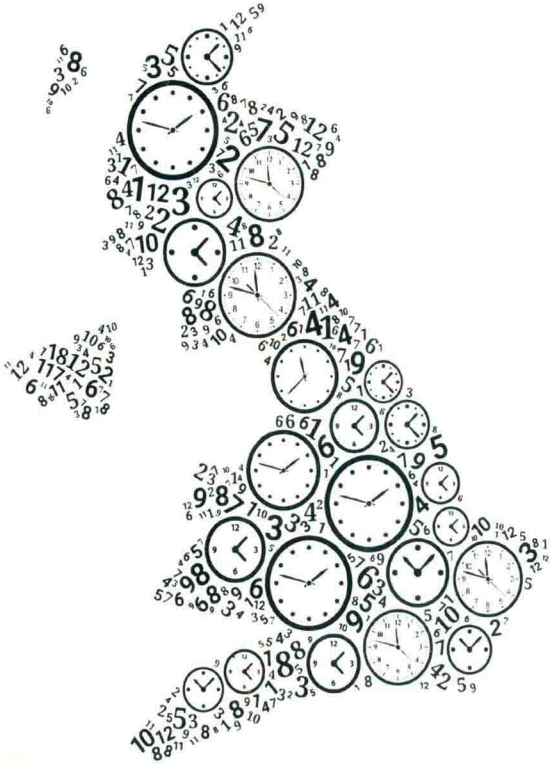
BREXIT TIME

LEAVING THE EU – WHY, HOW AND WHEN?



Kenneth A. Armstrong

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For Ian

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There is a risk of being thought of, or holding oneself out as, a Brexit 'expert'. The subject matter of this book, and indeed any analysis of Brexit is, in reality, extremely exposing of the gaps in our knowledge. As someone who thought he knew a reasonable amount about the EU and how it works, the period since the referendum has been humbling and I am all too happy to acknowledge that in the process of writing this book I have learned a great deal. That said, it is only right to acknowledge and thank all my friends and colleagues who read drafts, answered queries and generally helped me to make sense of what I thought I was doing. In particular I want to thank: Simon Bulmer, Iain Begg, Lorand Bartels, Gráinne de Búrca, Marise Cremona, Mark Elliott, Tamara Hervey, Christophe Hillion, Mario Mendez, Jo Murkens, Andrew Scott, Joanne Scott and Jo Shaw. As ever, any errors are mine alone.

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Kenneth A. Armstrong
Cambridge
March 2017

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Introducing Brexit Time

In a referendum held on 23 June 2016, voters in the United Kingdom (UK) agreed with the proposition that the UK should leave the European Union (EU). The UK government has acted on that referendum result by beginning the process by which the UK will withdraw from the EU. So begins a process known as 'Brexit'.

The argument advanced in this book is that Brexit was not the UK's 'manifest destiny'. It was a choice. Like all choices it was a product of a variety of forces and the structures that mediate those forces. One of those structures is time.[1]

The word 'Brexit' has its own place in time. It derived from the use of the term 'Grexit' to describe the potential withdrawal of Greece from the eurozone during its sovereign debt crisis. Its transformation into 'Brexit' is attributed to the founder and director of the think-tank *British Influence*, Peter Wilding. By December 2016, the word had entered the *Oxford English Dictionary*. Over time, the language of Brexit has been adapted and supplemented as a means of characterising responses to the referendum result. When used as a way of describing pro-withdrawal supporters – especially in the form

[1] SJ Bulmer, 'Politics in time meets the politics of time: historical institutionalism and the EU timescape' (2009) 16(2) *Journal of European Public Policy* 307.

of 'Brexiteer' – it conjures up imagery of individuals battling to restore control to British institutions, to be contrasted with the 'Remoaners' unwilling and apparently unable to accept the outcome of the referendum.[2]

The aim of *Brexit Time* is to explore why, how and when is the UK leaving the EU. These questions are organised by reference to: a 'Time before Brexit', a 'Time of Brexit', a 'Time for Brexit' and a 'Time to Brexit'.

As to 'why' the UK is leaving the EU, as one of the leading protagonists of the 2016 referendum campaign captures, it is tempting when confronted by decisions that produce big outcomes to try and locate a big cause rather than drilling down into the 'branching histories' which create the possibilities and potentials for certain choices to be made.[3]

In the 'Time before Brexit' the choice of the UK to become a Member State of the then European Economic Community and the reasons behind that choice are explored. The background to the 2016 referendum is revealed focusing on the ambition of the then Prime Minister, David Cameron, to seek reform and renegotiation prior to the referendum. In a 'Time of Brexit' the explanations turn to how a balance

[2] I Katz, 'Victory of the swashbucklers. Did the word "Brexiteer" help the Leave campaign win?', *The Spectator* [print version] (24 September 2016). The three key ministers – and Leave campaigners – whose portfolios are inextricably linked to Brexit were, unsurprisingly, termed 'The Three Brexiteers': S Heffer, 'Meet the Three Brexiteers: the men who could change how we exit the EU', *New Statesman* (13 September 2016).

[3] D Cummings, 'On the referendum #21 Branching histories of the 2016 referendum and the "frogs before the storm"', www.dominiccummings.wordpresss.com (9 January 2017).

between the forces of nationalism and internationalism changed and a new nationalism and new internationalism surfaced. More specifically, the success of the campaign for the UK to leave the EU was its capacity to persuade voters to 'take back control' from the EU. Through an exploration of the key campaign themes of 'control over borders', 'control over money', 'democratic control', 'control over laws' and 'control over trade', the chapters in a 'Time of Brexit' reflect on how the sorts of concerns which had been around throughout the UK's membership of the EU came together during the referendum campaign.

The 'how' of exiting the EU reveals the economic, political, legal and institutional complexity of untangling the UK from over forty years of EU membership. In a 'Time for Brexit' the chapters look to how the result of the referendum has been translated by a new Prime Minister, Theresa May, and her government into a manifesto for change that is not just about defining a new relationship between the UK and the EU but is also about redefining Britain both at home and globally. At the same time, this process of extracting the UK from the EU poses fundamental questions about the capacity of the UK as a multinational state to not just work together but hold together, not least given the strong preference amongst voters in Scotland for the UK to remain in the UK and the desire of the Scottish National Party to keep the dream of an independent Scotland in the EU alive.

The 'how' and 'when' of leaving the EU are brought together in the chapters that form a 'Time to Brexit'. In 2009, the Treaty of Lisbon introduced a new Article 50 into the

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Treaty on European Union (TEU). For the first time, the EU had a specific mechanism to allow a Member State to withdraw from the EU. Yet the process of triggering that mechanism was a matter of controversy and of litigation, with UK courts becoming a focal point for contestation of who had the authority to pull the Article 50 trigger. Much of the problem lay with legislation enacted in 2015 that had made provision for a referendum but not for its consequences in 2016. As Thaler argues, the 'choice architecture' created in 2009 at EU level, and in 2015 at UK level, shaped and moulded post-referendum legal and political choices.[4]

The conclusion of the Supreme Court that legislation was needed before Article 50 could be triggered brought Parliament back in as a participant in the Brexit process. However, the principal institutional changes were those within the UK government as Whitehall geared up for Brexit. Meanwhile, an expectant European Union awaited the UK's notification of its intention to withdraw while also pondering what the future of the EU might be.

In different times and in different locations, choices are made that shape Brexit. These choices have causes and they have consequences. These are choices in time, and of time. This book tracks those choices up to the point of the UK's notification of its intention to withdraw from the EU.

It is not a book about whether withdrawal from the EU is a good or a bad thing. It is objective in its presentation of

[4] R Thaler, 'Britain pays the price for a badly designed Brexit choice', *Financial Times* (17 August 2016).

data and arguments, but necessarily subjective in its interpretation of their significance.

Brexit Time is ongoing. Further reflections on the UK's withdrawal from the EU will be offered on a companion blog brexittime.com.

This is Brexit Time.

Part I

Time before Brexit

1

Before and After Membership

The UK arrived late to membership of the European Economic Community (EEC). Created by the Treaty of Rome in 1957 by six founding 'Member States', the EEC set itself the goal of establishing a 'Common Market'.[1] The foundations of that Common Market would be built on the free movement of goods, as well as the free movement of people, of services and of capital. Its construction would be facilitated by a set of political institutions with tasks to apply and to develop the basic legal principles set out in the EEC Treaty. A Court of Justice would ensure that the Community's Member States held true to the commitments they had entered into under the treaties. This was the EEC that the UK joined in 1973. More than forty years of participation later, in 2017 the UK served notice of its intention to cancel its membership of what had become the EU.

The decision to end the UK's membership was a choice. It was a choice given to the electorate through a referendum held on 23 June 2016. The decision to hold the referendum was also a choice: a product of both long-term and more immediate domestic party politics over the UK's relationship with the EU.[2] It followed a renegotiation of aspects of the UK's membership by

[1] The original Member States were France, Germany, Italy, Belgium, Netherlands and Luxembourg.

[2] T Bale, '"Banging on about Europe": how the Eurosceptics got their referendum', http://blogs.lse.ac.uk (23 June 2016).

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