
Kluwer Mediation Blog

Brexit and No End in Sight: A View from the Perspective of a Theory of Negotiation

Greg Bond (Bond & Bond Mediation / University of Wildau) · Friday, May 24th, 2019

I am sorry for writing about Brexit again here. It is not as if Brexit matters that much. To readers of this blog outside of Europe perhaps not all. But I cannot resist it. I was thinking about writing about the Beatles and The Rolling Stones - arguably equally as UK-centric as Brexit. Well, I apologise if you are now disappointed, but I have decided to shelve that idea for next time. Unless next time Brexit budges in again - you just never know. Sorry.

Prime Minister May (who may be just Acting PM May by the time you read this, or ex-PM May) hoped to put a new version of the Brexit Withdrawal Agreement to parliament in London. And politicians on all sides rejected this as an insult to their intelligence, as a sham, as not what the people wanted, as a waste of time. They are clamouring for her to leave office (again: maybe she will have done by the time you read this). There will be no agreement, pretty well everyone agrees. Emotions are running high.

I can offer four perhaps mutually exclusive explanations, using negotiation and conflict theory. Mediators are wise to know a little of that theory, I guess, which is my excuse for the theme of Brexit.

1. The Best Alternative to Negotiated Agreement. Also known as your No-Agreement Alternative

What will you do if you say no? If you walk away without agreement? What will the consequences of that be? This is a rational decision-making tool. If your alternative is more attractive than the deal on offer and if your alternative has a high chance of materialising, say no to the latter. And if it less attractive, or if it is speculative rather than realistic, then make the deal on offer work out.

Does a large number of UK members of parliament believe that the UK can negotiate a better deal with the EU than the one May and the EU negotiated? If so, say no to the deal on the table.

Does a large number of UK members of parliament believe that a no-deal Brexit is preferable and a likely outcome if May's deal is rejected? If so, say no to the deal on

the table.

Does a large number of UK members of parliament believe that if parliament fails to agree there will be a general election and a change of government in their favour? If so, say no to the deal on the table.

Does a large number of UK members of parliament believe that if parliament fails to agree then there will be a new referendum that results in no Brexit at all? If so, say no to the deal on the table.

Does a large number of UK members of parliament believe that refusing to agree to Theresa May's deal will force her to resign and that what then follows will be an improvement? If so, say no to the deal on the table.

And how rational are these BATNAs really? How much chance do they really have of coming about? Maybe members of parliament should rather be focusing on the WATNAs - the worst alternatives to negotiated agreement. This brings me to my second point.

2. Cognitive Bias

Negotiators and mediators beware. Cognitive biases, of which there are many, detract from our abilities to assess situations on their objective merits. Cognitive biases suggest that there may never actually be anything as clear-cut as objective merits.

How many mediators reading this believe they are among the best mediators in their field? How many best mediators can there really be? How many of us overestimate our own capabilities and chances? This would be the **overconfidence effect** - are UK members of parliament succumbing to it?

How many UK members of parliament are suffering from the **Ostrich effect** - ignoring an obvious negative situation.

Or perhaps the problem is **reactive devaluation** - because the proposals are coming from Theresa May (and some of her cabinet), they cannot be taken seriously.

Or do the different factions in the UK parliament suffer from an **illusion of control** - believing that they can still influence what will happen by sticking to their contrary positions?

It may be a matter of **irrational escalation**. Having got stuck in a position and defended it for so long, members of parliament are unable to move away from it. The sunk costs are too high.

There are many more biases, but I will stop here. Either the behaviour of UK members of parliament is rational, and they really do believe they have stronger BATNAs, or it is irrational, and rampant cognitive bias has engendered a form of collective delusion.

3. The Differing Interests of Principals and Their Agents

The third element of negotiation theory concerns interests. We all know what interests are – the underlying reasons we want something. When in mediation, we ask why parties are demanding what they are demanding – what is the real reason for asking for money, for example.

There are different categories of interests, and in negotiation and mediation we rarely have only the interests of the company or department (or whatever) we are representing in mind. In commercial mediation, the company is the principal, and the negotiators are the agents. The agents have interests that might complement the interests of their principals, and they might have interests that are independent of those, or even interests that run counter to the interests of their principals.

In politics the agents (the politicians) represent a number of principals: their country, their constituents (their voters), and their parties, primarily. And they also represent themselves, and have their own interests – to be re-elected, to gain influence in the form of jobs within government, perhaps.

To what degree are British politicians representing their principals, and which of these principals are they representing? And to what degree are they using Brexit as a way to push for more power for their own selves, or for positions and factions within their parties? Coming back to the BATNA – to what degree do they see their BATNAs in terms of their own personal gain or loss?

In mediation, we need to know that the people around the table have very personal interests too. I add that these are mostly very honourable. In the case of some of the protagonists in Brexit, I am not so sure.

4. Dispute Resolution?

If you cannot negotiate a way to resolution, mediate. If you cannot mediate, then turn to an arbitrator. There is no automatic procedure for this in a political system where arguably the highest arbitrator in the land – the sovereign parliament – cannot agree. The arbitrator of this arbitrator is the people. This logic calls for a new referendum. Failing that, elections.

Finally: I may be wrong. I probably am wrong. It may be that there is no theory that can help us understand what is going on in British politics. I again apologise to readers for writing about Brexit.

If I had the opportunity to speak to Mrs May, I would say: “You can’t always get what you want” (The Rolling Stones). Or “Let It Be” (The Beatles).

Phew!

To make sure you do not miss out on regular updates from the Kluwer Mediation Blog,

please subscribe [here](#).



The Leading Online Service
for International Arbitration

300+ Authors
Nearly 3,000 awards
11,000+ court decisions
2,250+ BITS

Request a free
demo now
[KluwerArbitration.com](https://www.kluwerarbitration.com)

 Wolters Kluwer

This entry was posted on Friday, May 24th, 2019 at 6:13 am and is filed under [Brexit](#), [Cognitive Bias](#), [Dispute Resolution](#), [Europe](#), [Negotiation](#)
You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.