

Dear Editor concordanceOUT.eu

Four years ago, I wrote an article which, I think, still has some applicability although it was written before the referendum. Indeed, I very much hope that the last of my words do not turn out to have been prophetic!

The huge error which Mrs May has made was not to have a realistic plan worked out before Article 50 Notice. Yet to do so the PM and her advisers needed to understand the principles and mechanics of the EU. This they clearly do not do even today. The recent Facebook revelations from the PM were peppered with errors and untruths.

However, there is one modest legislative proposal which would have dealt with Dominic Grieve very nicely even though the penalties available to Henry VIII might be a little out of fashion today.

David Starkey has put the comparison between the great Monarch and the enfeebled PM very well indeed.**

Negotiating Independence March 2014 [but still relevant today]

A personal view by Edward Spalton, In FREEDOM TODAY

Hon. Secretary Campaign for an Independent Britain

Whilst independence campaigners of other parties might prefer to use a different phrase, what they hope for is not far off the “amicable divorce” from the EU, advocated by Nigel Farage. Such a settlement will demand clear thinking, strenuous negotiation and unshakeable political will.

Whilst many have a deep-seated loathing for our subjection to the EU, we should remember that it has taken nothing from us which was not freely surrendered by our governments of all colours, officials and parliament.

We should reserve our major suspicions for them and approach the institutions and personnel of the EU with steely objectivity and diplomatic courtesy.

To do that, it may be necessary to create an expert task force or “Department of Disentanglement” separate from the Foreign Office which, for two generations, has been stocked entirely with Europhiles.

The EU is an institution of laws – tens of thousands of them – but it will break even the most supposedly sacrosanct to secure its existence. When the euro was introduced, the treaty specified that no member state could ever be made responsible for the debts of another. Yet as

soon as crisis struck, the principle was instantly jettisoned before any legal change had been made. We are dealing with an institution which is primarily one of political will, not law. The laws are invoked only in support of the project. So caution is essential and suspicion of Article 50 quite reasonable.

To achieve a new politically independent trading relationship with the EU countries, there are various considerations surrounding Article 50.

Firstly, international law does not generally allow the existing or new internal constitutional requirements of contracting states as a valid reason for non-performance of a previously agreed treaty. The article does. Secondly, the Article appears to be a *lex specialis* – an agreed provision of a treaty which therefore takes precedence over general rules such as the Vienna Convention. Thirdly, for an EU document it is remarkably straightforward, specifying a clear procedure, including an obligation to negotiate a future relationship within the not unreasonable period of two years.

It is unrealistic to expect that the member state which has given notice to leave should also be privy to the discussions within the EU institutions on the matter. You cannot expect to sit on both sides of the table at once. You cannot simultaneously be buyer and seller.

We will not be going like Oliver Twist to ask the President of the European Council, “Please Sir, may we have our country back?” and then waiting for two years to see what the EU offers. We must go with a well-prepared negotiating position of highly specific, reasonable requirements and keep the initiative at all times.

In extricating the country from foreign bureaucracy, we do have experience from history. The Acts of Praemunire prohibited English subjects from taking cases to foreign courts, Henry VIII 's Act of Supremacy and Act in Restraint of Appeals established beyond a peradventure that “The King's Majesty hath the chief power in this Realm of England and other his Dominions.... and is not, nor ought to be, subject to any foreign jurisdiction”. It was not mere coincidence that these Acts were repealed or rendered dead letters in the run up to our accession to the EEC.

Acts of Parliament still derive their sovereign force from the prerogative power of the Crown in Parliament, “The Queen's Most Excellent Majesty”. There should be a comprehensive modern Act with the same effect and intent. Such an Act would be a deterrent against new EU Regulations or requirements being sprung on us during negotiation. It

should also provide dissuasive penalties for anyone, particularly British officials, trying to circumvent it – though probably not quite the same ones as Henry VIII's !

Armed with such a safeguard at home, capable of being invoked if necessary, negotiations could proceed, more or less on an ex gratia basis, but in outward conformity to the Article – working, as it were, with the grain of the treaties. To tear up a treaty as a claimed sovereign right might be popular in the saloon bar but would not impress at the bar of any international tribunal or indeed overseas public opinion.

Like it or not, international trade is now regulated by myriad rules. Whilst many of them come from bodies like the United Nations or the World Trade Organisation, Britain is contracted to them through the EU because we outsourced our negotiating power to it. As businesses have spent huge sums of money to comply with these rules, they rightly need assurance that Britain's new arrangements with the EU will not cause them any disruption or place British products and services in a position of dubious international acceptability or disadvantage. Our suppliers and international creditors need to have similar assurance that their interests will be respected and their investments safe. Such considerations are essential, if the divorce is to be amicable and the outcome prosperous.

To win any referendum against the inbuilt advantage of the status quo, people have to be convinced that there is an attractive, credible, working alternative which will secure their jobs. There is no doubt of that. Something like the Norway Option has great presentational advantages. It already exists prosperously. It would not be the end point. Just as the EU project moved from the Coal and Steel Community to the Treaty of Rome, so further advances towards fuller independence can be made from that platform. But we have to persuade people to take the first step. Incompetence or treachery at home is more greatly to be feared than the EU.

The Romans remarked that slaves came to love their chains. Our civil servants have become very comfortable in EU servitude and out of the habit of drafting primary legislation. The effects of a botched renegotiation, combined with adverse economic circumstances, could see a future government panicked into crawling back by invoking clause 5 of Article 50. Now that really is to be feared!

With grateful thanks to Lord Stoddart of Swindon and Petrina Holdsworth for political and legal advice. All mistakes are, of course, entirely the

author's own.

Information from

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Today September 2018: outspoken historian David Starkey will set out the striking parallels between Brexit and Henry VIII's split from Rome at a talk in Yorkshire next month. Chris Burn speaks to him about what he thinks Theresa May could learn from the Tudor monarch.

Link : <https://www.yorkshirepost.co.uk/news/analysis/david-starkey-on-brexit-repeating-history-and-why-he-thinks-theresa-may-is-terrible-1-9361688/>

Henry VIII was an English leader left frustrated and humiliated by an unyielding greater power across the Channel, unmoved by attempts to change its rules despite increasingly-desperate entreaties and negotiations.

The description aptly fits Theresa May following the excruciating rejection of her plan for Brexit by European Union leaders in Salzburg last week - but the nation has been here before almost 500 years ago when Henry VIII sought the permission of the Catholic Church in Rome to annul his marriage with Catherine of Aragon so he could wed Anne Boleyn.

Henry first made the request to annul the marriage to Pope Clement in 1527 but was refused. Years of political manoeuvring in an attempt to change the decision failed and in 1531, the Pope ruled that Henry was not free to remarry and any children he had with Anne would be viewed as illegitimate.

But Henry ultimately got his own way through a split from Rome in what is now known as The English Reformation - the king was declared Supreme Head and Sole Protector of the Church in England, his marriage to Catherine was annulled and he wedded Anne in 1533.

Now the many extraordinary parallels - and some of the key differences - between what happened in Henry VIII's day and the UK's on-going split with Europe are to be explored by the celebrated and often-controversial historian David Starkey at a talk in Harrogate next month.

Speaking over the phone to The Yorkshire Post last Thursday, hours before European Council president Donald Tusk dealt a seemingly-fatal blow to Mrs May's

Chequers plan, Starkey says there is a key difference between the prime minister and Henry VIII, who eventually got what he wanted through Parliament.

“He played his cards cleverly. There was a huge propaganda campaign and bullying and bribery but he was a great political leader,” he says. “She isn’t.”

Starkey, who has studied Henry VIII for decades and written several books about him, has long spoken of the way in which the Reformation sowed the seeds of Euro-scepticism particularly in England and the nation’s “semi-detached relationship with continental Europe”.

“Nobody before Henry would have made any argument about England being not much different from the rest of Europe. It was Henry who turns England into a defensible island, who literally fortifies the English coastline. It really is Henry that turns England into a genuine island.”

While Starkey admits Henry had “other means of persuasion” not open to May to make his case - Lord Chancellor Thomas More was beheaded for treason after opposing the separation from the Catholic Church, for example - the historian says many of his arguments have echoes with those made by Brexiteers today.

“Clearly the religious belief aspect is separate when it comes to the Reformation,” he says. “But Henry didn’t fight it on the grounds of religious belief, he fought it on the grounds of sovereignty for England to take decisions for itself - just the kind of things we have been arguing about since the whole debate of joining the EU once the Common Market started turning into a would-be federalist state.

“Henry is saying ‘I don’t want my rights to marry who I wish to be decided by a foreign court’. The Roman Catholic Church of the time looks very much like the European Union of today - an international body with its own body of law, general assembly and elected head. All the other EU countries now and the churches then are subordinate.

“The resemblances are really very striking. The whole point of the talk is Henry’s decision to break with this took England in a very different direction. For 500 years, we have had propaganda that we are different, separate and do things our own way. When the referendum took place in 2016, Henry VIII won again.”

Starkey voted Leave in 2016 and says he would do so again, describing himself as “rational Brexiteer”. “We were never fully part of the EU, outside the Schengen agreement, outside the single currency. The reason I finally came to the decision to put my cross for Leave was the progress of the EU to becoming a federalist state seemed to be unstoppable.”

He says he had expected a narrow victory for Remain and was shocked by the outcome. “The result was totally astonishing. You had the whole weight of the state and all forms of polite opinion had been against the Leave vote and yet the vote took

place. In the cold light of day, one does begin to wonder how you untangle 40 years of economic integration.”

But despite still supporting Brexit, Starkey is dismayed by how it is progressing and has some blunt words when asked what Henry VIII’s lessons could teach Mrs May, who he describes as a “terrible Prime Minister”.*

“She could learn to be a better politician,” he says. “But the thing that is totally extraordinary when you look back is Henry underestimated at first how difficult it was going to be. He got it badly wrong for two years. There was a major humiliation in 1527 when the ecclesiastical court in London refused to consider his case and referred it to Rome.

“But then he did what Theresa May should have done - he went away and thought, researched and considered and then came up with a properly reasoned strategy** which was then pursued rigorously and fearlessly over a long period of time.”

Starkey holds out little hope this will happen today, saying that in his view Mrs May is “without every conceivable quality you need for a Prime Minister at a moment of national crisis”. “Everyone says she is resilient but what is the virtue of resilience when you are doing something badly? We are in a terrible position and the alternative is even worse. Jeremy Corbyn is the only reason she is still there, he is a catastrophe. In the whole of my life, I can’t recall two such poor leaders.”

He says the poor state of political debate was also evidence during the referendum campaign, with a “shocking lack of clarity” on both sides. “People go on about how dreadful Boris Johnson’s claims were but equally the other side’s decision to campaign on terms of economic scare stories was idiotic. In contrast, in Henry’s day, what is very striking is the clarity on both sides, most clearly exemplified in the trial of Thomas More.”

Despite the links between the events of the 16th Century and today, Starkey says Henry’s experiences are no guide to the future and can teach us “nothing” about what is to come in the next few months and years.

“History is not prediction and anybody who claims it is a charlatan. But it does offer perspective and points of clarity. You can see how we have had a very similar rupture in our relations with another international body that purported to represent European ideals.”

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- **Contrary to the Facebook statements of the PM which was strewn with errors: -**
- 1. The EFTA countries are not and never have been in the Customs Union
- 2. The EFTA countries do not pay annual dues to be in the Single market.

- 3. The EFTA countries do not accept 100% of the EU Rules and Regulations, but rather only the trade related ones [some 20-30%] and can specifically agree not to accept any that they seek to reject.
- Were these errors political and intentional or just signs of the ignorance of the PM? Is that perchance why she cobbled such a hopeless plan together at Chequers??