In the first chapter of the Book of Ezekiel (1:5-8), the prophet describes a vision in which he sees four creatures with human form, each had four faces. The Brexit reminds me of these strange creatures. Those who deal with the concrete problems of Brexit, especially the UK government, have to be in conversation obviously with the EU27 on the three agreements on withdrawal, transition, and our long-term relationship with the EU. In order to develop a position, the government needs to be in conversation with industry and those significantly affected in particular sectors. In many sectors, like those I will discuss, the powers which are returned from Brussels will be devolved competences, and so there needs to be a conversation with the devolved administrations on both what the policy with the EU27 should be and how any returned powers should be exercised. Finally, the Government and lobbies need to be in conversation with Parliament which, post-Miller, has the final say and to whom the Government is accountable. The Brexit creature is thus engaged in four conversations simultaneously, using each of its distinct faces. The image conjures up the complexity of Brexit as a celestial being with one brain processing four conversations at once.

I want to pay special attention to one face, that of devolution and to anchor this in two specialist areas: agriculture and research.

AGRICULTURE

Agriculture produces £108bn a year in revenue, roughly the same as the top 6 UK supermarkets and compares with £63bn for financial services. It employs 4 million people. It is an area in which leaving the EU deprives the UK of a revenue stream from the CAP, which will thus require new domestic legislation to replace. At present 55% of UK farm income comes from the CAP, including £2.4bn a year in direct payments to farmers.

Facing the EU, the conversation is that the withdrawal agreement needs to settle when payments are to be made and how repayments are made for over-payments and under-payments. There will need to be a settlement of accounts with the Rural Payments Agency and the EU. The current agreements on Single Farm Payments (Pillar 1) and Rural Development Schemes (Pillar 2) are planned until 2020, so the UK government has promised to continue these for the period 2019-20. This will come out of UK funds. The transition agreement needs to ensure that the UK continues to provide exports to the EU (75% of agricultural exports) and imports at reasonable levels. Tariff levels will be important, because WTO level tariffs could be prohibitively high (40% for lamb, for example). That will, in part, depend on the UK continuing to observe EU regulatory standards. So the UK will have to agree not to change those standards for the worse at least in the short-term.

Facing Industry, the Government has been in conversation with key actors since July. Those actors provide information based on their own research which the Government department has often not done itself (because of the embargo on pre-referendum Brexit preparations).2

1 I am very grateful to Professor Michael Cardwell of the University of Leeds for his help in this area.
2 See, for example, Yorkshire Agriculture Society, The Implications of ‘Brexit’ for UK Agriculture (published July 2017: www.yas.co.uk) which was being prepared during the referendum campaign.
Major actors have their own agendas, but the Government needs to listen in order to draw up its agenda of issues. As Meurig Raymond, President NFU, stated “[Mrs Leadsom] has good reason to believe that Defra is attracting some of the best talent, both within and outside Whitehall, to manage its Brexit workload and to ensure food, farming and the environment continue to be at the heart of the government’s thinking in its Brexit negotiations. It’s crucial that this continues to be the case, and we will be working closely with Defra to make sure our priorities are also the government’s priorities in the weeks and months ahead.”

But there are conflicts to be managed. Since 2005, the Treasury has been wanting to reduce the level of farm subsidies, which explains why the UK farmers are receiving less than the average minimum subsidy that the EU plans to achieve for 2020. The supermarkets have a policy of cheap food and would thus welcome the UK Government statements of an objective of zero tariffs on food. The farmers, on the other hand, want to have a significant subsidy to maintain the viability of certain activities. They also want to continue the Environmental schemes which form a significant part of Pillar II. Farmers have significant expenditure on labour. In certain areas, the availability and the cost of labour is such that without migrant labour, whole industries will die. Mrs May abolished the seasonal workers scheme in 2013 (ahead of an EU directive on how the people were to be treated). This will need to be reinstated, allowing very large numbers of migrants into the country on a seasonal basis (usually without families). This, of course, conflicts with the Brexit reduction of immigration strategy.

**Facing the devolved administrations,** we first have to recognise that agriculture is a devolved competence, but treaty making is not. The interests of the four nations are different. Hill farmers in Wales and Scotland are more significant than in England. For example, the Least Favoured Areas account for 86% of all agricultural land in Scotland. Northern Ireland has an integrated food sector. Raw produce is transported from the Republic to the North and processed food is transported back over the 263 border crossings. (On three of these, there are over 300,000 crossings a week). There will need to be different rules in the different nations and this will lead to different subsidies. My family is by origin from the Scottish border, Reiver country, engaging in cattle rustling across the border. The new scheme gives plenty of scope for that. The problem is money: the current payments into the CAP come from an undifferentiated mass within the UK contribution to the EU. There will be a saving to the UK Treasury when we are no longer members of the EU. But subsidies will have to come from the budgets of the devolved assemblies. Thus legislative competence lies with the devolved assemblies. They could make rules to deal with their schemes. But there is talk of retaining some powers at UK-level, which could contradict this. Budget lies with the UK Treasury to redistribute, and we know what the UK Treasury thinks of agricultural subsidies. So there is a lot of bargaining to be done within the UK in order to get a vision for the future of agriculture, certainly for 2021 and forwards. This will test how far there is real devolution: can you really have devolved powers without the cash to pay for your policies?

**Facing Westminster,** there is the issue of how accountability is to be provided. Select committees will keep a watching brief, but there are multiple committees involved here: Agriculture, Environment, Home Affairs. Then there is the problem of the Great Repeal Bills. If, as expected, there will need to be delegated power, then the question will be who gets the delegated powers. Under the devolution legislation, the UK Parliament can legislate in areas where powers have been devolved. But can it delegate to UK ministers the power to legislate for devolved areas, or should the delegation be to the ministers in the devolved areas? My own view would be that the Sewel Convention requires the latter. (This appears to be the
position of the UK Government in the Great Repeal Bill White Paper, but only in respect of changes to devolved laws.) But, as the Supreme Court stated in *Miller*, the Sewel Convention is not binding in law.

Given that the UK will fund agriculture for 2019-20, it may well be that the future funding arrangements are being parked as a post-Brexit agenda. That timing fits the revisions to the CAP, due to commence in 2021. Both the UK and the EU may well have new arrangements in place for 2021 which set out a new scheme.

RESEARCH

If we take research, we move into an area where the UK loses access to an area in which it does well in competitive funding. Under Horizon 2020, the UK obtains 15.2% of all grants, second only to Germany with 15.7%. With a decline in national funding, EU funding is almost a matching source. So in this area, the UK gets out considerably more than it contributes. There is pressure for the UK to remain part.

Research is a mixed competence. The UK Government is responsible for research councils, but the devolved governments are responsible for funding universities and can commission research to be funded by Research Councils.

This is another area in which industry, in this case, the academic sector is lobbying hard. In the first place, it is lobbying on both sides of the EU negotiations. Through European research groupings such as LERU and ALLEA, the academic sector from the UK is seeking to get the definitions of future research funding in the EU designed in such a way that it is open to non-EU members. On the UK side, there is a lot of lobbying to persuade the UK government that it wishes to request access to these EU programmes. This involves all the main players in the research world in commissioning research to provide concrete evidence about the significance of EU-funded research to research and innovation in the UK. In many cases, this is providing the UK Government department with evidence for the Treasury and the Brexit Department. There are regular “high level” meetings with the minister, Jo Johnston. But there will be choices to be made: if we have limited amounts of money, then do we continue to support our participation in EU infrastructure projects or go for access to research funds? It is here that the stakeholders will fall out with each other..

But the devolved assemblies will also have their own agendas. They will want to keep a regional spread of research, as well as access to research workers. But they do not have the funding power. This may yet be another area in which the power of the UK government becomes obvious despite devolution.

Facing Westminster, we have already seen with the Higher Education Bill that there is a significant academic lobby in the House of Lords. There may thus be more demand for explanations on this area and greater ability of industry to lobby.

CONCLUSION

The purpose of this presentation has been to explore the dynamics of the legally supported structures in place to structure the Brexit process. The key dynamic is the formulation of negotiating positions. That is the quiet and relatively unseen process of meetings between industry and Government in which industry provides the research evidence to enable
departments to lobby the central negotiating powers of the Treasury, no. 10 and the Brexit department. Industry will also be working actively on these central powers to secure an appropriate negotiating position. Industry will also use its European associations to ensure that the EU negotiating position is also favourable.

The weaker link is the connection between the UK government and devolved governments in working out agreed positions and agreed implementation for devolved powers. Some of these need sorting out before a negotiating position is agreed. But Westminster is the weakest link, because it will come in very late in the process. The negotiating position will be agreed with industry first and the devolved administrations second, with the looming importance of the Treasury as the ultimate arbiter of what is feasible.