Brexit: no word has made a more spectacular irruption into the Brussels vocabulary in the last two years. Is this a subject for philosophers?

It is. Philosophers have been discussing about justice for 25 centuries. They may therefore easily be prompted to think about what a fair Brexit might be like. One economist colleague dismissed this question as meaningless. A fair

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Deal, he told me, is simply a deal that is acceptable for both parties. And what is acceptable can only be discovered by looking at what ends up being accepted.

A fair Brexit deal, according to this view, is not something that could be characterized a priori. It is simply a deal acceptable by both the UK and the EU, and the only proof of acceptability is acceptance. This is a superficial view, however. Many experiments have shown that human beings — and even some other primates — reject offers from which they would benefit because they find them unfairly stingy. "No deal" is then the outcome because outrage trumps self-interest. This happens in experiments, but also, for example, in real-life negotiations between employers and unions. And it could happen with Brexit.

So, the agreement reached does not define fairness but is affected by prior conceptions of fairness. How is a fair deal then to be conceived?

There are some minimal conditions that are uncontroversial but insufficient. One of them is "pacta sunt servanda": if you made commitments, you must honour them. This applies for example to the pension rights of all EU public servants, whatever their nationality, who served during the period in which the UK was a member of the European Union. It also applies to the commitments made for the current budget period. Even though there are some grey areas, it is not too difficult to get an estimate of the UK’s corresponding liabilities. But this leaves the shape to be taken by the “future relations” between the EU and the UK completely open.
Another uncontroversial constraint is that the deal must be symmetric. For example, if the UK grants certain rights to EU citizens on British soil, the EU must grant the same rights to British citizens on EU soil. But this is a very weak constraint. Suppose, for example, that there are high tariffs on the EU-UK trade of wine and none on the EU-UK trade of whisky, in each case in both directions. This would be perfectly compatible with the symmetry condition, but so would the converse situation, in which high tariffs would apply to whisky, with a very different impact on the interest of the EU and the UK.

If the honouring of commitments is too short-term and symmetry too weak for a full characterization of fairness, what stronger condition do you think should be imposed on the Brexit deal for it to count as fair?

One condition that is said to have circulated in European circles after the Brexit vote is “Qui casse paye”: if you voluntarily destroy something of value to other people, you have to compensate them for the loss. This conception can appeal to an analogy with the alimony to be paid in cases of unilateral divorce. Fairness arguably requires that a husband leaving his poorer wife, or vice versa, should leave the spouse no worse off in material terms than they were during the marriage.

Overall, the EU is much wealthier than the UK, but per capita, the UK’s GDP is about 15% higher than the EU’s, which is why the UK is among the net contributors to the EU budget. On this account, not unlike the divorcing husband, the UK will need to keep paying far more than what follows from “pacta sunt servanda”, perhaps an amount equivalent to its current net contribution.

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“qui casse paye”, the UK should not only bear its direct economic losses from reduced trade. In addition, it should compensate the EU for the losses it suffered as a result of the British decision.

In other words, the culprits must pay for all the damage they caused. This sounds like a pretty harsh conception of fairness.

Harsh, but also not very plausible when you think about what it implies. If fairness requires that the UK should compensate the EU for the cost of its withdrawal, shouldn’t, say, Switzerland compensate the EU for the cost of it not joining it? Far more plausible and important, in my view, is an altogether different interpretation of a fair Brexit. It focuses on the likely consequences for the pursuit of greater social justice in both the EU and the UK.

Greater social justice can be roughly understood as the equalization of opportunities. The freedom of movement and the ban on nationality-based discrimination contribute to it by neutralizing the impact on people’s opportunities of the nationality with which they happen to be born. But they also put pressure on the operation of the various redistributive mechanisms that member states have been using for decades to help equalize opportunities among their native populations: publicly funded education and health care, social insurance and assistance.

Part of the roots of anti-European sentiment, not least among the pro-Brexit voters, is that the single market’s four freedoms undermine these mechanisms. If it is to properly address such concerns, the EU must transform itself into a “caring Union”, proactively supporting social policies.

Isn’t this precisely something that Brexit will facilitate? The UK has been among the member states most opposed to the development of such a “social Europe”.

True, but Brexit, and especially a soft Brexit, could also be a mortal blow to this project. Just imagine that Brexit becomes, as the UK’s Brexit minister Dominic Raab recently put it, “a springboard to a buccaneering global embrace of free trade.” The wider the access of this “Global Britain” to the European single market, the more easily it could defeat any effort towards a more caring Europe.

How? Through the cumulative effects of competitive devaluation of the pound, of tax and social competition, of free riding on the global public goods generated by the EU and of further increasing the current massive net brain drain of more than 600,000 people at the expense of the rest of the EU. “We’re delivering Brexit to control immigration”, Raab said, “but also to expand our global horizon, so we attract the best and the brightest from around the world.”

And with the London metropolis, its top-ranking universities and the world’s lingua franca as its vernacular, the UK is in a good position to do so. A cherry-picking immigration policy, coupled with an enticing tax policy for high-potential expats will do the rest. As to desperate refugees, eager but unskilled “transmigrants” stuck on the continent on their way to Britain, and the hundreds of thousands of economic and ecological migrants managing or trying to cross the Mediterranean, this will no longer be the UK’s problem.

Willing or not, the EU and its member states will then be dragged into tax and social competition, forced to make material prospects better for the better off and worse for the worse off — the opposite of a caring Europe. A fair Brexit would above all be one that prevents such a process. To achieve this, either it must constrain the weapons at the disposal of “buccaneering” Britain at least as much as if the UK had remained in the EU or it must deny the UK unimpeded access to the single market, at a significant cost to both parties. “Fair deal” is not synonymous with “easy deal”.

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