

Referendums for EU Politics?

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The question of whether referendums are the appropriate tool to resolve complex issues is a difficult one, and here I will focus on the place of referendums in British politics as they relate to the EU. I will make three key points that contribute to our debate.

(1) The first concerns the referendum as a tool of politics. In the UK, the referendum has an uncomfortable place in the complicated jigsaw of our constitution. It has been used only twice in relation to EC/EU politics (and only infrequently in domestic politics), and this alone makes it difficult to consider it as anything other than either a novelty, or an anomaly. In both 1975 and 2016, the referendum was advisory, although in practice, each referendum result (Stay in 1975;

Leave in 2016) was considered definitive, at least in the short term.

The political party in power at the time: Labour in 1975, and the Conservatives in 2016, opted for a referendum in the context of bitterly divisive internal party politics. Labour was split on ideological grounds – seeing the EC as ‘a capitalist club.’ In 2016, the Conservatives felt electorally threatened by the rise of UKIP and sought survival through greater self-reliance (national sovereignty) in international and domestic affairs. In both cases, at the highest echelons, there was open and public party disagreement on the EC/EU. This reduced the capacity for either party to secure the support of their party faithful.

Party politics has also muddied the relationship between the sovereignty of Parliament in relation to the 2016 referendum result. The constitutional difficulties on parliamentary versus prerogative rights to set in train the decision to leave the EU were expertly exposed by the Supreme Court. What UK referendums over the EC/EU have done is to expose the inability of the British party system to come to an accommodation with the aims and working practices of European integration. Europe has always been a cross-cutting issue for the major British parties. In this sense, the UK has always been an outlier in the Continental European integration

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process and the new kind of domestic and international politics that it promised.

The referendum has also been an uncomfortable tool in the sense that, while it apparently gives voters a direct and influential ‘say’, the practical structuring of the referendums (without equal financing in 1975) and exclusion of 16-year-olds from the vote in 2016 (although they could in the Scottish independence referendum of 2014) were both amateurish and unfair. Further, the wording of the question itself has been oversimplified and the consequences of a vote either way was not made clear. This has led to obfuscation (practised to a disgraceful extent by both sides in 2016) about consequences, and thus reinforced the phenomenon that the referendum was, like many local government and European Parliament elections, a second-order matter. Voters expressed opinions that were not directly related to the question asked. (Giving elites ‘a good kicking’ is one fine example of this, not least as the elites most consistently under fire in the years running up to the referendum were national MPs and peers themselves – the anticipated holders of post-Brexit parliamentary sovereignty).

(2) The referendum experience in the EC/EU has been very different. The UK did not have a referendum in 1972 before accession in January 1973. The Danes (Yes), Irish

(Yes) and Norwegians (No) did have referendums before finally joining. Indeed, France held a referendum as well, to gauge whether the French wanted the 1972 enlargement to go ahead (Yes). Referendums before enlargement have become a pattern in the EU, along with referendums on treaty changes over time. Some of these referendums have also been striking in their impact – especially the defeat of the Constitutional Treaty proposal in 2005 (when UK Prime Minister Tony Blair had also considered a referendum until the treaty was buried by the referendums in France and the Netherlands).

The difference with these referendums is that the proposals have been more specific, and the public better informed about the consequences of their vote. Furthermore, if an issue is turned down, it has been modified and then taken back to the electorate. Nevertheless, the referendum, it seems to me, remains a fickle tool for change – at root it exposes the limitations of MPs at the national and the European Parliament level. It should be noted both that, in some European constitutions, the referendum is a part of the constitutional apparatus, which is quite different from the UK constitutional framework. Maybe new technologies may in time change the referendum effectiveness and landscape in the longer term.

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(3) All this leaves the British government with an enormous political and diplomatic challenge (some say ‘disaster’ or ‘train crash’), a challenge that may in the end prove to be beyond its capacity. This is not least because it has had to find its negotiating red lines by on-the-job improvisation (no European Court of Justice, control of immigration) and within the greater context of the EU’s own rules (on the Single European Market in particular), because of the woolly and inept British referendum process. It should be noted that the historical experience of the British doing trade negotiations with the European Economic Community in the 1950s is also alarming – as we reached our Plan G (from Plan A to G) to create a free trade area, only to have this vetoed – since the sense within the European Commission was that the UK was trying to wreck the whole integration project by diluting it from the outside. Post-referendum negotiators, read your history books!

In the interim, the way in which voting was counted has exposed the divisions between English and Scottish/Northern Irish voters which may deliver unintended consequences of a very great magnitude. This challenges the value of head-counting politics on a non-nationwide basis.

The government has rejected the capacity of the British Parliament to decide on any eventual deal.



CONSTITUTION IN CRISIS

The constitutional implications of this are enormous, and counter-intuitive to a democrat. The irony is that, having set out on the referendum path in 1975 in a way that has been ad hoc, if not slap-happy, it may be that only another referendum can trump that of 2016. There should therefore be another referendum – difficult and technical as it may be – to square the constitutional circle in two years or thereabouts.

If we do leave after 2019, we will never get a deal that is any better than that which we now have. So there will surely be a reapplication and then referendum when, a couple of decades down the line – if the EU still exists – we find that there is no alternative, and find ourselves in the line to renew our membership.

