

Brexit: a cautionary tale for divorcing couples?

By Graeme Fraser

Like Brexit, divorce has traditionally been framed in similarly adversarial and belligerent terms and this has also led to counterproductive behaviours.

Brexit has been characterised as a divorce so often that it has become a cliché. Two parties are ending their formal relationship, with emotions running high and a financial settlement looming large. However, Brexit and divorce are not quite as similar as they might appear.

Brexit is vastly more complicated than divorce. Divorce involves two individuals, while Brexit involves a supra-national organisation, 28 culturally-diverse states and a combined population of over half a billion people with wide-ranging viewpoints. International and domestic politics come into play in Brexit with no equivalence in divorce. The EU are concerned to discourage other member states from following the UK's lead and must consider the Good Friday Agreement. Meanwhile, the UK Government must ensure any deal is approved by Parliament.

Brexit negotiations are governed by EU law in the form of Article 50 of the Treaty on the European Union, which has just five clauses, totalling only 256 words. Divorce, by contrast, is subject to a specific set of processes, governed by legislation, supported by precedent and adjudicated by the court.

Brexit, then, is not divorce writ large. The parallels between the two are limited in scope.

The lessons of Brexit

Brexit and divorce both involve moving from incompatible positions to consistent positions through dialogue. The failure to reach a timely Brexit agreement offers important lessons, not only for divorcing couples but also for public policy.

The most valuable lessons lie in the tendencies in the Brexit negotiations towards framing, blaming,

abdication of responsibility, brinkmanship and punishment.

Framing

Framing has been the most fundamental failure of the Brexit negotiations. The negotiations have been framed in highly adversarial terms that run contrary to the prospects of achieving a deal.

The language used acts as a scaffold, giving structure to how people think about the negotiations and, to a significant extent, determining their actions. Framing of Brexit as analogous to divorce is problematic, given the widespread association of divorce with conflict.

Unhelpful framing is a major reason why divorce has this connotation, with much of the language involved in a divorce – think 'petitioner' and 'respondent' – frequently painting the process in highly antagonistic terms which lead to behaviours that are ultimately counterproductive.

Blaming

The highly adversarial framing of the Brexit process has led to the UK and the EU almost constantly seeking to apportion blame upon each other, whether for Brexit taking place at all or for the failure of the negotiations.

Blame is similarly problematic in divorce and can significantly hinder couples' ability to reach fair and sustainable agreements.

Objectively, only in a minority of cases does responsibility for a divorce lie solely with one person. Often, irreconcilable differences are the cause of the breakdown.

Even, if that were not the case, apportioning blame is highly unlikely to achieve a positive agreement.

Abdicating responsibility

The flip-side of blaming the other party is abdicating responsibility. Both sides in the Brexit negotiations have demonstrated this, most recently the EU in placing the onus solely upon the UK to identify a mutually acceptable solution to the problem of the backstop.

Where two parties need to reach a mutually acceptable conclusion, this will be much easier if both take responsibility for finding that conclusion. This is as true for divorce as it is for Brexit.

Brinkmanship

Blame and abdication of responsibility often lead to brinkmanship, the negotiating equivalent of a

siege, in an attempt to leave the other party no room for manoeuvre and thereby forcing them to capitulate to demands. Both the UK and the EU have resorted to this strategy without success.

Brinkmanship is especially damaging where an ongoing relationship needs to be maintained. In the case of Brexit, that is in the form of trade, security and cultural relationships. In the case of divorce, it might be in the form of co-parenting or running a business together.

Punishment

Closely related to blame, abdicating responsibility and brinkmanship is punishment, whereby one party seeks to inflict harm upon the other, which we have seen throughout the Brexit negotiations and we see in divorce.

While divorce can be a zero-sum game, actively seeking to harm the other party is unlikely to be the best way to reach a settlement that serves long term interests. It is only going to fuel resentment and perpetuate conflict. The same is true of the



Conclusions

Tendencies towards blaming, abdicating responsibility, brinkmanship and punishment in the Brexit negotiations stem from the adversarial and belligerent framing of the process.

Divorce has traditionally been framed in similarly adversarial and belligerent terms and this has also led to counterproductive behaviours.

The Brexit negotiations show how these tendencies lead to a stalemate that paralyses people's lives and make it impossible to move on.

On a national level, it is vital that no-fault divorce does not fall victim to prorogation and the general election that is likely soon.

For divorcing couples, it underlines the benefits of following a Collaborative approach that finds solutions that work for the whole family. A couple signs a Participation Agreement during

Collaborative negotiations which includes this commitment:

'They intend to resolve these issues by focusing on all their needs (their own and the needs of any children), rather than focusing upon just their own claims, needs and legal rights.'

The Brexit negotiators should have signed something similar, substituting 'citizens' for 'children'.

Notes

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