

Background paper/ Press Memo

The Brexit referendum in 10 Points

Criticism concerning democracy policy and outlook for the European Union

By Daniel Schily, June 2016

Democracy policy addresses a society's democratic procedures and democratic practice. These can become a political focus in and of themselves beyond any such policy's actual content. The form that the right to vote takes and the opportunities offered by participatory procedures do not exist from the outset, rather they are the subject of democracy policy.

This paper tackles issues surrounding the UK's referendum, which is scheduled to take place on 23 June 2016. It discusses whether this particular form of direct democracy is a good thing, and what Brexit might mean for the EU's democratic development.

Criticism

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1. Only laws are suitable subjects for referenda, not miscellaneous political programmes

There is a significant amount of evidence showing that citizens should be asked referendum questions that are as specific as possible and that can be implemented directly. This is because, unlike their elected representatives, it is not possible for the population as a whole to discuss either what the final decision or desired outcome actually is in the event that a referendum produces unclear results.

The only way to achieve this operational clarity is for the citizens to decide on a law. Other political programmes, such as the construction of a new town hall or relocation of a road, may be appropriate at municipal level.

The UK's question of "remain or leave" says almost nothing about the future, either for the British or for the EU's other citizens. Obviously no-one wants the UK to sever all ties with the EU – including those relating to freedom of movement, for example.

However, if the country votes to leave then matters clearly cannot continue as though the UK were still an EU state. So what would actually happen in that case? There is no clear legal arrangement on which a meaningful vote can be held. In our globalised world – economies, resources, military, data networks, the environment etc. – there is very little point in demanding autonomy. Plus, said autonomy must be granted by other parties.

A useful vote could, therefore, be held regarding an exit law that would set out, in advance, a target definition for the future partnership between the EU and the UK. Following the successful conclusion of said agreement, the entire matter would have to be put to the vote again by the UK's population.

2. David Cameron ordered the referendum

The UK's democratic procedural law provides no options for the population to ask questions directly in relation to a referendum. Additionally, the culture of modern, participatory democratic procedures is still in its infancy. At local level, some parts of the country enjoy an extremely active participatory culture in the form of parish councils and self-organised, semi-governmental local councils. It would seem advisable for the British population to carefully consider whether they want to introduce civil law-making in future by way of public initiatives, referendums and public votes. This could also involve international agreements.

3. The referendum is a way of seeking acclaim

Under no circumstances can the Brexit referendum be referred to as pseudo-democratic. The question is not manipulative and the government, namely David Cameron, is not exploiting its executive advantage. The United Kingdom has developed an instrument in the form of a "referendum commission" that was established to guarantee "fair play". This will be achieved, for example, by ensuring that Remain and Leave receive proportional and limited financing. Nevertheless, there is another problematic aspect in that the referendum came about in the context of an election, as supplementary democratic legitimation so to speak, through its direct approval by David Cameron.

4. The controversial mix of representation and direct democracy

Thanks to his electoral pledge to hold a referendum on whether Britain should leave the EU, Cameron has blended the elements of direct and representative democracy and violated the relevant imperative concerning elections and votes.

From a democratic theory perspective, direct democracy is only compatible with election-based indirect democracy where there is a clear distinction between the two principles – votes and elections. Elections are intended to legitimise a political regime and permit it to make governmental decisions on a population's behalf. These representatives must not shift that responsibility onto the nation's citizens.

Votes are a self-authenticating means of requesting input from citizens in the event that a vote is mandatory for legal reasons, or where a relevant section of the population deems that a vote is the right thing to do.

International, empirical democracy research has proven that it is highly problematic if the executive is able to "sense" whether another historic vote should take place or not. There is good reason to fear that the UK population could in future increasingly accuse the government of ignoring its wishes on important decisions because no referendum was held. Referenda can also be abused during election campaigns as a type of propaganda, for example, allowing the population to vote on election gifts.

5. The referendum as a foil for the British debate about identity

Over the course of the referendum campaign, the feeling of belonging to a special group predicated on a distinct democratic culture and claim to national sovereignty, has played a significant role. However, functional reasons for the capacity to act for the economy, transport and other fields are less important. Rarely does the conversation turn to a democracy perspective on a globalised world that provides EU citizens with double the protection of their human rights.

6. The democracy theory problem of the majority of the minority in Europe

Through this referendum, a small proportion of Europe's citizens are deciding on the future of Europe. What seems reasonable from the sovereign British perspective is certainly not so from the perspective of all EU citizens. Every democracy is subject to two polar opposite demands: the autonomisation of a minority and the enforcement of globalising majority rule. Brexit addresses this first demand. Britain wants greater autonomy again. Both parties will be expected to coexist harmoniously if the UK leaves the EU. Yet no-one appears to be giving any thought to what the majority of all other Europeans might decide in this matter.

7. The issue of minorities in Britain

The make-up of the British electorate has undergone a major transformation in recent years. For example, Scotland now has its own statute of autonomy and its own parliament. Another question that should be asked is whether Northern Ireland can remain peaceful in future if it belongs to a country that is no longer part of the EU. It should give pause to think that the English, the largest population group in the UK, represent the majority of the "Leave" side.

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Outlook for the EU

8. The referendum is an opportunity for the formation of EU democracy

The referendum can be seen as an important opportunity to drive the education of a truly European electorate, one that does not neglect the needs of its individual populations and that represents a diverse unit welcomed by all sides.

9. The EU needs the British rule of law and British pragmatism

Historically speaking, the UK in particular represents the origins of the rule of law, as well as the emerging individual rights of freedom and property. Admittedly, it originally only applied to British citizens and not to its colonies. British parliamentarianism has developed several entirely unique characteristics. Since there is no constitution and therefore no skilled constitutional jurisdiction, compliant practice of the law is especially important in Britain.

This British pragmatism contrasts dramatically with the deductive – often natural-law-based and morally excessive – constitutional tradition that evolved in post-war Germany in particular. A European constitution project without the UK is doomed to be lacking in practical relevance and to eventual failure, since a transnational legal system would have to prove itself in real life and could never develop based solely on symbolism and the noble principles of a constitutional state and human rights.

The continent needs the British procedural ingenuity; the Brits want to see the demand for an agreement come to real fruition. To British ears, a dictum such as "ever-closer union" sounds like the abolition of British sovereignty; Germans hear hope for a steadily improving common understanding. It may be that the EU needs fewer of these pithy principles, which are perhaps better suited to national constitutions.

10. Diversity for the EU

Everyone knows that tradition plays a major role in Britain's retaining a series of much loved yet impractical procedures. A separate measurement system and driving on the left are just two among a multitude of examples that in no way threaten the EU's existence. As per the new direction for European democracy proposed by Democracy International, local identities should be taken into greater account than in the past.

The Brexit referendum is another chance for Democracy International to advocate for a democratic revamp of the EU. A number of decent jumping-off points are provided by the Lisbon Treaty. The Treaty states that a Convention shall be established to develop a new democratic basis for the EU. All EU citizens will then be able to vote on the outcome by way of a referendum.

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