



Plunging from Olympus and hoping to climb back up again? « Brexit » as an English Tragedy

Prof. Dagmar Schiek (@dschick)



The allegory

According to myth, Hephaestus was born lame and was cast from heaven in disgust by his mother, Hera, and again by his father, Zeus, after a family quarrel. He was brought back to Olympus by Dionysus and **was the only god to have returned after exile**. (Encyclopedia Britannica)

What if Hephaestus had plunged himself from Olympus?
Would the Gods have had him back?



An English Tragedy?

- Classical Greek tragedy
 - Create cathartic experience through watching
 - Evolves around the downfall of a honourable hero whose misconception (*hamartia*) sets in motion a succession of events which the hero, though (s)he may attain *anagnorisis*, cannot reverse, and which ends in catastrophe (dead or fundamental change in fate), initiating a learning process in the audience through catharsis

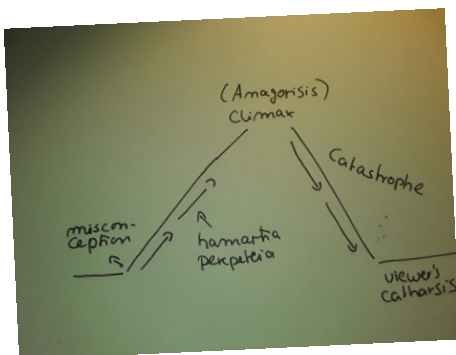


Overview

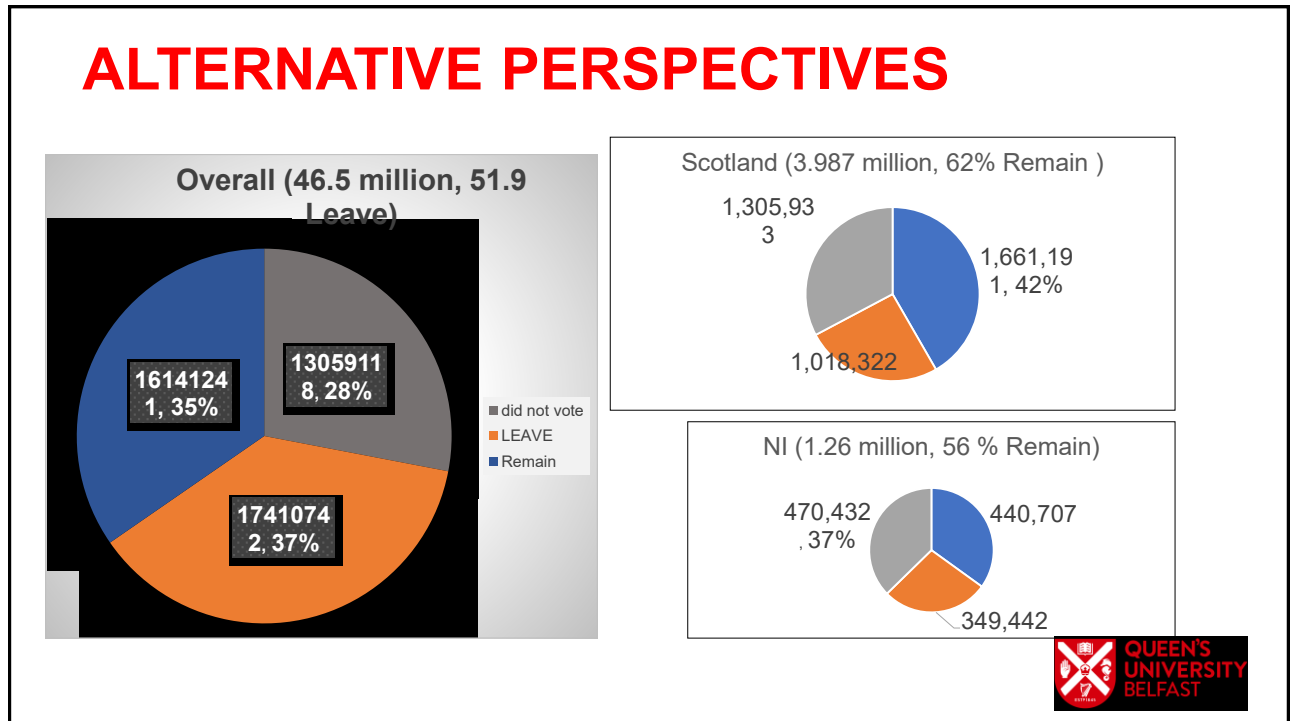
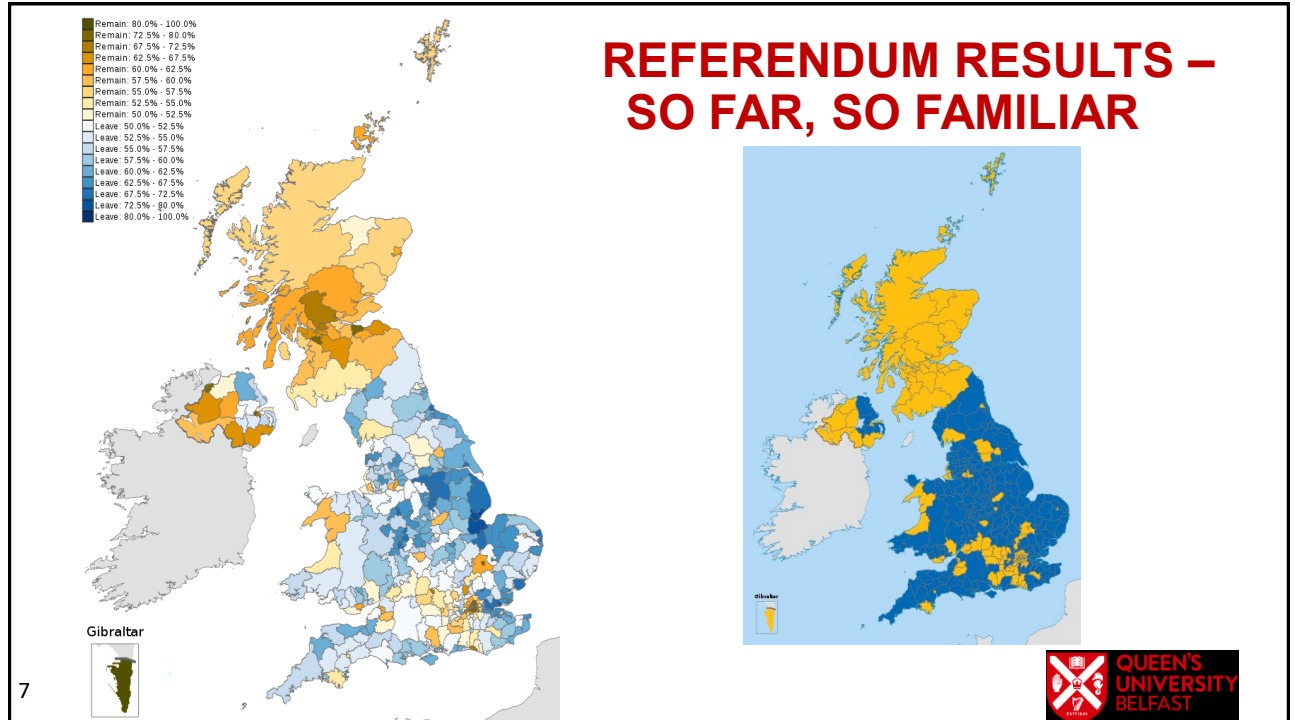
- The English element – and beyond
 - Flawed beginnings and misconceptions?
 - The referendum result – a warning?
- Can Brexit be averted? Legal frame
 - Article 50 TEU negotiation structure
 - The CJEU's Wightman ruling
- Can 'Brexit' be averted? - realpolitik
- What future relationship EU / UK?
- What happens tonight?



'Brexit': inevitable consequence of flawed beginnings?

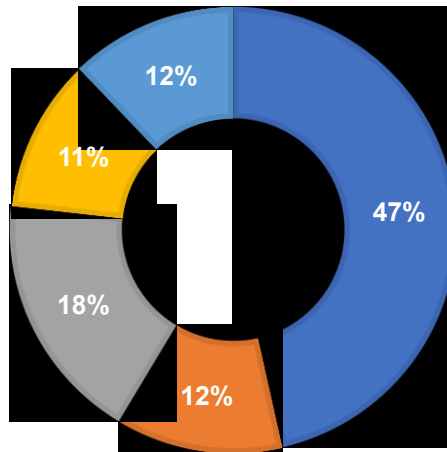


- 1948 – 1961
 - Strive for economic association of OEEC and EEC
 - Europe of the seven versus Europe of the six
- 1961 onwards
 - European rescue of the nation state (Milward) ?
 - A flawed accession process?
- 1985 onwards
 - British exceptionalism in membership
- 2002 onwards
 - Debate on creating an "exit option" from the EU



“MORE BRITS IDENTIFY AS ENGLISH THAN BRITISH”

- Equally English and British (51% LEAVE)
- English not British - 79% Brexit
- More English than British: 66 % Leave
- More British than English 37 % Leave
- British not English 40 % Leave



An English question?

The Independent reported on 24 June a congruence of voters in Britain (i.e. without Scotland or Northern Ireland) between identification as English and an inclination to vote for “LEAVE”



9

Why did the electorate vote in this way?

The referendum was based on massively sponsored misinformation

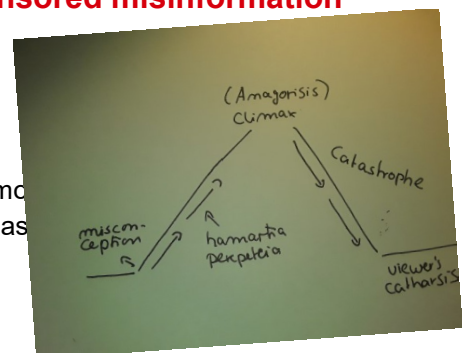
- Electoral Commission has fined offenders'
- it referred Aaron Banks to the criminal courts

There are serious concerns in “leave areas”

- Limited infrastructure development
- Extensive low wage sector & related risks from free m
- Identity issues (“Empire Melancholia”, “Englishness” as

Lessons for the EU?

- discontent of the “left behind”?
- Communicating integration?
- Offering special status to the UK?



10

Overview

- The English element – and beyond
 - Flawed beginnings and misconceptions?
 - The referendum result – a warning?
- Can Brexit be averted? Legal frame
 - Article 50 TEU negotiation structure
 - The CJEU's Wightman ruling
- Can 'Brexit' be averted? - realpolitik
- What future relationship EU / UK?
- What happens tonight?



Article 50 TEU (minus paragraph 5 on rejoining)

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.
2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.
3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.
4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it. A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.



Article 50 - withdrawal process unpacked

Paragraph 1

- National constitutional requirements (CJEU jurisdiction?)

Paragraph 2

- Withdrawal agreement (WA) only "takes account of framework for future relationship"
- European Council gives directions, EC negotiates, Council adopts after EP consent

Paragraph 4

- Council votes with "super majority" (72 % (20) of Council Members, 65 % of population)
- UK has no vote under 2 & 3

Paragraph 3

- Membership ends when WA enters into force
- Membership ends 2 years after notice
- 2 year period may be extended by European Council (unanimously) and withdrawing state

A SKEWED PROCESS?



- Separation of withdrawal and future relationship
- Dominance of EU Commission
- Isolation of PM in Council
- Automatic "exit" after two years

New perspectives: CJEU Wightman 10 Dec 2018

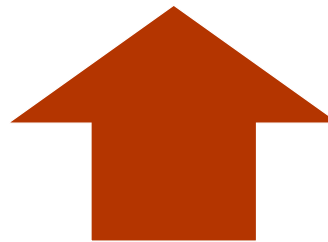


Character of the Union

- Ever closer
- Constitutional structure
- Network of rights and obligations (mutuality),
- EU citizenship as fundamental status

Withdrawal option

- Based on liberty and democracy (MS sovereignty)
- To safeguard bases of EU legal order (ever closer, fundamental status)
- → **Unequivocal & unconditional**



CAN “BREXIT” BE AVERTED? (REALPOLITIK)

UK internal problems

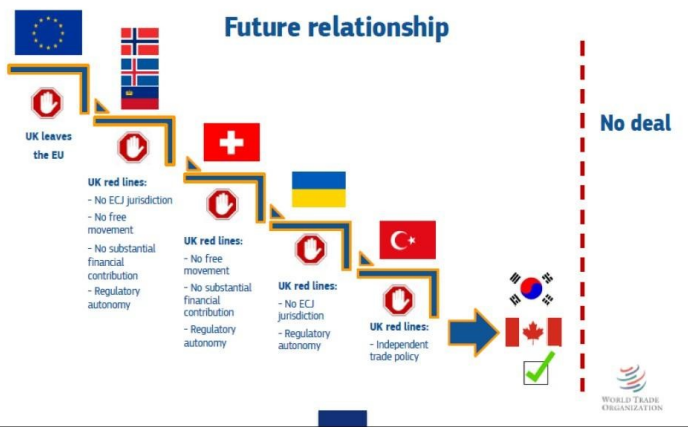
- Torn party positions overall
 - “Lexit”, Tory’s issues
- The dilemma of the first past the post voting system
- Empire melancholia clouds judgment
- Consequences only to become real after “exit”

EU problems

- An inflexible negotiation strategy?
- Will Ireland remain supported?
- The 2019 political dates
- Future majorities in the institutions may thwart future negotiations



WHAT FUTURE RELATIONSHIP?



- Article 8 TEU – good neighbourliness
- Dealing with Britain's remaining postcolonial problems
 - Cyprus, Gibraltar, Northern Ireland
- Defending the Internal Market and Economic and Monetary Union
- Protecting MS from risks

Source: European Commission, Team Barrier

17



WHAT HAPPENS TONIGHT (7 PM GMT)

Parliament to vote on up to 14 motions on the prime minister's written statement under Section 13 (11) of the European Union Withdrawal Act 2018. The most relevant (in my humble assessment of yesterday night) are

- Yvette Cooper / Boles motion (b) to require a new piece of legislation (EU Withdrawal No 3 Bill) to be debated on 5 February, with a view to pass the bill on that day
 - aims to "extend Article 50", procedurally most intelligent
- Graham Brady (n) to replace Protocol Ireland/ Northern Ireland by alternative arrangements (had PM support yesterday)
 - These have now been spelled out in the "Malthouse Compromise", which places a 10 year time limit on the Protocol, and allows each party to unilaterally withdraw from it, also requires that the EU agrees a free trade agreement with the UK in the withdrawal agreement.
- Blackford (SNP) (o)
 - Recalls that the withdrawal agreement is rejected, "calls for the Government to seek an extension of the period specified under Article 50(3) of the Treaty on European Union; agrees a No Deal outcome should be ruled out; and recognises that if the UK is an equal partnership of nations, the 62 per cent vote to remain at the EU referendum on 23 June 2016 in Scotland should be respected and that the people of Scotland should not be taken out of the EU against their will."



MORE MOTIONS FOR TONIGHT

• Labour Front Bench (a)

- Provide time for the House to debate alternative options including
 - Renegotiating withdrawal agreement in line with "Labour-Brexit" (Norway + and -)
 - Legisalting for a "people/s vote"-)

• Dominic Grieve (CON) (g)

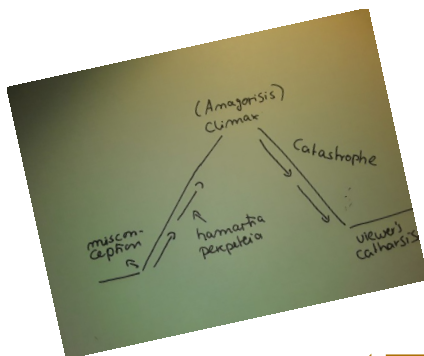
- Forces vote on 12, 26 Feb and 5,12,19 and 26 March
- Gives MPs guaranteed meaningful vote
- Has cross party support

• Reeves (support by Benn) (j)

- in the event that the House of Commons has not passed a resolution approving the negotiated withdrawal agreement and the framework for the future relationship for the purposes of section 13(1)(b) of the European Union (Withdrawal) Act 2018 by 26 February 2019, requires the Prime Minister to seek an extension to the period of two years specified in Article 50(3) of the Treaty on European Union



The drama continues



5 Feb

- Cooper/Bohles succeeds?

8 Feb

- Second reading of EU Withdrawal Bill (2)

26 Feb

- Last day to vote

eventually

- Extension of Article 50

People's vote

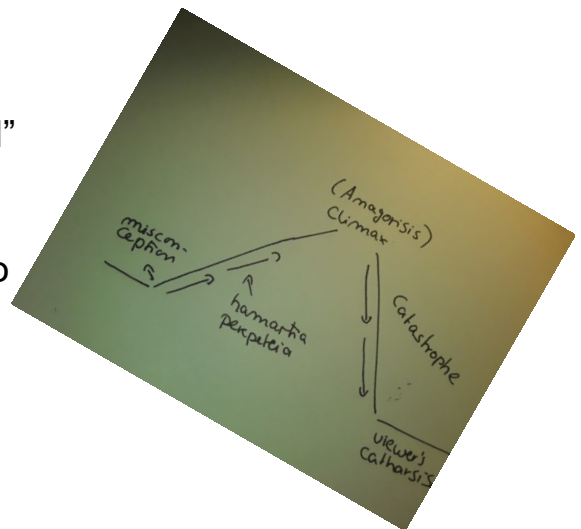
- If not revoke

Further mishap



CATHARSIS?

- The sentiment of being “left behind” is relevant beyond the UK
- The EU must find a way to nurture socio-economic integration if it is to survive
- Populist challenge harbours the danger that fundamental principles such as free movement for all are revoked
- Its not just the “liberal world order” which is at stake.



SOME REFERENCES

- Dorling, Danny; Thomson, Sally (2018); Rule Britannia. Brexit and the End of Empire, London: Biteback Publishing
- EU colleagues blogs under “[The UK in a Changing Europe](#)”, [LSE EUROPP Blog](#), and on our own
- Joerges et al. (2017) “Economic Constitutionalism and the “European Social Model”, Conference contribution 2017
- O’Reilly et al (2016) Discussion Forum: Brexit: understanding the socio-economic origins and consequences, Socio-Economic Review 14 (4) 807-854
- House of Commons (2019) Exiting the European Union Committee Response to the Vote on the Withdrawal Agreement and Political Declaration: Assessing the Options HC 1908
- Schiek, (2019) [The ECJ’s Wightman Ruling, Brexit and the EU as a Constitutional Entity](#)
- The text of the Malthouse Compromise: bit.ly/CompBetterDeal
- Long read on the Protocol Ireland/Northern Ireland (Schiek, 2018) : <https://nilq.qub.ac.uk/index.php/nilq/article/view/174>

