AM: First of all, what would she need to bring back to win you over?

DD: I’m not sure I agree with the characterisation of hard-core Brexiteers. But by the by. What she needs to bring back. She needs to bring back a clear ability on the part of the United Kingdom to be able to leave this treaty when it chooses to. There is no other treaty in the world I’m aware of where a sovereign nation undertakes to join up and can only leave when the other side says so. So that’s the key point, the ability to get out when we need to. To end the backstop when we need to.

AM: So without getting too detailed is Geoffrey Cox’s notion of an arbitration panel, an arbitration committee, acceptable?

DD: Well, it might be, depends on the criteria, depends on the arbitration. I mean, the ideal is just a unilateral right to withdraw, which is what is normal in these things. I mean, if you don’t have that there are three problems. One, it hits our constitution, breaks Northern Ireland away from us. Two, it undermines our ability to do trade deals with the rest of the world. And three, it gives all the negotiating levers to the other side. You’ve got to sort those problems out. And an arbitration panel might do it, might do it, it depends.

AM: It sounds to me as if you think this is a rotten deal and you’re pretty determined to vote against it.

DD: Oh, it’s a dreadful deal. On many, many counts. But I would love to be able to vote for it, if she gets the ability to pull out. At least then it’s rescuable. I mean, throughout this whole process
I’ve been trying to get the prime minister to keep the thing rescueable, and at one point in July decided it wasn’t.

AM: This is the only deal going, and the prime minister has said very clearly that if you don’t vote for this deal you may take us to a position which is not Brexit at all.

DD: Well, let’s be clear about that. Look, after the defeat by 230 clearly Brussels was shocked. You could see that. And the tenor of the language changed. Mr Varadkar’s language changed, Mr Junker’s language changed. Wait a minute, wait a minute. And it all changed. And then all of a sudden three Cabinet ministers said you’ve got to take no deal off the table, you’ve got to have an extension. And then it went back to being hard again. I mean, the issue here is the negotiating strategy has gone wrong, and it’s gone wrong largely because the government has abandoned the one thing you can do, which is to walk away if you don’t like the deal. We’ve given that away.

AM: This is all to do with the backstop. Who negotiated the backstop?

DD: Well, with respect, the prime minister.

AM: You negotiated –

DD: I mean – no, no, no, with respect that’s not true. I mean, if you read – there’s an interesting article in the Daily Telegraph today, you’ve just been doing your news review, which points out that every single piece of advice I was overruled on has turned out to be a pivot in the problem we face now.

AM: But you came on that chair and you told me that the backstop was not legally binding. You were wrong about that?
DD: No, no, no. I wasn’t actually. I mean, with respect, there was a great deal of hysteria about it, but it was not legally binding. Remember the line, nothing is agreed till everything’s agreed. And in fact, the week after – well, the day after in fact, the next day, the Brussels Commission said no, Mr Davis is right. But of course, it’s an undertaking.

AM: What you said, ‘it’s conditional on getting a trade outcome. This was a statement of intent more than anything else. It was more a statement of intent than it was a legally enforceable thing.’ It’s turned out to be very legally enforceable. But you also said at the time that by now we would have got a trade deal, it would basically be done. We’re miles away from that.

DD: With respect, I mean, again, number one, what I said to the Brexit Committee round about the time I was on your programme, I said to them, ‘look, when’s the last possible time this going to happen? The 29th March.’ It caused an uproar. There was an urgent question in the House and so on. This is not what we want, but that’s what the European Union typically does. In all its negotiations it goes down to the wire. And what have we done? We’ve given away the ability to take it down to the wire. We’ve said we’re going to extend it. We’ve given away the right to walk away. These are really critical to carrying out a proper negotiation. That’s why I resigned.

AM: You’ll vote down the prime minister’s deal and then the next thing that happens, a day later there’s a vote on no deal, and it looks very likely the House of Commons votes against no deal. In your view does that mean the government has again taken no deal off the table?

DD: Well, it has to not press no deal, but it’s never been its first priority. I mean, the effect of the government losing this week, the effect of, frankly, the European Union’s intransigence on this,
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is to make two things more probable. One is no deal, as it were by accident because we defer by a few weeks but we get nothing and so we have to leave anyway, under the law. Not under –

AM: And that’s the short extension.

DD: The short extension. Or we get no Brexit. And that’s what the House will have to choose between. It’ll have to choose between something which might have a risk of some short term but manageable economic turbulence or something which for certain will be a democratic disaster, namely not delivering on the referendum. And that’s the balance we’re between.

AM: If the Commons does not deliver on the referendum, what happens next? You call it a democratic disaster, what do you mean by that?

DD: Well, Britain will get its Trump moment. I mean, what happens is that the British people, who voted for this, and a large number of remainers who didn’t vote for it but still think it should be carried through because they believe in democracy, will see a government walking away. A parliament walking away from a question that they themselves put to the people. Now, that will undermine – that will absolutely undermine belief in democracy in this country. And certainly belief in the established political parties.

AM: Could this Tory Party survive that happening – you talk of a Trump moment?

DD: Well, I mean, it would be massively damaged. There’s no doubt in my mind that it would be massively damaged by walking away from this. But so, frankly, would the Labour Party to some extent. I mean, you know, you may find – I mean, for example, one of the things that might happen is that people might argue
for – in the government might argue for an extension. It might even get that through the House of Commons and the European Union agrees it. What has to happen then? It has to have a European Election in this country. Who do you think would win that European election? I don't think it can be either of the major parties. It might be the new Brexit Party or something like that, because the British people would say, 'we want to teach you a lesson.' That's one possibility.

AM: The Tory Party is looking at splintering and breaking up completely in this situation. It's been suggested in today's papers that if Theresa May said to people like you, 'I'm going to stand down very quickly after this vote,' and allow, as it were, a real Brexiteer or however we characterise this, to take over as leader of the Conservative Party. That might be a way to get her vote through.

DD: No, it won't work. As one of your commentators said earlier, that won't get the vote through. I mean, the simple truth, as somebody, I think it was Damian Green said, you can change the leader, you can't change the numbers. We've got to focus on the issue here, which is delivering on the Brexit demand of the British people. And that means leaving, and that – I mean, you should ask the Foreign Secretary later – that means leaving the customs union, leaving the single market. There's no two ways about that. It was said on your programme by every single proponent of both sides in the Brexit referendum that that's what it meant. And we have to deliver on it. Anything else won't work.

AM: And so now we're in a situation where the Commons is likely to face a choice by the end of this coming week of no deal, as you said, or effectively not the kind of Brexit that was promised. In those circumstances –
DD: It’s more than that. I mean, look, you had on this programme last week the past master of political tactics. You had Tony Blair on here. He didn’t make much concealment, as it were, of his wish to see this whole thing reversed, right. What was his first step towards to that? It was a deferral. And then a second referendum. And then he hopes, a reversal. Well, that’s what this is about, and the British people understand very clearly what’s going on. They understand better than the commentators.

AM: So you are hoping really for no deal at this point?

DD: No, no, I’m not. You see, I think what’s – the reason I’ve always said no deal’s got to stay on the table is because it’s what brings the European Union back.

AM: Sorry, the choice for you might be this deal or no Brexit at all.

DD: No, no. I think we – that’s what we’re going to be aiming to avoid in the tactics -

AM: If that is the choice, what’s the answer?

DD: Well, frankly, this deal is worse than current membership in one sense, because we can’t get out of it. But I don’t think that’s anything like the best outcome. And what we have to do –

AM: So you’d rather stay in?

DD: No. No, no, no.

AM: I mean these are the choices now ahead of us

DD: No, it’s not. This is one of the problems. You keep – and it’ a British establishment problem and the BBC’s worst at it, you keep
posing this as though these are choices we make. No, they’re not, they’re stepping stones in a negotiation. And so what would –

AM: Parliament is going to have to make these choices.

DD: Yes, it’ll have to make its initial choices and the government goes back into negotiation. If it says no deal is still on the table, I don’t think no deal will happen, I think the European Union will come back and say let’s take another couple of week to negotiate. Why? Because, whether it’s the German Haller Institute or the IFO or any of them, they all say the damage to the European community is much, much greater than the damage to Britain. Much, much greater. Order of magnitude difference. They won’t do it.

AM: We’ll wait and see with great interest. David Davis, thanks very much indeed for talking to us.

(ends)