Select Committee on the European Union

Uncorrected oral evidence: Scrutiny of Brexit Negotiations

Tuesday 23 July 2019

4.10 pm

Watch the meeting

Members present: Lord Jay of Ewelme (The Chairman); Lord Boswell of Aynho; Baroness Brown of Cambridge; Lord Cavendish of Furness; Baroness Donaghy; Lord Faulkner of Worcester; Baroness Hamwee; Lord Kerr of Kinlochard; The Earl of Kinnoull; Lord Lamont of Lerwick; Lord Morris of Aberavon; Baroness Neville-Rolfe; Baroness Primarolo; Lord Ricketts; Lord Sharkey; Lord Teverson.

Evidence Session No. 1 Heard in Public Questions 1 – 21

Witnesses

I: Professor Sir John Curtice, University of Strathclyde; Gina Miller, Co-Founder of SCM direct, Transparency and Rights Campaigner; Henry Newman, Director, Open Europe.

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Examination of Witnesses

Professor Sir John Curtice, Gina Miller and Henry Newman.

Q1 The Chairman: Welcome to you all. We have been greatly looking forward to this session and are extremely grateful to you for coming and giving evidence to us today. Almost nothing on Brexit has gone according to plan so far—well, not according to plan, but as predicted—except for the announcement of Boris Johnson as Prime Minister. The future looks equally uncertain, and we are greatly looking forward to your analysis of what might happen next, so thank you very much indeed for coming to give evidence to us.

It is now 4.15 pm and we aim to finish this session by 5.45 pm, an hour and a half, as we have a little extra work to do here afterwards. I hope that is all right with you. Can you introduce yourselves and we will then move on to the questions that we have prepared? I suspect the discussion may range rather more widely than some of the questions we had in our minds.

Gina Miller: I have been a businesswoman in the City since 1996. I now own an investment management company, which is a fully automated online platform. I have also, for 30 years, been a campaigner on social justice, ranging from modern-day slavery to transparency in the investment world and the world of charities. I have been lobbying and dealing with the EU for quite some time.

Henry Newman: I am the director of a think tank, Open Europe. Before that, I was a government adviser working in the Cabinet Office and the Ministry of Justice.

Professor Sir John Curtice: I am professor of politics at Strathclyde University and senior research fellow at both NatCen Social Research and the ESRC’s UK in a Changing Europe initiative.

Q2 The Chairman: Thank you. As you can hear, we have competition today from a helicopter. We had a choice as to whether to close the windows and keep out the helicopter noise or keep the windows open and have a little noise and slightly less heat. We have decided to adopt the latter course, but that means that we may need to speak up a bit so that we and those sitting at the back can hear what is said.

To start with, what is your immediate response to the election of Boris Johnson as leader of the Conservative Party? What impact do you think it will have on the Brexit negotiations? There may be one or two more specific questions for Sir John Curtice on some of the polling as we go through this.

Gina Miller: The name on the door has changed, but I am not sure that the facts, the circumstances or the options and consequences have necessarily changed. I say that for three main reasons.

The first is the clause in the extension agreement signed in April this year for the extension until 31 October, which stated that the extension was
granted as long as there was no renegotiation on the withdrawal agreement.

Secondly, the culture at the top of the EU has changed now that the three senior posts have been elected. They have gone to individuals who are very much unionists and defend the EU. Mrs von der Leyen is very much of that mindset, as is the new head of the Council, the young Belgian Prime Minister. There has been a mood change in the culture at the top of the EU in defending it, not just because of Brexit but because of the rise of populism in other member states. That might colour the chances of renegotiation as we go forwards.

Thirdly, there is the reality of the time we have, in that one of Mrs von der Leyen’s election pledges was that she would bring equality and gender parity to the European Commission. For her to achieve that might mean that the college does not get elected on 1 November but towards the end of the year, during November or December. It is very unlikely that the full college of the Commission, not just the sitting, will be in place to look at whatever might be negotiated if Prime Minister Johnson were able to do so.

The obstacles on the EU side have probably increased. There is also Prime Minister Johnson’s wafer-thin majority; if only two more parliamentary Tories were to cross the Floor, that would leave him with a real dilemma.

The Chairman: If I have this right, you think that changes in Brussels and the European Union might be more important than the change of Prime Minister here.

Gina Miller: No, it is both. I started with the EU just to explain that they are the ones on the other side of the table. Here, I am aware that six Tory MPs are talking to the Lib Dems this week. If just two were to cross the Floor, as I say, that creates a real problem for having a parliamentary majority in the House.

The Chairman: Would you agree with that, Henry Newman?

Henry Newman: Some of it. It is certainly true that some things have changed in Europe. I do not think that the appointments of the new President of the Commission and the new President the Council are particularly relevant to Mr Johnson, because they will not take up their posts until after his do-or-die exit date of 31 October.

But some things have clearly shifted on the European side. There is a structural limitation in the mandate of Task Force 50 in the negotiating team, whose mandate is set by the European Council and obviously cannot go beyond it without a new mandate from the Heads of State and Government.

However, discussions are happening inside the Commission team about the possibility of surgical changes to the withdrawal agreement itself. That is not necessarily to say that they are about to make those offers,
but they are clearly trying to work out what could be done in that direction. There is also some clear interest in giving a new Prime Minister a proper hearing.

I think there is also recognition that the exact same withdrawal agreement now stands no chance of passing the Commons as it is, so if there is to be a negotiated exit it will need some movement. That may not take it as far as some critics of the withdrawal agreement, particularly inside the Conservative Party, would like. None the less, there is a changed landscape.

On other European attitudes, I have noticed, when talking to interlocutors in the Élysée and elsewhere, a high degree of exasperation, frustration and boredom with Brexit overall—we can all share that sentiment, perhaps—but also a recognition, as I said, that politics has shifted, and that although the European election results produced a fractured picture in the UK, the largest single share of the vote went to a party that explicitly campaigned on a mandate of no deal. That was something of a surprise on the continent.

The domestic position is very difficult for the Conservatives, exactly as Gina Miller says. Boris Johnson faces two groups of parliamentarians of roughly equal size on either side of the party, who are threatening to bring down the Government if they do not deliver Brexit by the 31st in the shape that one group wants, or to do so if they deliver a no-deal Brexit by the 31st. His position and his inheritance are extraordinarily challenging, and he will have a very short honeymoon.

In and of itself, changing the new Prime Minister does not change the parliamentary maths. Having said that, there is a slight shift. To some extent, among the Conservative parliamentarians I am speaking to, there is also a desire to give the new Prime Minister a fair run at it. There is a slight sense that patronage in the Whips’ Office might be reset, and that there might be a willingness to give a new Prime Minister a shot at things. That is not a perfect carte blanche to do what he likes; he will make his most interesting decisions over the next two or three days, as he sets out his Cabinet and his Ministers, and we see how that affects the overall mood within the Conservative Party.

Q3  
**The Chairman:** Thank you. We will come on to a number of the points you raise in more detail as we go through the questions later on. Sir John Curtice, how would you summarise public attitudes at this stage towards Boris Johnson as Prime Minister?

**Professor Sir John Curtice:** Like all of us, Mr Johnson is more highly regarded for certain qualities than for others. He does pretty well on likeability. He is quite widely regarded as determined and a relatively strong character. He does rather less well when people are asked about honesty, or indeed competence.

More broadly, across the electorate as a whole, he is clearly not a particularly popular Prime Minister. YouGov put out some data this
afternoon pointing out that in asking exactly the same question as to whether people had a favourable or unfavourable view of the Prime Minister, the numbers for Mr Johnson are not as good as those for Mrs May when she first became Prime Minister in July 2016.

But as so often in this subject, talking about the electorate as a whole is probably to miss the point.

Mr Johnson’s crucial characteristic, and it is a quite remarkable one, is that he is actually most popular among a group of voters who say that they would not currently vote for his party: that is, Brexit Party supporters. His numbers, on virtually any characteristic, are higher among those who say they would vote for the Brexit Party than they are among those who say they voted for the Conservatives in 2017, and in some cases even more than for current Conservatives.

From that, it follows, of course, that the other crucial characteristic which the Prime Minister-to-be also has is that he is a polarising figure. Basically, he is liked by leave voters and is pretty intensely disliked by remain voters. Certainly, in so far as he has set out as one of his ambitions to unite the country, he is certainly not necessarily starting from the easiest base. But given that Brexit divides us on most issues, not just simply the desirability or otherwise of the new Prime Minister-to-be, maybe we should not lay all the blame for that at his feet.

**The Chairman:** Thank you very much. That is a very good lead-in to the rest of the questions.

**Q4**

**Lord Cavendish of Furness:** This question is specifically to Sir John, but maybe also to the others.

One hears a lot of talk about the first 100 days. In your experience, Sir John, what authority does a new Prime Minister have, and historically how long does it tend to last?

**Professor Sir John Curtice:** In many respects, the Prime Minister’s authority is a function of their popularity and the current standing of their party among the electorate.

A Prime Minister who has first been elected nearly always has that authority, because they have just managed to deliver the victory upon which their party’s incumbency in office rests. A Prime Minister who inherits the office mid-term is sometimes in a somewhat different position. Some of us think that John Major engaged in quite a small miracle in managing to rescue his party from the position he inherited in 1990, although his victory in 1992 did not enhance his authority for very long. But clearly the moment Gordon Brown’s poll numbers went down did not do much for his ability as a Prime Minister.

Mr Johnson’s difficulty is that the traditional fount of authority is that, at the end of the day, MPs think that the future of their political careers lies in their ability to enable the Prime Minister to achieve his objectives. That is made more difficult for a party that has only 25% of the vote, and a
Prime Minister who is personally not particularly popular—although he is still more popular, it has to be said, than the Leader of the Opposition.

However, as my colleagues have already indicated, clearly there is a reluctance inside the Conservative parliamentary party to pull the rug out from underneath his feet before he has even had a chance to measure the size of the carpets. Doubtless, therefore, much will depend on what he has achieved or seems to have achieved, if not by the beginning of September then certainly by the time of the Conservative party conference and the return of Parliament in the autumn, because by that point crucial decisions will have to be made.

The difficulty that he undoubtedly faces, by the criterion that I have raised, is that it is no secret that there is a body of Conservative MPs who are more inclined in the remain direction, some of whom have probably come to the conclusion that their political careers are such that they are no longer likely to have much prospect of senior office again. Of course, characters in that position are most difficult to whip behind you, which may be the real problem the new Prime Minister faces.

**Gina Miller:** On that last point, having spoken to a number of senior Conservatives in the different blocs in the lower House, the entrenchment is increasing rather than the sense that when you have a new Prime Minister it is party first. We are finding that, with Brexit, the normal party norms are not playing out.

What is quite extraordinary, and is also borne out among the public and through voters, is that research done by King’s showed that only one person out of 16 did not identify themselves with what it called a Brexit badge. It is no longer about political party in particular but about remain or leave. That is significant when that badge is also being worn by parliamentarians within their parties, and it is replacing their party loyalty to some degree.

**Lord Boswell of Aynho:** I have a quick question, which I rather promoted up my thoughts in the light of those responses, about democratic accountability. It seems self-evident that when you introduce a referendum mechanism, that immediately poses questions about legitimacy vis-à-vis Parliament at any one time, almost neutrally as to the extent of the parliamentary majority.

There is also the question of the renewability of the mandate—something that we have always accepted in Parliament, with the Septennial Act and then coming down to quinquennial elections. There is no such mechanism in relation to referenda.

Perhaps we could start with Sir John on this, but any other comments are welcome. This is meant as a neutral question. Do you have any sense in which one can legitimately claim democratic legitimacy for a decision conveyed by referendum? Does it have a half-life, or does it eventually come to an end?
**Professor Sir John Curtice:** The only precedent in law, if I remember correctly, is that the provisions for a border poll in Northern Ireland allow for one once every 15 years. That is the nearest precedent that we have for setting a time limit on how frequently you can return to the same subject.

I can see us slipping into a discussion about the merits or otherwise of a second referendum, Chair. I do not know whether you would like me to pause at this point, because almost inevitably your question will lead me into talking about things that I am aware you may want to talk about more widely.

**The Chairman:** Let us hold them in reserve, but we certainly want to come back to that point.

Q6 **Lord Faulkner of Worcester:** My question follows on from your very interesting answers to the first question.

What is your view on the Brexit policy options available to a new Prime Minister? Do they include, for example, extending the 31 October deadline? How likely are they to be pursued, and how will the EU respond to them?

**Professor Sir John Curtice:** The trouble is that we all probably have our own list of the policy options.

I am of the view—I am by no means unique in this respect—that even if the new Prime Minister succeeds in negotiating a new deal with the European Union within the next three months, we are not leaving on 31 October. I simply cite in defence of that statement that the UK Government indicated that they would have to have a fourth indicative vote at the beginning of June because they would require the seven weeks until basically this week to get legislation not only through the House of Commons but through the House of Lords, which everyone tends rather to forget.

Despite what was said during the campaign, if indeed a deal is achieved, extension has to be an option. More broadly, of course, if the new Prime Minister were to find that they have not negotiated a deal but that by some means or another the other place has succeeded in making clear by law, or basically through the threat of a no-confidence Motion, that no deal is not a policy they can pursue, presumably the Prime Minister will have to seek an extension. So an extension has to be an option.

Beyond that, what might achieve that? My colleagues know more about this. Clearly, the one area where everybody has indicated that there is room for renegotiation is on the political declaration. It strikes me that one of the complaints made by those on the Brexit side of the argument is about the sequencing of the talks and the way in which they have required us, as it were, to settle the divorce bill before we negotiate our future relationship.
But of course, in so far as you engage in talks to make the current political declaration more specific than it currently is—many people would argue that it is notable for its lack of specificity—arguably you can de facto begin to get around some of the sequencing problems.

Interestingly, one of the things open to this Government is to try to move the political declaration in the direction of a harder Brexit than it is currently thought necessary to point. Henry will know much more about this, but I guess there are still opportunities out there for rewriting, yet again, the various missives and understandings that have been written about what the withdrawal treaty does or does not mean, and that the European Union really, really does not want to implement the backstop.

It raises an interesting question, among many questions. The option that is clearly in the eyes of many of those on the Brexit side—there was a very interesting digression by the chairman of the Public Administration Committee a couple of weeks ago, and it was very clear what he was advocating—is basically a GATT Article XXIV agreement by the end of October. As far as trade is concerned, that would seem to imply that we enter a potentially endless transition agreement instead of a backstop. I will let you sort out the ironies for yourselves.

The other interesting question is whether the UK Government will reverse the negotiating position of the current Government, which was to include the whole of the United Kingdom inside the backstop, or whether they would wish to go back to a Northern Ireland-only backstop. One suspects that that might be the one bit of the treaty that the EU might be willing to reopen, because it was its idea in the first place. That, of course, opens up a whole can of worms about the relationships between the Government and the DUP, about which you are all very well aware.

**Henry Newman:** There are four basic options available to the new Prime Minister. He can leave with a deal, he can leave without a deal, he can revoke Article 50, or he can extend Article 50. Those are the only options; everything else is a special case of those.

Leaving with a deal obviously requires a majority in the Commons. A 31 October deadline would be extraordinarily challenging, but of course anything beyond that, with an extension, requires the agreement of the 27 unanimously. It is unlikely that that would be withheld, but it is certainly a possibility.

We can go into some of the details of what a new or revised Brexit deal could look like, but Michel Barnier tweeted just today essentially offering to rewrite the political declaration, within certain limits. My private conversations with Commission figures suggest that they are pretty open to very comprehensive rewritings. I do not think that would be enough for the House of Commons. I think that, to secure supportive parliamentarians, the Attorney-General’s legal advice would have to change. That would be the ultimate litmus test.
As for an extension, Boris Johnson has staked his credibility on not having an extension, so I think it is extremely unlikely that he would seek one unless Parliament forced the Executive into doing so. Revocation, again, is extraordinarily unlikely; it is supported by almost no Conservative MPs. But in a forced choice between no deal and revocation, on the cliff edge of a potential departure without an agreement having been ratified, nobody knows what could happen.

To go back to something that was said earlier, it is certainly true that opinions in Parliament have hardened a great deal since the referendum. Even during the leadership contest I was surprised to hear both leadership candidates rule out the possibility of a backstop with a unilateral exit or a time limit, which would clearly have been acceptable to a significant majority in Parliament just a few months back.

My understanding—again, this depends on which element within the Johnson camp you speak to—was that this was not a pre-planned answer. That suggests something that is broadly positive, which is that the Johnson Brexit plan is unwritten, which has advantages and disadvantages. We know that he has said quite clearly that he wants constructive ambiguity around the financial settlement, but he has called for a common-sense protraction of the status quo, which sounded at some points like an extended transition, although at other points he has denied that. He has also said that we should solve the Irish border during the future relationship. Those are some elements of what he has said.

I will finish very quickly on something Gina said that I disagree with. I think it is true that there has been polarisation within Parliament, but I do not think you can use the 2016 referendum identity as a simple test of where parliamentarians fall. Very often, you hear MPs on the Conservative side who voted to remain getting quite upset when they are described in television interviews as remainers. They argue that they have repeatedly voted for a deal that, as they saw it, delivered Brexit.

What we have seen recently with the alternative arrangements commission from Prosperity UK is two MPs who formerly backed remain leading work to try to find a way to resolve the Irish border question. I think there is a group who have radicalised within the Conservative Party, represented perhaps by the now former Justice Secretary and the soon to be former Chancellor, and others, but that does not map on to the 2016 vote choices of all MPs.

**Professor Sir John Curtice:** To clarify something, do you accept that, if the new Prime Minister succeeds in negotiating a deal by mid-October and wins an indicative vote in the House of Commons in the first week back, we will still have to apply for an extension, because we just cannot get the EU withdrawal treaty through the two Houses in 10 days?

**Henry Newman:** I am not a parliamentary expert at all. I think it would be very challenging. However—
**Professor Sir John Curtice:** Let us say that the indicative vote is won very narrowly. Given what we know of the narrowness of the Government’s majority, they may not be able to get a programme Motion through the House of Commons.

In those circumstances it would clearly be nonsense for the Prime Minister to give up the ghost on a deal which it looked as though eventually, albeit with a great deal of difficulty, they would manage to get through both Houses of Parliament.

**Henry Newman:** I will answer very quickly.

**The Chairman:** Very quickly, because we are coming to Gina Miller.

**Henry Newman:** In those circumstances an extension may well be agreed and would make sense. Equally, that exact question was repeatedly put during the leadership race and denied.

I am not an expert in parliamentary procedure, but I have spoken to people who are, and they have argued the counter-case: that a shorter timetable with a potential cliff edge is actually an asset, if you look at it the other way around. Part of the problem that we have been through is that MPs have never had to face an actual decision point: they have always felt able to kick the can down the road rather than decide.

**Gina Miller:** I want to come back to the options facing the new Prime Minister.

On the withdrawal agreement, I have been having conversations across the parties, because it is important to test all the different groups. There are those I have spoken to who are willing to endorse a withdrawal agreement. It is a question of trust. They trust that Prime Minister Johnson will deliver on Brexit, and if a short extension is necessary they trust that he will carry it through. There was not that same element of trust with the previous Prime Minister. I think it is important that they may put up and listen to some of his recommendations about changes in the political declaration, for example.

It is very interesting that Mrs Merkel has talked about the idea that we can overwrite the backstop if there are changes in the political declaration. There appears to be a move and a concentration, both in the UK and in the EU, to look at that political declaration as the thing that changes and that is then voted on, together with the withdrawal agreement.

However, I want to bring everyone back to something that was in the withdrawal Act that was passed last year. Section 10 is about the continuity of north-south co-operation and the prevention of new border arrangements, and it is quite detailed. At the moment, it seems to have been ignored, as though you can just remove the backstop and ignore that which is already in law. I think it is a bit of a humbug section for the new Prime Minister and for the negotiations when it comes to the backstop.
As for the EU’s willingness, I have noticed a hardening exhaustion, as we all have, here in the UK. Yes, we can change the political declaration, but the practicalities are that the withdrawal agreement has been ratified by 27 member states who are not willing to reopen the withdrawal agreement because it has gone through ratification.

**Henry Newman:** It has not been ratified, it has been agreed by the Council.

**Gina Miller:** It has been agreed by the Council in a form that was, as much as possible, ratified before it could go into legislation. It is important to realise that process and that any changes would be in the political declaration.

I have always felt that logically the backstop fits better within the political declaration, because it is about the future relationship. You would not know what that looked like until you knew what the future relationship would look like. There is a logic to having the backstop in the political declaration.

I am not saying that there is necessarily complete political will to accept that, but there is a logic to it which I think the EU will be open to. I have to say that while this idea of an indefinite extension—or implementation period, whatever you would like to call it—may have some positives, such as deferring the economic impact, I worry about its negatives, such as this idea that we will be stuck in this no-vote, no-say position, just taking rules without any end. That is a terribly weak position, which would put the UK in a worse position than the EFTA members. So I worry about this idea of an indefinite extension as an option.

I come back to this idea. I wonder whether a Prime Minister who is trusted that he will deliver may well get the withdrawal agreement through Parliament because of the Brexiteers in his party rather than the objections of the remainers.

**The Chairman:** Thank you. That is helpful. I ask you to keep your answers short, otherwise we will not get through the questions.

**Q7 Lord Ricketts:** I will try to make this question short as well. Going back to something that Gina Miller said earlier about the landscape in Brussels, about Ursula von der Leyen, the new team, and Charles Michel, and so on, would you agree that there is a strong feeling in Brussels that this is now a legacy issue for the outgoing Commission, and that with a new team, a new agenda and a new European Parliament, in a way this feels like yesterday’s issue there?

For Juncker and Barnier, however, this is a really important legacy issue, so there is that window of opportunity. It is not a total lame-duck Commission in the last weeks, if we are within the parameters that they can work with, for this outgoing Commission to land a big outcome for itself. Does that not help a Prime Minister perhaps to use the weeks up to 31 October as a forcing period in the legacy Commission?
**Gina Miller:** I think it does. There has already been some discussion that Juncker will stay on until the end of the year, and that has been already agreed to all intents and purposes. So there is a legacy issue that you wrap this up and do not put it on the shoulders of the incoming new Commission.

**The Chairman:** That is very helpful.

**Lord Lamont of Lerwick:** To keep it brief, may I address this question to Henry Newman?

Do you think that the issue of the arbitration mechanism, both in the withdrawal agreement and in the political declaration, where it is echoed or is more or less the same, matters to Conservative MPs, and what is your own opinion about that with respect to an EU representative, a UK representative and a third-party representative—with reference to the EU court? Some people have thought that this is very weighted against the UK.

**Henry Newman:** It matters, exactly as you suggest. The idea of having a joint arbitration panel is perfectly sensible and quite standard procedure in international dispute resolution, so I do not have an intrinsic problem with that.

The mistake from the UK side perhaps was not to secure a binding reference to the UK Supreme Court on questions of UK constitutional law. That would have seemed a more equitable approach, so if it had been a question of EU law, given that the EU has a doctrine of supremacy of interpretation for its Supreme Court—obviously the European Court of Justice—you can understand why they would want that referral to the ECJ on those questions.

However, to balance it, it would have made sense also to have had a referral to the UK Supreme Court, which would have looked more approachable. The alternative without such a referral could have been that the European court could have struck down the treaty. At the point when the treaty was being agreed, the dispute resolution mechanisms in the deal between the EU and Canada had not yet been tested by the court. It is a concern.

I am less worried about the substance than some parliamentarians are. Ultimately, if you get to the position where you have a significant dispute, it would be an interstate dispute, which is a completely different order of the obvious concern of some Conservative politicians about the jurisdiction of European law in the UK as a member state. Once you leave, and if you are dealing with an international treaty, it is a question of international law rather than a member state, and it is a very different animal.

**Lord Kerr of Kinlochard:** I would like to take Ms Miller back to her last point about the undesirability, in her view, of an indeterminate transition period.
Is it not also likely to be found illegal in Brussels? The lawyers have already been required to stretch a point with the interim period as enshrined in the withdrawal agreement, but would they not dig in against the idea that one could avoid Articles 217 and 218 by sticking with Article 50 for an indeterminate period?

**Gina Miller:** I think they would, for very many reasons, but not only that. The withdrawal agreement, on page 204 I think, says that if we went into that period of time, we would be able to negotiate but would never be able to implement our agreements with other third countries. That does not benefit the EU or us. That then puts almost a stalemate on all countries working together, which is not desirable from anyone’s point of view, both legally and practically.

**Henry Newman:** I think Boris Johnson ruled this out as an idea at the final leadership hustings with Iain Dale.

The only advantage I see in replacing a potentially indefinite backstop with a potentially indefinite transition is that once you leave and are in the transition, it allows the political landscape to change. Precisely as I referred to earlier, part of the problem is that MPs have not been forced into an actual decision. There is a bloc of parliamentarians determined to reverse the referendum result and therefore not deal with the future, whereas once the UK is out and in the transition it will have to face decisions about what comes next rather than trying to redo a decision that was taken previously.

**Lord Sharkey:** I go back to the backstop and ask Sir John in particular how he would summarise public understanding of the backstop, if any, and attitudes towards it.

In a more general sense, what are the implications, if any, of the new Prime Minister’s statement that the backstop needs to be scrapped?

**Professor Sir John Curtice:** There is something very curious about public attitudes and polling towards the deal that Mrs May negotiated. It is the one thing that unites remainers and leavers: both dislike it. It is about the only thing about Brexit on which the two sides agree.

At the same time, there has been very little polling on what people do or do not like about Mrs May’s deal. There has been a little bit on the backstop, and it has been of a certain kind. Sky, for example, asked people whether they were for or against Mrs May’s deal, and it got the usual kind of answer: 26% in favour and 42% against. They were then asked, “What if there were a limit on the backstop? Should MPs vote for it then?” It then got 31% in favour and 33% against, and there was something about vague alternative arrangements.

The point was that there was something of a shift when you asked people about changing the backstop, not particularly among leave voters, but nothing dramatic. Similar work was done by Hanbury on legally binding changes. But that, basically, was it. No one has ever actually asked, at least on this side of the water, whether the backstop is a good thing. It
has been asked by one poll in Northern Ireland, where the backstop seems to be relatively popular, not least with the nationalist community.

In so far as one has to try to interpret what is going on, there are probably two things that one needs to understand about this issue. It is not to do with the detail. The first thing is that, in so far as people have picked up the message that the backstop in some way or another limits the UK’s sovereignty because it is something that we cannot get out of unilaterally, and in so far as sovereigntist sentiments are crucial to understanding the leave vote—i.e., people want this country to be able to make its own decisions—you can see why that might be enough for them to object.

Secondly, the other potential implication of the backstop is that it limits the range of free trade arrangements which this country can negotiate with the European Union, which are commensurate with keeping an open border in Northern Ireland, and in so far as that takes us in the direction of Chequers, which the public certainly for whatever reason decided that they did not like, again you can see why that might cause people to object.

To be honest, you have to engage in this interpretation of the broader evidence. Specifically on the deal, and specifically on the backstop, or indeed specifically on virtually any aspect of Mrs May’s deal, polling is there little. That does not mean to say that the public do not understand, but you have to ascertain the sentiments from the broader political context.

**Lord Sharkey:** Yes, thank you. But what are the implications, if any, of Boris Johnson’s statement that the backstop needs to be scrapped? The answer may be none, of course.

**Professor Sir John Curtice:** The implication politically with the European Union is that it will make it rather difficult to reach an agreement, given the stated position of the European Union and the Irish Government on the subject. Domestically, in so far as Mr Johnson’s message to what is overwhelmingly a leave community inside the Conservative Party is, “I’m going to get rid of something that you all dislike, because it is Brexit in name only”, broadly speaking that chimes in with their views about what is being achieved.

I do not want to prejudice where you want to go with your question, but just let me say this and then I will stop: do not underestimate the levels of support for no deal among those who voted leave. For at least half of them, it is roughly their first preference, and for at least two-thirds it is acceptable. That community is relatively large inside the Conservative membership.

So for them what Boris Johnson has been saying on tearing up the withdrawal treaty and, “Whatever happens, let’s get out by October the 31st”—I am occasionally tempted to point out that it was the European Union that set that deadline, rather than us—is basically, “Let’s get there
and do it. That’s the instruction, and if we have to get out without a deal, many a leave voter would endorse that”. The trouble is that they are a minority of the electorate.

**The Chairman:** We will come on to no deal in a moment or two.

**Gina Miller:** I want to come back to the Ipsos MORI-Irish Times poll on the question of the backstop in March this year. What was very interesting was the difference between the north and the south. In the south, I think the poll found that half of all voters favoured a referendum on Irish unity and that a clear majority would vote for reunification if there was any attempt at erecting a backstop.

The other thing, which came from the police, was the idea that a trusted-trader scheme to replace a backstop is all very well, but they do not think that a smuggler is going to pre-register on a trusted-trader scheme, so they are very concerned about what would happen to smuggling across the border if there were no checks and no means to put anything up. In the case of the backstop, there is the European Union and the UK, but what about the WTO? It is the one party that always seems to be ignored. The WTO members will have something to say about the idea of no backstop or no checks there.

Finally, another thing from the police I spoke to when I was over in Newry and at a couple of other crossing points was that even if the technology was there to replace it, they would have to have some physical presence. That is when the question of the Troubles arises. That is their biggest worry.

**Henry Newman:** Briefly on the backstop, we at Open Europe did some polling with Hanbury, which did not test the backstop qua backstop but just asked, “What do you think about a deal which provided all the things that the UK would have if we were in the backstop?” It found that it was enormously popular, including among leavers and remainers, and particularly with Conservative voters.

I think that spoke to the catastrophic failure of the May Government to explain what they were doing. It is quite evident that the public’s opinion of both Chequers and the Brexit deal were shaped by the resignations of senior Ministers, rather than the substance of what was involved. I would be very surprised if lots of the public understood the fine points of the detail. As Professor Curtice said, they get a sense that this may curtail UK sovereignty, but my experience is that Ministers who have resigned over these policies do not understand them either, in some cases.

**Q10 Lord Lamont of Lerwick:** This question is perhaps to Mr Newman again. Do you think that the Prosperity UK group’s recommendations have made a difference? It is my impression that they made a difference to Johnson. Am I right in that?

**Henry Newman:** It has got people talking about the alternative arrangements idea on both sides of the channel and both sides of the Irish Sea, which is a good thing. There is a desire, particularly in Ireland,
to try to find a way through. Clearly, there is limited political space, and I do not think that the option of excising the backstop entirely and replacing it with nothing is viable, but this work has been successful, and, ultimately, it should have been led by the Government long ago.

There also needs to be a tonal shift from the European side. What we regularly hear from the Commission’s senior officials, but also from some European Heads of Government, is the idea that nothing can replace the backstop—in which case, Brexiteers are right to fear that this is potentially a long-term relationship into which the UK is being bounced. If the tone was much more, “We will do whatever we can to find a way to make alternative arrangements work”—if they said, “This is a good start, so thank you very much, alternative arrangements commission. It does not cross every ‘t’ and dot every ‘i’, but thank you for this work; we will build on it”—that would go quite a long way.

One irony about the alternative arrangements commission’s work, which was broadly very good, was that it came quite close to a Chequers-style approach in one area, sanitary and phytosanitary regulations. It suggested as much as a common rulebook and essential alignment with European rules on agricultural standards, which of course was the policy that originally caused the split within May’s Government. It is ironic that there are only so many solutions under the sun, and that the alternative arrangements group came back in some respects quite close to Chequers.

The Chairman: Thank you. We will now get back to some of the questions on no deal.

Baroness Donaghy: My general question is: how likely is a no-deal outcome, and what will no deal mean in practice? Can the new Prime Minister be prevented from delivering a no-deal outcome if he is determined to do so?

I also have a particular question for Sir John, following his statement about the views in the Conservative Party on no deal. How would you summarise public understanding of and attitudes towards no deal?

Professor Sir John Curtice: I will let the other guys take the difficult questions and I will deal with the easy one afterwards.

Gina Miller: Some work that we have done through campaigns—we do not have the numbers on this, but we can tell from anecdotes and the questions sent in to us—shows that the sentiment travelling around the country is that, “No deal will put an end to this”; that somehow it means that it will be all over. That is very worrying, because it is just the beginning of much more.

In practical terms, it is likely that we will become a third country on 1 November if the Prime Minister is able to drift over the line of 31 October and that legal default. Having spoken to the EU and the task force, I think they would then circle back to the three main things in the withdrawal agreement which they have been negotiating: Northern Ireland, citizens’ rights, and the payment of the monies that are due.
There are international obligations before we even advance to anything else. I can see them circling back to those quickly.

As an example, from my work in financial services, of the sentiment and mood music that we need to be very mindful of, Switzerland has been negotiating with the EU on financial services and it was offered temporary short-term equivalence. The Swiss situation really mirrors what we are going through; their agreement did not pass the public or the Parliament in Switzerland, and with a couple of weeks’ notice it was withdrawn as of 1 July. There was a particular pointed remark about Brexit when that decision came down from the EU.

There is a stiffening of resolve to protect the single market, which is what this would come down to if we were to go into no deal. I worry very much about the idea of us trying to withdraw any of the money that is owed and the EU then possibly suing us. There might suddenly be a case in The Hague, and no other country would deal with us if we were in dispute.

There is also the feeling that no deal is a lose-lose for everyone, but the EU countries feel that the integrity of the single market matters more than no deal.

Henry Newman: No deal is clearly a strong possibility. It has grown as a possibility over the last few weeks and months, and the possibility of miscalculation on both sides is high. We just do not know whether Parliament will be able to intervene, even if it tries to do so. A recent majority for a proxy attempt to block Prorogation was high, but in other cases the majorities have been far slimmer. Boris Johnson is right to say that opinions have changed since the European elections. We have even heard Labour politicians who previously opposed the deal say that they would prefer no deal to no Brexit. That calculation may apply to others.

It is possible that if the UK left without a deal, the EU might well come back and demand all the same things. Equally, the Tánaiste said recently that no withdrawal agreement means no backstop, which to a degree suggests that the Irish Government are at least cognisant that if there is no deal there is not the protection of the backstop.

The EU may calculate that the UK will come back begging to the negotiating table in the event of no deal, but that is far from certain. We have seen politics polarising very strongly, and it could actually spiral off in the other direction and cause a much wider breakdown in international relations across the continent, which would be a terrible thing.

I think there is confusion about how to read Mr Johnson across the continent. There is a sense and a belief that he might be about to do a "Nixon to China", which I think is unlikely; I do not think that Boris Johnson will suddenly turn around and offer to sell the current Brexit deal to the Commons. It is much more likely that, to pick a different Cold War analogy, he will be willing to pursue mutually assured destruction in the event of no deal, with the intent of avoiding no deal but playing absolute hardball on that.
It is of course true that the effects of no deal could be more significant for the UK. However, at least the UK had some degree of mandate for leaving the EU back in 2016, and of course in the European elections this year the party advocating no deal won the largest slice of the vote. I am not saying that there is a clear mandate for it, but there is no mandate for no deal on the European side.

To go back to Lord Ricketts’ point, there is a strong sense that the current negotiating team and the Commission that is about to leave office in the next few months will have failed very badly in their mission to reach agreement if this all breaks down. I do not think that takes us to a point where they would move anywhere on their red lines, but it takes us to the position where they would like to find a way through to avoid no deal.

On the impact of no deal, we at Open Europe have done some work on this. We have a report called *No Deal*, which looks at the medium-term economic impacts. The big question is the extent to which both sides are willing to agree separate arrangements if we get closer and closer towards no deal. So far there has been some preparation in that direction, but it has been relatively limited. If it looks more likely, we may see that beginning to change, particularly as the sense grows that there is simply no path for the current withdrawal agreement through the Commons, nor a path to a cross-party agreement, which was of course the Commission’s plan B. That has categorically also failed.

The other thing that I hear from senior figures in the Élysée and elsewhere is that there is no possibility as far as they can see for a reversal of Brexit. If you take the fact that there is no possibility for the current withdrawal agreement and no possibility to reverse Brexit, you are left deciding what you want to do and the extent to which you want either to move on the current deal or to mitigate no deal.

**The Chairman:** Taking all that into account, what percentage would you put on the chances of no deal?

**Henry Newman:** I would really rather not, given my catastrophic failures to predict anything recently other than perhaps the selection of Boris Johnson. I think there is a strong chance, although certainly not a majority chance.

**Gina Miller:** I can report back that earlier this year, around March and April, the EU was talking about a 25% chance, and now they see it as being over 50%. The last meeting on 9 July did not bode well for this. I was in the Senate on the day when Acts were passed in both Houses for the new budget and the new rules, and new rules and Acts of parliament and legislation have been passed in nine member states, so we should not have the idea that they are not ready. We are actually less ready for no deal than many other European member states.

**The Chairman:** Sir John, you have been waiting patiently.
Professor Sir John Curtice: That is fine. This is fascinating. Of course, the answer to your question is that it all depends on the House of Commons, and we do not know quite how the Commons is or is not going to fall—everybody agrees that the numbers are tight—or, equally, the exact procedure by which things could be stopped. Do not rule it out. One obvious possibility is that the Government indeed succeed in pursuing no deal, but as a result the House of Commons throws it out, because that is what they have done, and we will end up having an election on whether or not we were right to leave.

Anyway, back to public opinion. It is very difficult to get at what the public understand. There was an attempt by some academics back in January, although I am not sure that the question was that good. They gave people a series of options as to what no deal might mean. One of those options was, “We remain a member of the European Union”. You will be pleased to hear that only 4% of people thought that that was what no deal meant—which, if you think about the phrase colloquially, it could do: if there is no deal, presumably nothing has changed, right?

So the public have got that no deal does not mean remaining a member of the EU, and only 20% of people were unable to give an answer at all. Beyond that, there were two options. One option was, “We are no longer an EU member, but talks continue”, which a quarter chose. Then half chose, “We are not an EU member, and that is the end to the talks”. If I asked Gina and Henry which of those last two answers was correct, I might get two different answers, so to that extent at least the question was not a perfect one.

As for attitudes more broadly, this is an issue on which inevitably, like pretty much everything to do with Brexit apart from Mrs May’s deal, we just divide along remain/leave lines. There are two or three points here. First, it becomes difficult to talk about attitudes towards no deal without beginning to talk about attitudes towards a second referendum. One of the persistent findings of all the survey research that gives people a variety of options as to what we might do—they may be procedural or substantive options—is that what comes out every time is that the two single most popular options are either leaving without a deal, which is the most popular option among leavers, or either having a secondary referendum or just revoking Article 50, which between half and two-thirds of remain voters will consistently back.

You have to understand that, whatever view one takes about the Commons, public opinion is now deeply polarised about the options before us. I guess I now take the view that, whatever we do, that will remain the same unless we somehow find a deal that is much more popular than any deal that anybody has come up with so far. It is going to be very difficult to come up with an outcome that is going to satisfy more than half the population and which may well end up satisfying less than that, and it is very tough for politicians to come up with something that is going to keep the public happy. Anyway, we are deeply polarised between those options.
If you then simply ask people whether they are for or against no deal, or whether they think it is perhaps an acceptable compromise or a second preference, you basically discover that only around a third of the public as a whole think it is a good idea or an acceptable compromise, while the rest think it is not such a good idea. Essentially, that is the half of the leave community, which thinks that leaving without a deal is a good idea.

Equally, when BMG recently asked people whether they were for or against, slightly more people—by a difference of about six points—said that they were against no deal than said they were in favour. Essentially, however, leave voters were 68% in favour and 15% opposed, while remain voters were 13% in favour and 74% opposed. That just replicates the remain/leave divide on which we are largely evenly divided. In all these questions about being either for or against, if you do not go through any of these options but simply give people a stark choice, you simply end up with something close to a 50:50 split.

One other thing to say is that Opinium has asked a question in which the choices are holding another referendum, having no deal, and going away and renegotiating. The one option that is becoming less popular is carrying on negotiating. There is a sense out there of the public beginning to get frustrated, but the problem of course is that people do not necessarily agree about the best way of relieving their frustration.

Q12 Lord Cavendish of Furness: Would Sir John agree that there is a public perception that we are where we are largely on account of quite incredible ineptitude on the part of the Government negotiating it, and that fresh faces are needed? Gina Miller talked about mood music. I would have thought that there was a widespread perception that this could be altered enormously by proper diplomacy and somebody going over and saying “Look, let’s start again and try to do something”. That seems to me to be a public perception.

Professor Sir John Curtice: You are absolutely right. It is the other thing upon which remainers and leavers tend to agree. I have been tracking this during the Brexit negotiations and my own research, and the last readings, around January and February, were that basically two-thirds of remainers and two-thirds of leavers thought that the UK Government had made a hash of the negotiations.

Remain voters tend to be much more critical of the UK Government than leave voters. Of course, voters, not least among those on the leave side, are also pretty critical of the European Union’s handling of the negotiations. LRB runs polls now asking people whether they think the Prime Minister has done a good job in running Brexit, and 90% think she has done a bad job.

So there is no doubt that the public are deeply critical of the way the current Government have handled Brexit. That has had a history to it. Essentially, the Prime Minister’s Lancaster House speech of January 2017 gave the public confidence in the Government’s handling of Brexit and it became positive. The wild walk in the wood in Wales and its fallout undid
all that. The publication of the Chequers agreement then undermined confidence among leave voters in the Government’s handling of Brexit, and as the Brexit impasse has continued, people have become ever more despondent.

To that extent, at least, a new Administration could hardly get it any worse and may well be more effective at laying some of the blame on the European Union for whatever the fallout is than the current Administration have proved to be.

It has always struck me, as we talk about the outcome of Brexit, that we have to be aware that there is a political battle in persuading the public of where responsibility lies. A new Administration, if they try to go in a new direction, may succeed in persuading the public that, “It’s not our fault, it’s the European Union’s fault”. That will certainly be a crucial political battle.

**Gina Miller:** I completely agree with that sentiment. That is one of the things the EU is worried about.

Going back to your question, while a new Administration and a new team could go and negotiate, we are still up against the timeline and against the fact that there is no one to negotiate with at the moment; the individual member states will not be there. The practicalities do not go away, even if there were to be a new team.

There will be some interesting soundings over the summer either way, come September, but if things are not going well I can see the political storytelling turning to the idea that it is the EU’s fault, with acrimony growing on both sides. That is not helpful to anyone, but it could be positioned as such. The previous Administration have not done that to that degree, and I worry about how that will look for the future relationship if they decide to go down that route of blaming the EU. What will that mean for our renegotiation of the future relationship?

I suggest that it is not the most sensible route. Even though it may get you out of a hole politically here in the UK with the voter, you still have to sit around the table and negotiate a future relationship. The prize is the future relationship.

**Henry Newman:** Of course, one of the ironies of the current impasse is that the timetable that Gina has rightly pointed to as a very difficult obstacle was a decision from the EU side, not the UK side. It was an anti-Goldilocks-length extension: it was neither so short that MPs were forced to actually make a decision, nor was it long enough to give time to go through the summer, have a new Commission in place and get on with a different sort of negotiation. That was set on the EU side.

It is encouraging that the new Prime Minister is planning to be optimistic and make that a centrepiece of his political strategy, but optimism in itself is not enough.
Finally, when you look at what was achieved by the UK negotiating team, without a majority and with very challenging red lines, you could argue that an enormous amount was achieved and that essentially the deal which the Prime Minister came back with just about managed to keep her red lines intact. Given where they started from and the way she lost her majority in 2017, that was extraordinarily impressive. When it comes to the size of the financial settlement, Mr Juncker had said on the record that he expected it to be at least €60 billion to €65 billion, and there were reports it would be over €100 billion. Elsewhere, he talked about all kinds of very tightly binding non-regression clauses: if you look at the details of the non-regression clauses, they are far more impressive.

However, all of that was lost in the way the public made their minds up about the deal earlier. The thing that has been most catastrophic for the public’s perception of the handling of Brexit, more than anything else, has been the failure to leave on 29 March. That was the crucial break.

**Professor Sir John Curtice:** Henry, I think it is perfectly clear that the Government should have employed you as their PR adviser. You are the strongest advocate of Mrs May’s deal I know.

**Gina Miller:** If I can speak from an economics point of view, optimism is not economics. The economic reality of what would happen with no deal is pretty catastrophic.

**The Chairman:** We have gone slightly off-piste and we are going to get back on to no deal.

**Baroness Donaghy:** Most of you have touched on this already, but if we leave without a deal, what do you expect to happen next? Will talks continue, will there be an election, will the EU take us to court? What will the next steps be?

**Henry Newman:** I do not think we know. It depends on whether the Government manage to sustain their majority through that period. We know that there is a group of Conservative politicians who have said they will do anything to stop the Government pursuing no deal. We do not know if that includes trying to bring down the Government. We do not know—there are constitutional experts in this place who will know far better than I do—what happens, given the strictures of the Fixed-term Parliaments Act, if the Government lose their confidence and there is then a 14-day period prior to a general election. The Government are telling us on the one hand that they have passed sufficient legislation to do crucial things in the event of no deal, but in other cases there seem to be lacunae.

Having said all that, if the UK left with no deal on 31 October, a majority would quickly be found to pass crucial legislation and to mitigate the very worst things that they have not yet been able to get on the statute book. I do not know: it completely depends what attitude the European side and the UK side take and whether no deal is seen as a deliberate policy choice or a miscalculation by one side or the other, or both.
**Gina Miller:** As an immediate reaction, from a financial point of view the exchange rate could see sterling back as low as it was in March 1985, but we do not know. We know that there would definitely be an impact on UK shares. Of the 150,000 or 160,000 SMEs, we hear that only 33,000 have already made preparations for no deal. For those that have not and that deal only with the EU, there will be a significant impact, and we have no idea what that will look like.

As for whether there will be tariffs and checks at borders, we simply do not have enough manpower or expertise in place at the moment, because we have not had to. So it will be very challenging to have everything in place by 1 November.

We have already seen that Moody’s, S&P and Fitch, the rating agencies, have said that the UK’s credit rating could be downgraded. Actually, I think that is overstated; I do not think that the UK is anywhere near Italy. Some rating agencies’ reports are overstated, but there will be an effect on markets, on sterling and on SMEs. We do not believe that FTSE 100 businesses will be as affected, because a lot of the bigger companies have their profits offshore, and a low sterling would actually benefit them. So there will be pros and cons, but it is the SMEs that we have most concerns about.

**Q14**

**Lord Lamont of Lerwick:** The Government will introduce a temporary tariff schedule immediately. Have you modelled that at all? There will be no response from the other side; they will just have the status quo, right?

**Henry Newman:** That is one of the most interesting questions. Gina referred to the Swiss example in the case of equivalence on services, which was very instructive. There were protectionist measures and the withdrawal of equivalence not just on the European side but on the Swiss side. It would be very regrettable if we ended up in some sort of trade conflict with the EU over services.

On tariffs, the Government part-published, very belatedly, a tariff schedule in the event of no deal. I think they could go further. There are some areas where we have withheld full liberalisation on certain products. My think tank is doing some more work on this, but the key would be to make sure that, on an MFN basis, we lower our tariffs. We could announce that we are doing this for an interim period in the event of no deal; as long as we applied it across the board, it would be open to us.

**Lord Lamont of Lerwick:** I thought they had said it will be for 12 months.

**Henry Newman:** Yes, but you could go beyond the Government’s current tariff scorecard. Yes, it is a key concern, and it will be difficult for the Government unilaterally to go that far. The bigger problem would be on the regulatory side. While it is possible, of course, to use something like GATT XXIV to come up with a tariff-free trading arrangement—

**Gina Miller:** No, you cannot.
**Henry Newman:** Well, you can. The irony is that the backstop itself is an example of a GATT XXIV-compliant arrangement. There is nothing particularly magical about GATT XXIV; it is just a bilateral agreement that allows you to plot a path towards a trade deal.

**Gina Miller:** On Henry’s first point, a number of WTO members have already lodged objections to our imposing favourable tariffs, or lower tariffs, than those imposed by WTO members. I do not know the number, but I know that some have already been lodged.

**Lord Teverson:** We have talked about what happens immediately afterwards. I just want to broaden that slightly.

The other area that we have not talked about at all is that of security, which is outside single-market issues and is partly an EU issue when it comes to certain data systems, like Schengen information. I am interested to know what you think. Is that an area where, pretty soon, background talks will start and protocols will be put in place, despite what happens elsewhere?

More broadly, I am interested in what the rest of the world is going to do. Will it ignore this, or does it affect ongoing trade relationships? Does the EU relationship have to be sorted out before the relationship with the rest of the world? How does that figure? I am interested in those broader issues.

**Henry Newman:** Overall, security has been extraordinarily underdiscussed in the entire Brexit debacle. On the economy side, we have had a huge focus on goods rather than services, and we have focused far more on the economy than on foreign policy, security or anything else. Speaking to officials in Whitehall, I know that they are very concerned about this. There will need to be more discussions around what can be done in the event of no deal.

I have noticed a change over the past few months, probably since the start of this year. Key allies, particularly Anglosphere allies, are more worried about the effects of no deal on security and foreign policy and are willing to speak on the EU side as well.

Initially, going back two years, there was very little engagement from Brussels and member states on what to do about security in the withdrawal agreement; it was seen as a second-phase issue. That changed substantially and far more was done on security. However, the political declaration is still relatively limited on security, foreign policy and defence.

**Baroness Neville-Rolfe:** I was very pleased to hear that you are doing work on the tariff schedule, and we would certainly like to see that, including the impact on domestic industries, for our inquiry. This Committee has done a lot of work on the rollover of international agreements. Are you are concerned that the Canadian agreement, as I understand it, is not being rolled over? Do you have any other comments on that area in a no-deal scenario?
**Henry Newman**: Again, it depends on whether we end up in a no-deal scenario where tariffs across the board are very substantially liberalised, in which case the tariff liberalisation as a result of the Canadian FTA becomes less relevant, although the regulatory aspects of it are of course significant.

The Government have made recent progress in certain areas on rolling over some of those FTAs, particularly with EFTA and the EEA states. That is obviously important, but there is more to do and progress is less than many had hoped at this stage.

**Gina Miller**: From what we have heard in the preference scheme, there has not been much discussion to date on security. Security was discussed at the beginning, but then it fell away because there was such a concentration on trade, which was a real shame.

The other thing that has not been discussed enough, which is also a problem, is the whole idea of Euratom and what happens with energy. That has also fallen away from every discussion, as has any idea of what happens at that stage. It is 25% of our energy, and it is a huge problem. Those are the two areas.

We have one of the most respected security services, and I just cannot see any member state pulling away from that and not co-operating until we have some sort of agreement. Perhaps that is why people pulled away from discussing this, but it was taken as read that it would not be an issue and there would always be this co-operation. I am not saying that that is correct; I think it was naive to think that that would be the case. But there was a sentiment that that co-operation would be there.

To get back to the UK for a moment, I find extraordinary the idea put forward by Andrea Leadsom when she was Leader of the House that there would be workarounds on legislation. No one can specify what those workarounds are and there seems to be no constitutional precedent as to how we get there. There is a real issue with us being legally ready for no deal.

**Henry Newman**: Very briefly, on security, it was a massive mistake in retrospect to not have a backstop on security co-operation, given the crucial importance of preserving it. I can understand that the backstop on the Irish side is an EU requirement, but a backstop on security and intelligence co-operation would have been a very sensible ask. If we were to rerun these negotiations, that should be there from the beginning.

**Baroness Primarolo**: Thank you, you have been extraordinarily patient and given us a huge amount of information.

I want to ask quite a compact question. Given the points you have made about the limited political space and the time constraints, and the picture you have painted of options that cascade on and on, perhaps Henry can start by telling us what he thinks will happen between now and 31 October. How might EU representatives respond to that? If we are to get to that stage, presumably there will be a strategy. Would you like to
speculate on what that might be?

**Henry Newman:** If I was advising the incoming Prime Minister, there is a pathway to a deal that could be reached with the EU. I think it is a narrow pathway, but it is plausible. As I said previously, there could be a substantial rewrite of the political declaration in a direction that takes us more explicitly away from a Chequers-style relationship and towards a free trade arrangement.

Further clarifications and assurances could be sought around alternative arrangements from the European side; they might be open to that. Protections could be added to address the concern of the Democratic Unionist Party and others in Northern Ireland that there might be divergence across the Irish Sea within the United Kingdom. You could seek in international law to protect against that. That would mean essentially rewriting in international law what is already a UK domestic decision. There is precedent for that on the EU side in the 1992 Edinburgh agreement, which essentially offered protection for the Danes against, as they saw it, the Danish Government selling out the Danish people on euro accession.

The final thing required is some sort of unilateral exit from the backstop. Obviously, that is by far the most contentious issue. Perhaps you could just about get to having an exit mechanism that could be triggered, so the UK as a whole could leave the backstop and withdraw to a Northern Ireland-only backstop. That would obviously be acceptable, as Professor Curtice said. The Northern Ireland-only backstop could then be left following a referendum in Northern Ireland. That might be the limit of what would just about be compatible, as the UK sees it, with the principle of consent in Northern Ireland.

It would be open to the UK to take a sovereign decision to leave the backstop or avoid going into it. If they did that, Northern Ireland would go back to a Northern Ireland-only backstop and then be able to decide to leave it, in accordance with the principle of consent, by a referendum in Northern Ireland that would offer either retaining the Northern Ireland backstop or leaving it, in which case both sides would agree to mitigate the border to the maximum extent possible via facilitation.

It is not easy, but that is about the limit that you could get to on a path to a deal that would have some chance of getting the Attorney-General to change his legal advice and would therefore pass Parliament. In a world of imperfect options, that would be the best way forward.

**Baroness Primarolo:** I have to say that we are talking about October 2019. The optimism of the Prime Minister, who will be confirmed tomorrow, has to manage Parliament and the perceptions of the people. You have told us what he might want to achieve, but I was asking more about the steps by which he can achieve it, given all the players involved—Parliament, EU member states and public opinion.
**Henry Newman:** Obviously there are significant challenges. There is also, as I said previously, an advantage in a time pressure. Both sides recognise that something needs to be done quite quickly.

Despite what was said during the leadership campaign, there is a 600-page draft treaty with the European Union, the vast majority of which is acceptable to almost everybody, including most opposition MPs. Therefore, we are talking about relatively narrow changes. Those changes are difficult, but, as I said, the Commission is open to some surgical changes. The question is whether those surgical changes entail removing the appendix or open-heart surgery. The options are between the two of those.

**Baroness Primarolo:** Is there not a difficulty and a tactical challenge if the Prime Minister, from tomorrow, decides to identify the pieces in the total agreement that are problematic and then does not get that agreement? He cannot run the argument to Parliament that he has a new agreement and then say to the European Union that it is the same agreement, just tweaked. That is not possible.

**Henry Newman:** If he achieves substantial changes to the deal, it would be a different deal. If the Attorney-General changes his legal advice, you could argue that it is a different deal. If it was combined with a declaration that pointed in a different direction—

**Gina Miller:** As you said, the reality is that in the time we have available between tomorrow and 31 October, and given the sitting days in Parliament and the lack of anyone sitting in the EU, changes could be made in the political declaration, but very few could be made to the withdrawal agreement. There is the idea that some Brexiteers who voted against the withdrawal agreement might well hold their nose, because legally we will have left the international treaty and repealed the 1972 Act. It may be that that deal goes through on trust that he will then negotiate the future relationship.

The other option is basically to do nothing and we drift over the line, which is 31 October. The lack of a sitting Parliament can be used to allow that to happen. Probably not a lot will be done purely because not much needs to be done if you take those two options.

**Lord Morris of Aberavon:** With all due respect to the polls, it is the numbers in the House of Commons that ultimately count. What is there a majority for in the House of Commons? Constitutionally, only a Member who can command a majority in the House of Commons should be invited to form a Government. When Theresa May formed her Government, she persuaded the authorities that she had a majority, although in fact it took about 10 or 12 days for an agreement to be reached with the DUP. There was no majority before that.

Secondly, Sir John, have the great British public been asked whether they care about the backstop one way or the other?
Professor Sir John Curtice: There is certainly a lacuna in our constitutional arrangements. As you are perfectly aware, if a vacancy arises for First Minister of Scotland or Wales, the Assembly/Parliament elects a First Minister and makes a recommendation to the Crown. In so far as some of us suspect that the days of hung Parliaments are something that we need to learn to live with, this place needs to think about that. If a Prime Minister resigns or dies in office, as was the case in Scotland with Donald Dewar, there should be a procedure in place to elect a new Prime Minister from within the House of Commons so that it is then clear to the Crown who has the confidence of the House. There is a clear constitutional lacuna.

As I said, we know very little about public attitudes towards the backstop. Henry has talked a little about what he has done and I have picked up one or two things. It is evidently unpopular, but, as I explained earlier, why it is unpopular is not something that you can discern directly from the polls; you have to interpret what is going on. When you ask questions, as a number of polls have done, such as whether MPs should vote in favour of it if the backdrop were dropped, you get rather more people in favour of the idea. Beyond that, no.

One has to remember something fundamental that affects the whole debate: for most people on this side of the water, the border we have with the European Union is a sea border by which we are divided by just over 20 miles between Dover and Calais. That is it. We do not psychologically appreciate that there is a 300-mile land border between us and the European Union on the island of Ireland. We all know that that was not discussed during the referendum.

We have now discovered that, because of the history of the Good Friday agreement and so on, this is rather a big issue, not just for now but for our future relationship, because we have to come to some accommodation with the European Union that means that the border can stay open in such a way that the European Union thinks that the integrity of the single market is not being compromised. Solving the backstop is the litmus test for the really big question that we have not yet solved, despite all the debate about alternative arrangements.

We should bear in mind the sentiment on the leave side, as polling has illustrated. Frankly, the idea that you can persuade people in England who voted to leave, and who in so doing are in their mind reclaiming their sovereignty, that their ability to reclaim their sovereignty is constrained by the peripheries of this state—Northern Ireland or even Scotland—is for the birds. At the end of the day, for many a leave voter, Northern Ireland is just an impediment to what they want to achieve and not something that they are necessarily ready to take on board.

Gina Miller: On the question of confidence and commanding the majority of the House, sources close to senior MPs who are unhappy at the prospect of no deal say that they are talking about supporting a vote of no confidence, which would be extraordinary. It is a conversation that is
happening in order to avoid no deal, if that seems to be the direction of travel. The confidence issue may well become a major one in September.

**Henry Newman:** Further to what Lord Curtice said—sorry, Professor Curtice; I elevated you—there is a confused picture when it comes to the EU’s attitude to the backstop. The European Union tells us that it is all about the preservation of the Good Friday agreement, which is a perfectly legitimate argument, but also sometimes that it is about the integrity of the single market. Those are not quite the same thing. There is a bit of a distinction there.

On majorities in the House, following Gina Miller’s case we had a substantial majority to trigger Article 50. Since then, we have had many majorities indirectly against no deal, but no majority for a deal other than via the Brady amendment. That is where we are.

**The Chairman:** We have one or two questions for Sir John Curtice about polling, which we will need to ask and answer quickly, if we may.

**Professor Sir John Curtice:** Fine.

**Q19 Baroness Hamwee:** My questions are all about the changes since June 2016. You may feel that you have answered my first question, which is about public support for, or opposition to, another referendum. There has been mention of other referendums in Northern Ireland and so on, but I mean the UK.

My next question might be slightly more difficult, but the answer might be the same. What is the result likely to be?

**Professor Sir John Curtice:** The answer to your first question is that it depends on how you ask people. If you ask whether there should be a people’s vote, or whether people should have the final say on the deal, a deal, or whatever, and do not make clear that remain would be an option on the ballot paper, more people are consistently in favour than against. If, on the other hand, you ask whether we should have another referendum and, by the way, remain will be an option on the ballot paper, they say, “Oh my Lord. Do you mean to say that we have to go through all that again?” You will get more people against than in favour.

Essentially, the wording matters to leave voters. Some leave voters are somewhat sympathetic to the idea that they should be able to say whether or not they like the deal, because after all it was they who said they wanted it in the first place. That would be for them to say whether or not they like the deal, not for us to change their minds about Brexit.

The real problem with holding a second referendum is that it has been sold and promoted as a remainers’ project. Some people say that the only way out of this impasse is to put the issue back to the people, because the MPs cannot decide. The problem is that, because it has been sold as a remainers’ referendum, like virtually everything else about Brexit there is no consensus that this is the way in which we should proceed. Around two-thirds of remain voters are consistently in favour of
the idea, but once you use the neutral wording, around two-thirds of leave voters are against it. We are basically split.

Let me make this point, because there have been criticisms about no deal. It is often argued that a second referendum would be deeply divisive; it probably would be. Equally, leaving without a deal would probably be deeply divisive. These are two polar opposites. They are the things that are most popular among remain and leave voters, so it is very difficult to bring them together.

On the outcome, for what it is worth, when you simply ask people to choose remain versus leave—more or less the same question as three years ago—the opinion polls consistently show a small lead for remain. However, at least 85%, and possibly more, of those who voted in 2016, on both the remain and the leave side, would do exactly the same thing again. The principal reason why the polls tend to show a small lead for remain is because those who did not vote three years ago are now two to one in favour of remain, if they have expressed a view, and have probably become more pro-remain during the past three years.

The honest truth is that if any pollster tells you that it is 52% remain and 48% leave, it is basically too close to call. Given that the foundation of that lead, such as it is, rests on the views of people who did not vote three years ago and are not necessarily terribly interested in politics, to be honest we do not know what the outcome of a second referendum would be.

There is an argument about whether this should have been bought into earlier. The Kyle-Wilson amendment and the idea of a second referendum as a confirmative vote was clever politics. However, those on the remain side have been very slow in picking it up.

The difficulty we face—

**The Chairman:** We have to move on.

**Professor Sir John Curtice:** Very quickly, so far, none of the compromise options which Henry has talked about and eloquently defended, including the Labour Party’s idea and Mrs May’s idea, is popular. They are more difficult to sell than either no deal or a second referendum, but the problem is that both no deal and a second referendum are deeply divisive. That is the political problem we now face.

**Baroness Hamwee:** When you refer to the people who did not vote three years ago, are you including people who have become enfranchised?

**Professor Sir John Curtice:** Correct, and those who are no longer with us who voted leave three years ago can no longer be polled by the pollsters. We have no direct access to them.

**The Chairman:** We are getting a bit close to the bone there.
Lord Lamont of Lerwick: The question I was meant to ask was about how Brexit affects support for political parties, but I wonder whether I might ask a much narrower question to follow up on what you said in reply to Baroness Hamwee, when you said that Theresa May’s deal was very unpopular, or the least easy to sell. You have published research showing that, if the Conservative Government deliver Brexit, a large proportion of Brexit Party voters would return to the Conservative Party.

Professor Sir John Curtice: I have not published it, but others have.

Lord Lamont of Lerwick: If the form of Brexit was very soft, akin to Mrs May’s deal, do you think those people would return to the Conservative Party from the Brexit Party in the same way? You talked earlier about people who favoured no deal, but it is my impression, perhaps wrongly, that those among the general public who favour no deal often mean that they just want to get it over with. Do you know what I mean?

Professor Sir John Curtice: I am tempted to say, “Ask Nigel Farage”, because it is probably on him that the answer would depend. If Nigel Farage were to say that it is a rotten, useless deal and that he is agin it, it would be much more difficult to get Brexit Party supporters on board.

That said, we are talking about pathways. Clearly, so far as public opinion is concerned and how this plays out politically, the crucial thing that we will all be looking out for in the next two weeks is whether or not Brexit Party supporters switch to the Conservative Party. As I said, Boris Johnson is very popular among Brexit Party supporters.

The argument in favour is that popularity. The argument against is twofold. First, it might already be priced into the polls, because there has already been some movement away from the Brexit Party and towards the Conservative Party during the campaign. Secondly, as you indicated, there is polling out there to show that people have said that they will not vote for the Conservative Party again until Brexit is delivered. We wait and see.

The answer is that it depends on what Nigel Farage says and, frankly, on what people like Steve Baker and Jacob Rees-Mogg say. These are potentially the people who will influence the views of the hard Brexiteers among the public.

Gina Miller: It is not just Boris Johnson but members of the Cabinet who will be appointed later this week; they are chosen by the Prime Minister. They are key figures. If it is a Cabinet that Brexit voters feel they can trust to deliver, you can see a shift across. It will be based on a combination of Prime Minister Johnson and his Cabinet.

The Chairman: A last and rather important question from Lord Kinnoull.

The Earl of Kinnoull: Professor Curtice, could you give us a brief summary of how you feel events have affected support for the union?

Professor Sir John Curtice: Ah. Let us talk about Scotland first of all.
The evidence is limited. There have been only four polls this year asking people how they would vote in a second independence referendum. For what it is worth, in those polls the average level of support for independence was 48%, whereas the average of the polls in the second half of 2018, as has been true for most of the period since 2014, was yes 45% and no 55%, which is in line with the September 2014 result.

It is also true that the increase in support for yes seems to have occurred primarily among remain voters. This is very heavily caveated, but based on the limited evidence that we have there may have been a slight erosion in support for the union in the wake of Brexit, for frankly the first time since 2016.

There is polling asking people what they would do if Boris Johnson becomes Prime Minister or if Britain leaves without a deal. It does not generate much movement, but it takes only a small amount of movement to get to 50% in favour.

I take the view that I have taken since 2014: basically, on the independence debate, neither side is where they want to be. The unionists cannot be sure that Scotland will continue to want to remain part of the union, and at the moment holding an early referendum looks like one very large gamble for the SNP, which is the only party capable of providing a Government for Scotland but cannot deliver on the unique selling proposition of independence. If we have a Brexit impasse, we also have an indyref impasse.

In Northern Ireland, one poll has been done. At the moment, there is still a majority in favour of staying inside the United Kingdom, but the poll went on to ask people what they would do if we leave with no deal and so on. If, as a result of Brexit, some kind of real border was created on the island of Ireland, that, together with the changing demographics of Ireland, clearly raises questions about the future of Northern Ireland’s position inside the UK.

**The Chairman:** And what about Wales?

**Professor Sir John Curtice:** So far, it has to be said that the level of support for independence in Wales is still relatively small. What is certainly true is that successive First Ministers in Wales have expressed a degree of unease about being the only people left having to deal with England inside the remnants of the United Kingdom. It might change the dynamics, but the truth is that, whereas Scotland can at least think about living off its tax base and the Republic already has its own tax base, the tax base issue is probably the most difficult one for Wales.

**Henry Newman:** One of the gaps in the explanation given by those who are campaigning for a second referendum is what argument they would then deploy against a second referendum in Scotland. That is particularly striking in many of the discussions on this.
**Professor Sir John Curtice:** The answer they will give you is that, if a second referendum changes the outcome, the problem of Scotland is solved because Scotland voted to remain. That is the SNP’s principal argument for having a second referendum.

**The Chairman:** Gina Miller, do you have any final words?

**Gina Miller:** The challenges cannot be underestimated, given the reality of the timelines and the fact that we do not have people on the other side of the table. That reality will dawn on the Prime Minister and his team when he takes office tomorrow. Then again, his personality is such that he could re-present what is already out there and get it over the line, because I do not think we can underestimate the trust that leave voters have in him, both within Parliament and outside it.

**The Chairman:** Thank you all very much. We are extremely grateful to all three of you.