:** I want to pick up on the questions Marcus Fysh asked and your answers about no-deal preparations. I hate the phrase “no deal”. I much prefer “WTO”, “clean Brexit” or “clean global Brexit”. I remember you saying “preparing for every eventuality”. That was quite a good way of doing that. But you mentioned March, and wanting to ramp up preparations in March. Was it in fact the case that you increased preparations in March but just were not able to publicise them as you would have liked to?

Mr Davis: Yes, some you could. If you did not have to publicise them in order to ramp them up, you could. So the Committee understands, there



has been a lot of bogus nonsense. I see that at least one rather brave civil servant went to *The Telegraph* over Christmas—people may not have read it—saying that all this stuff about how there has been no preparation is nonsense and there are hundreds of projects. In fact, there are 300-plus, of which about 125 are critical in one way or another. Typically speaking, at any point in time, about 10% of them will be late. It will not be the same 10%, because 10% will be late and we will chase up on the 10% and then another 10% will be late. But that is normal. Anybody who has run great big capital projects in business, as I have, is quite used to this. The very fact that we are able to know that and monitor it is only because we put in place a huge critical path analysis exercise.

Anyway, to come back to answering your question, there were ones where we could ramp up the preparation process, but the ones where we could not were ones that required publication before we made any further progress. The most obvious one, which is still there, is the one of preparation for small business handling of customs declarations to European destinations in the event of no deal. People make a great deal of this, including some of the supposed experts, but this is not that enormously difficult. The Union customs code has approximately 85 data categories. Nobody uses all 85. Each product will be different. It includes various things: what is the product? How many? What is the price? Where has it come from? Where is it going to? It is things like that.

Most of this is on your invoice software, so writing the software to transfer that to a Union customs code-compliant database system is not beyond the realms of mankind, but you need to start talking to people about their own software systems to do it, really. That is what should have happened in March. It is still doable. Whitehall has this view that small businesses are not very nimble. Actually, small businesses are a hell of a lot more nimble than big businesses, because, if they are not, they do not exist for very long. So it can be done, but that is an example of what should have been done earlier. It is publication dependent. That is the point.

Q67 Michael Tomlinson: No, that is helpful. We have seen that, since then, preparations have been ramped up further. The Treasury has committed over £4 billion to this. The Prime Minister, in my view, has been quite rightly firm that, come what may, we are leaving on 29 March. What is your assessment of what it would be like if we did not have a deal?

Mr Davis: It is quite interesting. You probably do not listen to the "Today" programme at 6.10 in the morning, but I was on the "Today" programme last week and I was asked this question. I said, "Well, people keep going on about Calais-Dover. There are several answers to Calais-Dover. One is that, actually, 40% of Calais-Dover trade is transferable to other ports: 20% on the same mode, which is ro-ro, and another 20% of it can go to container. That is the first answer. Secondly, the French themselves do not want to create a problem because, if you



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lock it up one way, you lock it up both ways. It is like a conveyer belt or a carousel. You cannot stop half a carousel. That is what they are doing". I talked about some of the preparations they have made.

The "Today" programme would love to say, the next day, "Ex-Minister says X and the French Mayor of Calais says the opposite". They went to see them and, of course, the French Mayor of Calais went even further than I did and said he was quite offended that people were making preparations for it to be blocked up. So it did not go out at 8.10; it went out at 6.10. But that is not unusual. I found this with the Mayor of Antwerp, when I saw him. Antwerp owns its port. He said, "We have already started talking about how we are going to do it", and so on. A lot of the nominal fears are unreal.

But let us imagine for a second. I am now imagining the worst case. I do not think it will happen, but let us imagine the worst case. Imagine they are given an instruction from Brussels, via Paris, to not do this and to cause a blockage. How long will that last? First, we can go round it; they cannot. We can go round it. French farmers are not going to be sending things to Rotterdam, but we might send things to Hull to go to Rotterdam or wherever. How long will it last? You have the yellow jackets already demonstrating in France. You would have French farmers in their tractors on the Champs-Élysées. You would have really serious civil disturbances in France, because that is traditional there when they want to object to that sort of thing.

The economic impacts are quite sizeable for the other states. The starkest one is Ireland. Ireland has £70 billion of trade with us every year. Something like 70% of its beef trade comes to us. Under the circumstances of what you might term the worst no deal—a no deal or a World Trade Organization arrangement is a spectrum in its own right—it is not going to go on for very long, because other countries are going to want it solved quickly. There will be a lot of bilateral activity. That is why I made this point earlier to the Chairman. The Bavarian deputy head of the CSU's response is relevant here. These are often very regional concerns. The head of north-west France, Xavier Bertrand, has said time and time again, "I want a good deal for Britain". If there are problems, they will be over the course of the summer. They will come to a relatively rapid fruition, because it is uncomfortable for our allies and our friends. I do not want it to be uncomfortable for them, but that is the hard reality in the event of that happening, which is why I do not think it will happen in the first place and, if it does happen, it will be quite quick to resolve.

Chair: I want to be sure you are comfortable. This is a very interesting session. I want to know whether you need to get off or whether you are happy to stay on for a few more minutes.

Mr Davis: I think I am all right for a few minutes. Let me just check. I famously never look at my own diary. Yes, I am fine for another quarter of an hour. Is that all right?



Q68 Michael Tomlinson: I will be very brief on this. It is about a second referendum, the desirability, the possibility, the mechanics and what would be required for it. What is your view?

Mr Davis: First, on the desirability, I think there are quite a lot of citizens who would be offended by being asked again and possibly asked several times until they get the answer right. That is the way they will see it, whatever the argument is here. Secondly, people make the argument: "We now know the facts". No, we do not. We know a whole new set of assertions. If people are coming back and saying, "Let us have a second referendum in a few years' time once we have seen what the outcome is", that is a different argument. For a second referendum today, you do not know any more facts in many respects than you did then. There are lots of assertions that could be nonsense. The latest round of project fear is just that. In desirability terms, I do not approve of it. It is a bad idea. It will cause resentment in its own right. I also happen to think that the result will be a more firm repetition of the same result. I have met a number of people who have crossed from remain to leave on the basis of the behaviour of the Europeans. I have met a lot of leavers who are even more determined about it. It will also be corrosive in terms of electoral responses.

In terms of practicalities, the most uncontroversial referendum we had was the AV referendum. We had a majority of, I believe, 84%. I am not sure, but it was a majority in the mid-80s. It was agreed as part of the coalition deal, so there was not really much scope for arguing about it. From memory, that took 11 months from start to conclusion. There was no serious argument about what the wording would be, what the question being put would be and so on. A second referendum on this would be hyper-controversial. The idea of it all going from soup to nuts in 11 months is a joke. It will take a lot longer than that, because there are people who will resist it. There will be people who will argue about the nature of the question and the phrasing of the question. Are the Government going to be allowed to say anything this time? Is there going to be preparation for the various outcomes, to the questions I raised earlier? There is going to be a whole host of things riding on it. I would doubt that it could reach fruition in less than two years. So what are we going to do? Are we going to suspend this negotiation for two years? That seems to me to be an affront in its own right.

That is before you even get to the question. Let us imagine you have a three-way question. Polling is always wrong on referenda, but let us assume it is right for a second and the polling shows a three-way split. Let us say you get 36%, 33%, 32% or something like that. Are you going to allow 36% to overrule 52%, which is what it would amount to if it was a reversal? You have that problem, too. How the hell do you interpret it? Does it end the question? I have to tell you that, if it reverses the decision, there will be calls for a best of three. You will have all that nonsense. It does not actually resolve anything and it reignites some of the debates on a more bitter scale.



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But the last bit, and the reason I have really been resistant to it, is its impact on the negotiating process itself. In the negotiating process, probably only one thing has been universal throughout Europe, everywhere I have been. I have been to every member state except Slovenia, and I was meant to go to Slovenia but the Government fell or changed when I was about to go there. Most of the big ones I met a number of times. The common view is that they do not want us to leave. That is unanimous. There are different reasons. Most of them are good reasons. They welcome our involvement; they like our money; they want our continuing trade relationship; they do not want any risks; they do not want ripples or anything. They know we make a big contribution to the standing of Europe in the world. That is something that is never talked about. Europe is a bigger thing with us in it than with us not in it. I am not talking about physical size; I am talking about standing, status and clout.

So they want us in, unanimously. In the event of a second referendum, what is that going to do to the sort of deal they offer us? They are going to make the deal worse, because they want to slant the referendum as hard as possible over towards us staying in. This supposedly democratic exercise would not be democratic, practicable or effective, and it would undermine the negotiations. You will probably get from that that I do not think it is a great idea.

Q69 **Chair:** Thank you very much. I have one last question. Is there any reason on earth that the House of Commons should take the initiative in finding a solution to the Brexit situation, the conundrum? Do you have any views on this? There is a lot of talk about Parliament taking control. I thought that the whole idea was that we gave it to the British people to decide, but what is your judgment about all these ideas that are flying round at the moment?

Mr Davis: Mr Chairman, as you know, I have long prided myself on my defence of the Commons over and over again, mostly on the Back Benches. That is probably the reason I have been there such a long time. The reason for that, however, is not that we as MPs deserve special rights; it is because we represent other people. Our rights are held in trust for other people. So I would defend those rights pretty much absolutely against the Government's rights, except when those rights want to be exercised against 17.5 million of our people. That is really what seems to me to be going on here. You have in the House of Commons, and in the House of Lords even more so, a remainder majority, a majority of people who really would rather that this did not happen. The idea, first, in principle, of handing over control of this process to the House seems to me to be an odd judgement of how democracy should work. It is just wrong. It misses the point about why we have the powers we have.

The second point is one of practicality. You will remember—one or two of your Committee Members were not here for it—the attempt by Jack



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Straw to get a conclusion on the reform of the House of Lords. The entire House of Commons pretty much, bar very few of our colleagues, wanted to reform the House of Lords; they just could not agree on how to reform the House of Lords. We went through this amazing day where we had all these different votes on every different permutation of how you reform the House of Lords, and every one of them lost. It was the best demonstration of how the House can have a thousand opinions among 650 members. You would have the same problem here, in terms of the nature of the approach, whether it includes a second referendum, a Norway option and so on. Secondly, at the end of it, who the devil is responsible? Who puts themselves back in front of the electorate and says, "This is what I have given you. Either keep me or throw me out". It is a weird notion of the operation of democracy.

As I understand it, Sarah Wollaston, as chair of the Liaison Committee, responded in pretty robust terms to it, and she is a remainer. She is a great critic of the Government's approach.

Q70 Chair: In actual fact, I am going to a Liaison Committee meeting this evening to discuss this very question. I will just finish by saying that you have been extremely generous with your time and also the way in which you have answered these questions. I would just mention that, historically, given the fact that this whole issue is about who governs this country and how, the last time it happened was around 1653, believe it or not, when, after having executed Charles I, Oliver Cromwell had taken over. They then found that the ideas were emerging that Parliament should run the country. It was Barebone's Parliament, named after somebody called Praise-God Barebone. He was the man in question.

Oliver Cromwell completely gave up in despair. That was when he made those famous remarks: "You have been here too long for any use you will ever have achieved. Depart, I say. In the name of God, go". He took the army in to get them out. We do not want anarchy, and I just hope that is the lesson some people take.

Mr Davis: Hopefully we will not arrive there, but there is a reason for the Crown in Parliament. You will know this better than I. Both you and your history, your antecedents, will know better than I why that is important. It is a model you might not have designed but that has worked brilliantly down the centuries. Let me just make one warning about the mechanism being used to try to achieve this, the so-called Boles amendments. If Parliament attempts and maybe succeeds in seizing power from the Executive, what is going to happen the next time a Government with a significant majority get in? It is going to continue the process started after the Irish problems at the end of the century before last.

Chair: This is the 1880s and the home rule issue.

Mr Davis: Instead of just controlling the agenda of the House, the timetable, the next Government will say, "We will also dictate the rules of the House and not allow them to be changed by a Speaker". In my view,



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that will do serious damage to our constitution. We are playing with fire in this. I speak as somebody who, generally speaking, more than most of the advocates of this, has been an enthusiastic defender of the rights of the House. I will continue to be, but not when it is against our own interests.

Chair: That is extremely interesting. Thank you very much. That was a long session but a very interesting one. By the way, it will go into the records when people come to evaluate this, not just for our reports, but historians will be very interested to see your perspective on that. Thank you very much for coming.