The Legitimacy of the Brexit Referendum and What We Can Learn from It

We send the EU £350 million a week

Let's fund our NHS instead

by Sandra Kröger

INTRODUCTION

Much has been said about the referendum on British membership of the European Union since the 23rd of June 2016. Commentators have mostly focused on the demographics of the result as well as the factors which determined voters' choices. By contrast, there has been little reflection on **how democratically legitimate** the referendum **process** can be said to have been[1]—not least because such reflection can only follow the availability of research findings on the campaign. Addressing the legitimacy of the referendum process not only helps to close a research gap but also opens discussion on what can be learned for future referenda.

It is possible to argue that a 'good' referendum strengthens the democratic legitimacy of a contentious policy so ratified, such as remaining in or leaving the EU.[2] This paper, however, does not discuss the legitimacy of referenda **per se**; rather, it looks at how democratically legitimate the referendum process can be said to have been by reference to certain criteria. These could include the roles Parliament and the devolved institutions have played in the process, recognising the different majorities across the UK.[3] But the focus here is on 'input legitimacy': who was given a vote in the first place, and whether those given a vote could make a reasonable choice in light of the campaign.

Of course, 'output legitimacy' also matters for democracies.[4] Whether staying in or leaving the EU will produce just policies and improve everybody's welfare, as well as grant the UK more sovereignty and democracy, is a very important issue—indeed, not a few consider it so important that it should **not** have been the object of a referendum in the first place. But focusing on the outcome of the referendum could lead to accusations of bias, suggesting that one would argue that it was democratic if the outcome was to one's liking and **vice versa**. Also, it would not say much about whether the process leading to the referendum result was democratically legitimate. Given that democratic processes are instituted to decide matters that people disagree about—such as whether to belong to the EU—the core of their legitimacy rests on there being a fair process to decide these disputed matters, so that the results will be acceptable also to the 'losers'. The quality of the democratic process is crucial to ensuring that conflicts can be managed peacefully and that losers are able to accept the result, if only in a preliminary way. Therefore, democratic legitimacy is largely a matter of inputs rather than outcomes.[5] And referenda are widely discussed as a means to increase the input legitimacy of democracies.

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[1] But see R Bellamy (2018), 'Was the Brexit referendum legitimate, and would a second one be so?', *European Political Science*, https://doi.org/10.1057/s41304-018-0155-x.

[2] R Rose (2013), *Representing Europeans: A Pragmatic Approach*, Oxford: Oxford University Press

[3] D Chalmers (2017), 'Brexit and the renaissance of parliamentary authority', *The British Journal of Politics and International Relations* 19, 4: 663-79; A McHarg and J Mitchell (2017), 'Brexit and Scotland', *The British Journal of Politics and International Relations* 19, 3: 512-26; A Soares (2016), 'Living within and outside unions: the consequences of Brexit for Northern Ireland', *Journal of Contemporary European Research* 12, 4: 835-43

[4] FW Scharpf (1999), Governing in Europe: Effective and Democratic?, Oxford: Oxford University Press

[5] A Buchanan (2002), 'Political legitimacy and democracy'. *Ethics* 112, 4: 689-719

THE CRITERIA OF LEGITIMACY

Input legitimacy derives from a process in which all relevant parties are entitled to have their views and interests treated with equal respect and concern.[6] In the context of the referendum, the associated criteria would be: (1) how the franchise was defined, (2) the presence of clarity, (3) the amount and quality of information, and (4) the quality of public debate.

Beginning with the franchise, the standard view of the political community is that entitlements to a say over collective matters should follow membership, formalised as citizenship. Importantly, citizenship has in modern democracies been linked to nation-states. This conventional view is reflected in the stakeholder account of political rights and obligations, in which the claim to being a citizen of a given political community belongs to those whose freedom and rights are inherently linked to the collective self-government and flourishing of this polity over time.[7] On this account, one would include those individuals in the franchise who enjoy citizenship of the given country.

Due to increasing social and political entanglements as well as ethical evolution, however, this reading of membership in a political community has been increasingly challenged. Some authors have instead advanced the 'all-affected' principle (AAP)—that those whose interests are affected by a decision should be able to influence the making of it.[8] The AAP thus determines the scope of eligible participation on the basis of the scope of the decision at hand.

The obvious problem with this approach is its 'over-inclusiveness'.[9]The latter is perhaps not surprising given the cosmopolitan drive of the supporters of the AAP but it leaves us uncertain as to whose interests are actually being affected. And for many, if not most, decisions, some citizens' interests will be affected more than others', thereby introducing the challenge of having to weigh interests and allocate proportional voting rights.[10]

Other scholars have argued in favour of the 'all-subjected' principle (ASP). Crucially, the ASP links democracy to the nation-state and argues that 'all those subjected to political rule within its boundaries ought to have a say in its making'[11]—a proposition that comes fairly close to the idea of 'no taxation without representation'. The ASP has been used to demand greater political inclusion, mostly of migrants, within the nation-state. For if resident aliens are obliged to abide by the rules of a state, why should they not have the right to participate in its decisions?[12] Anything else, so the argument runs, results in the 'effective disenfranchisement' of permanent residents from national politics.[13]

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[6] Scharpf, *op cit*

[7] R Bauböck (2015), 'Morphing the demos into the right shape: normative principles for enfranchising resident aliens and expatriate citizens', *Democratization* 22, 5: 820-39

[8] R Goodin (2007), 'Enfranchising all affected interests, and its alternatives', *Philosophy and Public Affairs* 35, 1: 40-68

[9] *ibid*, 49, 57

[10] ME Warren (2017), 'The all affected interests principle in democratic theory and practice', IHS Political Science Series working paper 145, 9

[11] S Näsström (2011), 'The challenge of the all-affected principle', *Political Studies* 59, 1: 116-34

12 C Gould (2006), 'Self-determination beyond sovereignty: relating transnational democracy to local autonomy', Journal of Social Philosophy 37, 1: 44-60

[13] S Benhabib (2004), *The Rights of Others: Aliens, Residents and Citize*ns, Cambridge: Cambridge University Press, 215

A mix of the stakeholder principle and the ASP should have prevailed in the British in/out referendum for all *relevant* views and interests to be treated with equal concern. On its own, the stakeholder perspective appears too narrow whereas the ASP appears too broad.

On the one hand, the strong link which the former establishes between presence, attachment to the political community and citizenship rights and obligations is not fit for purpose where one of the leading ideas is freedom of movement among (participating) states. EU law—more precisely, freedom of movement—has created for EU citizens who have settled in the UK reasonable expectations that they could stay without having to naturalise. Without a willingness to legislate, prior to the vote, that permanent-resident rights established prior to a potential Brexit should continue afterwards, those expectations could not be met. And, indeed, there was no such debate, let alone legislation.

As a result, the agreement of the British people to free movement under the EU treaties implied an obligation to include EU residents in the UK in the referendum on EU membership. The potential objection that citizens moving to the UK freely undertook the risk of the UK using article 50 to depart from the EU is at best valid for those who moved to the UK after the Lisbon treaty entered into force in 2009, since this article did not previously exist. But even after 2009, can we reasonably expect citizens to have been aware of this specific article?

Others might object that extending the stakeholder principle to those EU citizens resident in the UK would not have been sufficient and that the UK is not the relevant polity for the stakeholder principle—which instead is the EU. Yet the nation-state has not lost its meaning and function to such a degree that governments and citizens would be prepared to let individuals participate in political choices about their 'own' country when those individuals do not even live on the respective territory. The EU does allow for a member state to leave 'in accordance with its own constitutional requirements', as per article 50, without consultation of the other member states or their populations. And freedom of movement means EU citizens specifically living in the UK at the time of the referendum had established rights.

On the other hand, the weak link that the ASP identifies between presence, attachment to the political community and citizenship rights and obligations does not accept that people move (travel) in different capacities. For instance, some EU citizens would have spent their holidays in the UK over the 23rd of June 2016 and as such were subject to British law on UK territory. Certainly, that should not have entitled them to a vote. The same can be said about short-term migrant workers, who by definition would have left long before any of the consequences of the vote would materialise, as well as potential future migrants who had not yet become residents in the UK and as a result had not established rights.

In contrast, EU citizens residing in the UK were directly and strongly affected by the decision, particularly in the case of a 'leave' vote. Their lives would be, and have already been, affected by rising living costs and deteriorating employment opportunities (such as through relocations to other EU member states), as for all those living in the UK. EU citizens residing in the UK are a special case. Many migrated and settled because of free-movement entitlements within the EU and may now move to other member states. They should have been included in the franchise.

Secondly, for all relevant parties to be able to express their views and interests, it is crucial that there is clarity about the policy at stake. The question asked in the referendum needed

to be clear,[14] as did what followed from either answer.[15] Clarity exists when 'the various sides of an argument are well known and well established in the public discourse'.[16] If asked to tick a box without knowledge of what each option represents, one is not casting a meaningful vote.

Indeed, these principles are laid out by the UK Electoral Commission: 'Informed voters are fundamental to a well-run referendum, and this means that those eligible to vote (…) should be able to understand the referendum question, the possible outcomes and the campaign arguments'.[17] Clarity of the question as well as the implications of either choice was a crucial precondition of meaningful debate during the campaign, as well as a meaningful vote.

Thirdly, the amount and quality of information matter for a legitimate process. For the process to be fair and impartial with regard to the different views, spending in the campaign needs to be regulated so as to ensure that neither side overspends and each has an equal chance to put forward an argument. It is furthermore important that the information be circulated evenly, assuring that voters receive information from both sides and can as a result make an informed decision. Media have a crucial part to play in assuring that information is reported in a balanced way and that the arguments of both sides are made available to the public.

Information furthermore needs to be of high quality, meaning it must be 'accurate, impartial, accessible to as many people as possible, and relevant to people's concerns'.[18] For voters to make a free choice, trustworthy information should be readily available. If voters' choice is based on misinformation or deceit, they cannot be sure to vote in a manner which best serves their interests. Furthermore, their capacity to hold office-holders and campaigners to account will be reduced.

Finally, public debate is crucial: it is in the public arena that persuasion can occur, as arguments are exchanged and defended and can be weighed against one another. Such debate should be organised around alternative conceptions of the public good. Given no individual possesses all the relevant information about any given policy, sharing information via debate is important. Likewise, the different views that particular actors hold are rarely if ever appreciated by the larger public, rendering essential a public sphere where they can become known, all of which resonates well with Immanuel Kant's idea of debate as a tool of enlightenment.[19] Furthermore, public debate should feed into parliamentary deliberations as well as government policies. If there is no such debate, the link between society and state would be interrupted and democracy become elitist. It is through these various functions that public debate contributes to democratic legitimacy.[20] These days, it takes place mostly through the mass media, but also increasingly through 'social media', as well as public

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[14] L LeDuc (2015), 'Referendums and deliberative democracy', *Electoral Studies* 38: 139-48

[15] A Renwick, M Palese and J Sargeant (2018), 'Discussing Brexit—could we do better?', *The Political Quarterly* 89, 4: 545-52

[16] LeDuc, *op cit*, 142-3

[17] Electoral Commission (2016), 'The 2016 EU referendum: report on the 23 June 2016 referendum on the UK's membership of the European Union', available at www.electoralcommission.org.uk/__data/assets/pdf_file/0008/215279/2016-EU-referendum-report.pdf, 37

[18] Renwick *et al, op cit*, 549

[19] I Kant (2006), 'An answer to the question: what is enlightenment?', in Immanuel Kant: Toward Perpetual Peace and Other Writings on Politics, Peace, and History, edited and introduced by Pauline Kleingeld, New Haven, CT: Yale University Press, 17-23

[20] J Habermas (1962), *Strukturwandel der Öffentlichkeit: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*, Frankfurt am Main: Suhrkamp

meetings—which indicates that there are different fora with at least in part different publics, rendering it more difficult to realise these ideals.

Are these criteria too stringent? After all, we do not suggest that general elections are illegitimate if the foregoing campaigns (as 'senders') included bits of misinformation or some voters (as 'receivers') made their choice based on wrong information. These are fair objections, but there are important differences between general elections and one-off referenda which change the game to some degree. If elected politicians hand over very important decisions to voters, this attaches an even stronger responsibility on their part to stay truthful and not seek to manipulate the electorate. Yet elected representatives have less of an incentive to remain truthful in referendum campaigns, compared with general elections, given referenda are one-off events and they cannot be thrown out of office if their recommendations prove flawed or false.

This argument weighs particularly heavily in this case, since leaving the EU will shut the door to renewed British EU membership for the foreseeable future while having a considerable, and probably negative, impact on the economy in the short to medium term. In other words, the fact that elected politicians cannot be held to account by voters after the vote increases the need for them to act in ways consistent with quite stringent criteria, such as those advanced here. To allow them to do otherwise can only diminish popular trust in representative institutions.

At the same time, handing over very important decisions to voters places greater responsibilities on the electorate as well—not least the obligation to inform themselves more and better than they would do in the context of general elections. In a representative democracy, voters are normally quite happy to delegate the responsibility to govern and steer to those very few elected politicians who, in turn, are happy to make it their full-time job and as a result have more information on specific policies than the average voter. In forms of direct democracy such as referenda, this duty to be informed and act responsibly lies both with elected politicians who have decided to hand over a decision to voters and with the voters themselves. It is difficult to see how democratic legitimacy could pass a serious test if both sides do not accept their responsibility.

WAS THE BREXIT REFERENDUM LEGITIMATE?

The franchise for the 2016 referendum on UK membership of the European Union was defined in the EU Referendum Act 2015. It was based on the general election franchise, with provision made also for members of the House of Lords to vote, along with electors in Gibraltar. In so doing, the definition of the franchise followed the stakeholder account. Even from an all-subjected principle perspective, the exclusion of those expatriates who had not lived on British territory for more than 15 years seems entirely justifiable.

The Referendum Act reduced the electorate in a less justifiable way, however, by excluding EU citizens resident in the UK. This meant that 2.15 million adult EU citizens, most of whom paid taxes in the UK, were denied universal and equal suffrage.[21] As a result, some of those 'most likely to be strongly affected by the decision—long-term external citizens, many of whom rely on EU citizenship rights to reside in the host state, non-UK EU citizens resident in the UK and younger people—were precisely those deprived of a voice'.[22]

[21] A Low (2017), 'In some respects the Brexit referendum was a violation of human rights', http://blogs.lse.ac.uk/europpblog/2017/02/09/brexit-referendum-human-rights/
[22] J Shaw (2017), The quintessentially democratic act? Democracy, political community and citi-

Why was that so? A House of Commons briefing paper, published in June 2015, told all MPs and members of the Lords that the results of a referendum would not have to be implemented and thus would not be binding on Parliament or government.[23] This was 'the reason given for not extending the franchise appropriately'.[24] Another reason for letting the Brexit faction of the Conservative Party define the franchise in the way that suited it best—excluding British expatriates, 16-18 year-olds and EU citizens, the inclusion of whom would have favoured a 'remain' vote—was that nobody expected 'leave' to win.[25]

Due to the definition of the franchise, not all relevant parties could see their views and interests represented with equal respect and concern. As a result, the input legitimacy of the process suffered.

As to clarity, the referendum question, 'Should the United Kingdom remain a member of the European Union or leave the European Union?', was as such very clear. The trouble is that 'remain' versus 'leave' never comprised *just* one option. The latter ranged from staying in the single market and/or the customs union, over the Norway or Canada options, to the World Trade Organisation framework, and a majority for leave did not align 'the will of the people' behind any one of those alternatives. Indeed, Electoral Commission research found that 45 per cent of those polled found it 'difficult to access information about what would happen in the event of a Leave vote', as against 41 per cent who found this easy.[26] These numbers suggest that the public were deprived of clarity about what would eventuate in that case, rendering a meaningful vote difficult.

Here is an analogy. Imagine 40 per cent of the population are vegetarian, 30 per cent love pork but abhor beef, and the remaining 30 per cent love beef but cannot stomach pork. A vote on the question 'who wants to eat meat tonight?' could yield a 60 per cent majority. Yet both the pork and the beef options are rejected by 70 per cent of the population. The reason is simple: 'meat' is not actually a real option. 'Meat' means something different to different voters, and the 60 per cent majority in favour of 'meat' is the sum of mutually incompatible beef and pork eaters.[27] To make things worse, any skilled politician can evade criticism of the 'meat' option by switching from one definition to the other as convenient.

Transferred to the in/out referendum, this analogy means that the vagueness of the 'leave' option allowed its campaign to cast the widest net of all, encouraging each voter to keep their most favourable version of Brexit in mind, however far that might be from reality. It allowed hard and soft 'Brexiteers', market fundamentalists and protectionists, open-door internationalists and xenophobes all to add their votes together,[28] creating a coalition of incompatible voters.

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zenship in and after the UK's EU referendum of June 2016, *Journal of European Integration* 39, 5: 559-574

[23] House of Commons (2015), 'European Union referendum bill 2015-2016', briefing paper 7212, available at https://researchbriefings.parliament.uk/ResearchBriefing/Summary/CBP-7212, 25

[24] AC Grayling (2017), *Democracy and its Crisis*, London: Oneworld Publications, 190

[25] T Shipman (2016), *All Out War: The Full Story of How Brexit Sank Britain's Political Class*, London: Willliam Collins

[26] Electoral Commission, *op cit,* 44

[27] We know from related research that having more than two options for voters to choose from comes with its own problems—see A Weale (2018), *The Will of the People. A Modern Myth*, Cambridge: Polity Press, 132-7.

[28] Grayling, *op cit*, 194

One might object that, at a higher level of aggregation, most 'leave' voters agreed with the slogan of 'taking back control', so as somehow to achieve fuller sovereignty and be able to control borders. But this superficial consensus rested by and large on an inaccurate understanding of the status quo and/or false expectations as to what might be achievable in terms of sovereignty and border control post-Brexit and/or different interpretations of how the slogan would be implemented. Consequently, most 'leave' voters would not get the Brexit they thought they voted for.

In sum, the question of the referendum was not answerable because the implications of either outcome were unclear and the alternatives not sufficiently specified.[29] While there was a (narrow) majority for some version of 'leave', we do not know the real preferences of those who voted for it and the referendum concealed their divergence. As a result, the democratic legitimacy of the process was harmed.

Turning to information, one of the preconditions of a fair campaign is that both sides have access to similar amounts of funding. Referendum campaigners were 'subject to the PPERA[30] regulatory framework which places limitations on spending by campaigners and provides transparency about sources of funding'.[31] In the end, the breakdown of donations to non-party-political campaigners totalled £16.37m for 'leave' and £15.16m for 'remain'. Yet while 'remain' reported spending £16,152,899, 'leave' reported expenditure of only £11,534,426,[32] considerably less.

For each campaign, regulation foresaw a spending limit of £7m. It has meantime come to light that Vote Leave spent at least £625,000 over that limit, funnelling the amount into BeLeave, the youth arm of the 'leave' campaign. The overspent cash went into online advertising, targeting people based on individual psychological profiles. According to evidence heard by a Commons committee in March 2018, those profiles were built, through Facebook and other data, without the consent or knowledge of UK voters. They were first sold to Cambridge Analytica and then to a Canadian corporation, Aggregate IQ, hired by Vote Leave, to target UK voters.[33] In July 2018, the Electoral Commission confirmed that Vote Leave had broken electoral law. We cannot know the impact of the spending fraud by Vote Leave. What we do know is that there was fraud, which decreases the democratic legitimacy of the process.

As to the amount of information, voters had access to a multitude of sources, online and 'offline'. Online sources consist of the websites of media, government bodies, academia, think tanks and 'social media'. Offline sources comprise printed media, television, political events and one's peers. Though it is fairly safe to assume that the average voter will not explore all of these to inform themselves, it is also fair to assume that, taken together, these different sources produced a sufficient amount of information—though perhaps not necessarily the relevant information. Indeed, when asked, 84 per cent of respondents said they knew 'a great deal' (34 per cent) or 'a fair amount' (50 per cent) about what the referendum was for.[34]

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[29] N Allen (2018), 'Brexit means Brexit: Theresa May and post-referendum British politics', *British Politics* 13, 1: 105-20; Renwick *et al*, *op cit*, 546

[30] the Political Parties, Elections and Referendums Act 2000

[31] Electoral Commission, *op cit*, 9

[32] www.electoralcommission.org.uk/i-am-a/journalist/electoral-commission-media-centre/news-releases-donations/details-of-major-campaign-spending-during-eu-referendum-published-by-electoral-commission

[33] www.theguardian.com/politics/2018/mar/26/pressure-grows-on-pm-over-brexit-cambridge-analytica-scandal-theresa-may

[34] Electoral Commission, *op cit*, 44

When respondents were asked whether they had enough information to be able to make an informed decision, however, only 62 per cent agreed, whereas 28 per cent disagreed.[35]

On the quality of information, the campaigns were plagued by little lies, half-truths and misinformation.[36] The most prominent example of misleading the public was the suggestion by the Conservative Boris Johnson and others that £350m a week would be reallocated to the National Health Service once the UK had left the EU. It has become clear that this will not happen.

A key them of the 'leave' campaign was the idea of 'taking back control' and restoring a classic UK notion of Parliamentary sovereignty. The slogan was based on a false characterisation of the pooling of sovereignty which membership of the EU entails. While it is true that the Court of Justice of the European Union can in effect overrule national courts and parliaments, it is also true that Parliament had previously *decided* to give away some of its sovereignty to the EU—being of the view that it was necessary to sign up to international treaties, not least with immediate neighbours, to get on in a globalising world. Even strong 'leave' supporters have recognised that the slogan was 'a misleading half-truth'.[37] On the other side, the 'remain' campaign repeatedly used unverified numbers to support the idea of an economic breakdown, in the case of exiting the EU.

Indeed, the Electoral Commission received more than 1,000 complaints from the public about the content of campaign material. Furthermore, only 34 per cent of respondents to post-referendum research agreed that the conduct of the campaign had been fair and balanced, with a mere 12 per cent agreeing strongly.[38] The main negative reasons offered were that the campaign had been 'one-sided/unbalanced/biased/partial' (31 per cent) and the information had been 'inaccurate and misleading' (31 per cent).[39] Indeed, supporters on both sides have acknowledged that 'truth was badly compromised in much of the campaign',[40] thereby further reducing the democratic legitimacy of the process.

Richard Bellamy considers the half-truths and misinformation irrelevant, given voters would be used to it from regular elections and thus even expect it.[41] Unlike routine elections, however, the in/out referendum was a one-off 'event' with *a priori* no opportunity to hold the leading figures of either campaign to account. Therefore, there was even less incentive to act in a truthful way.

The media are the source of a vast amount of information received by the public, and it is their responsibility to inform and educate in an unbiased way, as well as to interpret. It has been suggested that the media did not do enough to retract lies, misinformation or unsubstantiated insinuations.[42] Even the BBC was criticised for treating all arguments 'as of equal value, giving equal airtime to unequal arguments'.[43] As a result, the arguments presented in debates often lacked the necessary proportion and expert critique, thus

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[35] *ibid*, 45

[36] Renwick *et al*, *op cit*, 546

[37] Rose, *op cit*, 13

[38] Electoral Commission, *op cit*, 47

[39] *ibid*

[40] Low, *op cit*

[41] Bellamy, *op cit*, 4

[42] J Seaton (2016), 'Brexit and the media', *The Political Quarterly* 87, 3: 333-7

[43] O Parker (2018), 'Brexit', in O Parker, S George and S Bulmer (eds), *Politics in the European Union*, 4th edition, Oxford: Oxford University Press, 1-28

leaving half-truths unexplored and insufficiently countered,[44] something which was labelled a 'fairness bias' by Timothy Garton Ash.[45]

Some might say that all the information was available, not least through fact-checking provided by the BBC and *The Guardian*, and people simply did not want to know or listen.[46] But the average citizen will not go to EU websites (or even the BBC) to find out whether a claim made by either side of the campaign is true. Citizens depend on party actors and on the media, to give them cues, including in regard to European integration.[47] To some extent, they do not even go as far as that and instead rely on peers in their echo chambers—though again cues there will have more often than not originated in some media outlet, and will often revolve around what some politician has said. Therefore, what party actors and the media offer in terms of information is highly important, though it leaves unanswered what responsibility voters have to inform themselves properly.

In sum, there seems to have been some overspending on the 'leave' side, challenging the idea that both campaigns had an equal chance to convince voters. Still, a wealth of information was available on either side, if not always put to good use. Again, this is likely linked to the absence of clarity as to what leaving the EU might actually mean. Certainly, the democratic process was harmed by the fraud and the half-truths and misinformation.

Finally, on the quality of public debate, the media again have an important role to play. By and large, they provide the forum in which different arguments are reported and exchanged. Overall, one could find different arguments in the media in favour and against staying in the EU—but there are two caveats.

First, whereas in broadsheets one could find arguments in favour and against staying in the EU, the tabloids were much more unidirectional and less balanced. As a result, the audience of the pro-'leave' tabloids was mostly exposed to one-sided, Eurosceptic arguments. Secondly, of the nine main UK-wide daily newspapers, five supported the 'leave' campaign. These were the *Sun*, *Daily Express*, *Daily Star*, *Daily Mail* and *Daily Telegraph*. Three newspapers were mostly pro-'remain': *The Guardian*, *Daily Mirror* and *Financial Times*. Of these only the *Mirror* had a circulation which compared with that of the pro-'leave' newspapers. The other main daily, *The Times*, adopted a more or less neutral position. As a result, 80 per cent of people who regularly bought a daily newspaper bought a title favouring 'leave', implying that the Eurosceptic discourse of the main tabloids reached a much larger audience.[48]

The combined effect of these two factors—unidirectional reporting by tabloids and their wider reach—was that 48 per cent of all referendum-focused articles were pro-'leave' and just 22 per cent pro-'remain'.[49] This perhaps does not come as a surprise, given most British

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[44] Seaton, op cit, 335-6

[45] www.theguardian.com/commentisfree/2016/apr/01/bbc-brexit-too-timid-impartial-on-eu not-enough

[46] Bellamy, *op cit*

[47] SB Hobolt and CE de Vries (2016), 'Public support for European integration', *Annual Review of Political Science* 19: 413–32

[48] D Levy, B Aslan and D Bironzo (2016), 'UK press coverage of the EU referendum', Reuters Institute for the Study of Journalism, University of Oxford / Prime Journalism. available at http://reutersinstitute.politics.ox.ac.uk/our-research/uk-press-coverage-eu-referendum

[49] *ibid*. That said, research findings are inconclusive as to the influence of newspapers on voting choice.

tabloids have for decades run a campaign against the EU,[50] as documented on the eve of the referendum by *The Economist*.[51]

More often than not, the cues the media and others pick up are provided by political leaders. Did they discuss their arguments against each other, in public? This happened to some degree in televised debates and when prominent representatives of either side made public speeches. But politicians mostly presented the advantages of their respective perspectives— or, in the 'remain' campaign, the disadvantages of leaving the EU—without directly engaging with each other's arguments or the 'facts' the other side used. We witnessed a cherry-picking of numbers and arguments, depending on which perspective was adopted.

Take the question of whether the UK can manage the scale of immigration while a member of the EU. 'Leave' suggested it cannot and that being a member of the EU meant signing up to the principle of free movement for EU nationals. Whilst this is correct, it missed the point that migration to the UK is more than just intra-EU migration. 'Remain' in turn said that, if the government chose to, the UK would be able to turn EU nationals away for reasons of public security or health. Whilst this is also correct, it did not really engage with the argument put forward by the 'leave' side.

Or take the amount of legislation coming from Brussels. 'Leave' claimed that up to 60 per cent of all the UK's laws were made in Brussels, whereas 'remain' would suggest that the figure was nearer to 13 per cent. Both sides got their numbers from the same source (a 2010 analysis by the Commons library) and both claims were correct—it all depends on what is included in the definition of EU law. The high estimate included EU rules which are not laws in a meaningful sense, such as administrative decisions and regulations not relevant to the UK. But this difference was not explained to the public and the arguments did not get properly discussed against each other, reducing the democratic legitimacy of the process further.

To sum up. The first criterion, implying a definition of the franchise which would have included all who were permanently subject to UK law on British territory and over 16, was not met. The second criterion, clarity, was met half-way: whereas the referendum question itself was clear, the implications particularly of 'leave' were anything but. As a result, it was difficult if not impossible to make an informed decision. On the third criterion, the amount and quality of information, we know that there was overspending on the 'leave' side. Information was accessible to many people and, as such, there was a sufficient amount of it. But it was not always accurate or impartial: voters were exposed to a series of half-truths and misinformation, and print media were heavily biased in favour of 'leave'. The final criterion, public debate, might merit comparatively the best score among the four. Different arguments were made, by politicians and by the media. But the quality of the debate was poor: there was a cherry-picking of arguments rather than looking at the question of EU membership in a more holistic way, and arguments were discussed not against each other but in isolation.

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[50] O Daddow (2012), 'The UK media and "Europe": from permissive consensus to destructive dis-sent', *International Affairs* 88, 6: 1219-36

[51] The paper published a chart, 'Lies, damned lies and directives', documenting decades of myths about EU regulations promulgated in the tabloid press: www.economist.com/blogs/graphicde-tail/2016/06/daily-chart-15.

CONCLUSION

The democratic legitimacy of the British in/out referendum in 2016 depended on certain criteria: the franchise, the presence of clarity, the amount and quality of information, and the adequacy of public debate. Empirical analysis of the fulfilment of these criteria has shown that the referendum fell short on the first two while it could have done better on the latter pair. In light of these findings, the assessment—albeit restricted to available secondary literature—cannot but be that the input legitimacy of the UK membership referendum was harmed.

Whether it follows from such an assessment that there should be a second referendum is a different matter. One the one hand, one could assert that, at the end of 2018, there was a strong public desire for another referendum, just as one could argue that political leaders and parties had not been able to find a way of implementing the result of the first referendum that finds sufficient support. In such a situation, and given the manifold claims about how the decision needs to respect the 'will of the people', it only seems reasonable to go back to the people, now that the options have become clearer. On the other hand, one might argue that the poor democratic quality of the first campaign might be replicated and as a result sharpen mistrust in representative actors and processes; that there have not been huge shifts between 'leave' and 'remain' voters, suggesting that all the information that has come to light since the referendum has not had too much of an effect on voters, and that organising another vote would just be continuing uncertainty; that another referendum might sharpen the divide among the electorate brought to light by the first referendum, not least if there would be a majority for 'remain'; and that there are serious international issues surrounding another referendum, such as the organisation of the European Parliament elections, the ongoing budget negotiations or the transition period, in which the EU and the UK were going to agree on a future trade deal, which would be further shortened. Which conclusion one reaches depends on how one weighs these different factors. That said, the factors which relate to the *input* legitimacy of the referendum point in the direction of another referendum.

Can we learn something from the *process* of this particular referendum? The single most important lesson to be learned from the recent British EU membership referendum is that governments should not call referenda if they cannot be very clear about what each option on the ballot paper entails. The commitment to a referendum by the former prime minister, David Cameron, did not come from a careful analysis of what an EU membership referendum would involve, what the implications of a 'leave' vote might be or how leaving the EU could be implemented. Instead, he sought to appease his backbenchers and prioritised winning the next general election.[52]

The consequences of holding a referendum on such an important question, without it having been clear from the start what 'leave' would mean, can be observed in British politics ever since. Not only has the country remained utterly divided, but MPs as well as the government struggle to know what type of Brexit they should deliver, if any—to the point that crashing out of the EU without any deal did not seem impossible at the end of 2018. In sum, 'a referendum is a mechanism for deciding between two options. It is not in itself a mechanism through which the form of those options can be developed'.[53]

Also, and given the poor quality of the campaign, it might be worthwhile using citizens' assemblies and other deliberative fora more. In a political environment in which the media

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[52] Renwick *et al, op cit*, 546
[53] *ibid*, 547

landscape is as polarised and ideological about an issue as the British tabloids are about the EU, and where citizens mistrust politicians to a high degree, it is worth experimenting more with forms of citizen education and enabling. Though only a few voters can participate in these fora, their results can be made broadly available and they might be trusted more by peers than what distant media or politicians claim.

Finally, referenda in general, and in particular in democracies where they are used rarely, should be complementary to representative democracy and not substitute for it. Cameron's decision to hold a referendum on EU membership was driven by party-political goals. Instead, it should have been embedded in a discussion in Parliament where government and opposition parties could have debated the problems they saw and how they might best be addressed, as well as which options—if any—should be put to the voter directly.

About The Author

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