

BREXIT

## GO WITH DIGNITY – CALL A SNAP ELECTION!

 Benito Müller /  July 8, 2016 /  1.4k

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### THE REFERENDUM FALLOUT (SO FAR)

Apart from Her Majesty's Prime Minister and his party-friend (yet Brexit nemesis) both metaphorically falling on their swords, and the leader of Her Most Loyal Opposition encouraged by the Prime Minister to do likewise ("it might be in my party's interest for him to sit there, it is not in the national interest and I would say: for heaven's sake man, go!"), the main fallout of the Brexit vote so far for me personally is that it has managed to create yet another division—on top of the geographic and socio-economic divides—by pitting the younger generation against their elders.

According to a survey carried out by London School of Economics "the referendum stimulated feelings, particularly among young people, of sadness but also ones of anger and frustration at people who voted to leave, and often at older generations. [1] A blog posted on the day after the referendum reinforces these findings, albeit in somewhat earthier tones: "[How old people have screwed over the younger generation – in three charts](#)". It adds something which I think is telling about the degree of indignation: one of the three graphs mentioned in the header depicts "how long each generation will have to live with this decision." The point being made is clearly that this is seen as an unfair distribution of the impact of the decision and that the older generations should have taken this into account.

It is of course true, as another Independent article put it: “Young people – if you’re so upset by the outcome of the EU referendum, then why didn’t you get out and vote?”, even though they could not have swung the vote.”[2] My worry is that without the opportunity to seek redress, this feeling of inequity will further alienate the younger generation from engaging in politics. This would be a serious loss for all of us.

## WHAT MANDATE?

If the people are asked by the government to express their opinion on a single issue in a referendum, they are entitled to expect a reasonable amount of truthful information not only about the issue, but also about the consequences of their decision. If this expectation is fulfilled and if the referendum process has been appropriate, then it is fair to say that the people and government should respect the outcome, whether they have taken part or not.

However, if a referendum is based on (gross) misinformation and/or if the format is (grossly) inappropriate then the people have a right, if not the duty, to question, indeed to repudiate any alleged popular/political mandate of the outcome. All may be fair in love and war, but not in democracy; and if there are legitimate grievances about the process, then they must be heard.

But are there legitimate grievances in the case of the Brexit referendum? Well, let us first consider the information that was provided to the electorate during the campaign.

## WAS THE PUBLIC TRUTHFULLY INFORMED IN THE REFERENDUM CAMPAIGN?

No one expects a political campaign to be completely truthful all the time, but what has emerged over the past couple of weeks – the wholesale back-tracking on promises made before the referendum, leaders of the Remain campaign being ‘outed’ as Eurosceptics, leaders of the winning camp shirking the responsibility for the outcome – is truly breath-taking and sufficient evidence that the public was wholesale misinformed, not to say lied to, during the campaign.

For me personally, the grievance is not just about “lies, damned lies, and statistics” (or as Robert Walker put it “Lies, Damned Lies and Brexit”), but also about the attitude taken by some of the campaigns on how to address the voter. Arron Banks, who contributed £5.6 million pounds to the Leave campaign *hired the Washington DC political campaign strategy firm Goddard Gunster on a multimillion-pound fee to sharpen its message. “It was taking an American-style media approach,” said Banks. “What they said early on was ‘facts don’t work’ and that’s it. The remain campaign featured fact, fact, fact, fact, fact. It just doesn’t work. You have got to connect with people emotionally. It’s the Trump success.”*[3]

I know I may be old-fashioned, but I think the voter should be respected as a decision maker and not manipulated/conned by PR agencies. Given this treatment, I believe the public has a right to be aggrieved about the circumstances surrounding the referendum process and even to 'Bregret' their vote (Wales has changed its mind over Brexit and would now vote to stay in the EU, poll finds).

But what about the format of that process?

## WAS THE CHOSEN FORMAT APPROPRIATE TO THE IMPORTANCE OF THE ISSUE?

Referendums, indeed votes, come in many procedural shapes and guises, and it has long been recognised that some formats are more appropriate to some types of issues than others. Apart from ensuring that the decision-maker (voter) has the information needed to take an informed decision, the key parameter is the choice of majority needed to win the outcome. This can be done by way of a relative majority (more than 50 per cent of votes cast), an absolute majority (more than 50 per cent of eligible voters) or some form of a super-majority (60 per cent or two-thirds majority of voters).

The general practice is to move to larger majority requirements for issues of larger significance, such as constitutional changes. Now Brexit clearly was, and was portrayed by all sides as, a 'once-in-a-lifetime' decision of enormous significance,[4] and as such one could have expected it to be dealt with a super-majority referendum. This clearly was the view of the then leader of UKIP, Nigel Farage before the referendum (who has since also abandoned ship) when he said that "In a 52-48 referendum this would be unfinished business by a long way. If the remain campaign win two-thirds to one-third that ends it." [5]

Moreover, the sentiment was also reflected in the Leave campaign grassroots, as represented by one William Oliver Healey who, on 25 of May, a month prior to the referendum, launched a [Petition to Parliament](#) reading: "*We the undersigned call upon HM Government to implement a rule that if the remain or leave vote is less than 60% based a turnout less than 75% there should be another referendum.*" As it happens this petition has since attracted over four million signatures.[6]

Parliament itself did adhere to the idea of significant majorities for significant issues when it enshrined in the [Fixed-term Parliaments Act 2011](#) that early general elections shall require a two-thirds House of Commons majority (including vacant seats!). It therefore beggars belief that we, the British public, were asked to take the 'decision-of-a-lifetime' by a simple relative majority vote. That format is insufficiently decisive and hence woefully inadequate for taking such a momentous decision. So I find myself in the ironic position of having to agree wholeheartedly with Nigel Farage that the referendum could only deliver a popular mandate with a super majority and that the outcome therefore is "unfinished business by a long

way”. One can only hope that if there were to be another referendum on Brexit, lessons will have been learned and something like Mr Healy’s petition be heeded.

## WHAT NOW?

It is by now common knowledge that the outcome of the referendum does not legally bind the government. For reasons explained above, I also strongly contend that, being essentially a hung outcome (not to mention being based on an unacceptable level of misinformation), it does not provide a popular mandate to justify triggering the ‘Article 50’ proceedings to formally leave the EU. But, with Pandora’s box having been opened for narrow-minded party political interests, the question now has to be how can our political representatives extricate themselves from the mess they created with at least a modicum of dignity?

## THE CONSTITUTIONAL LAW CASE

Immediately after the referendum I argued that “While, given its royal prerogative, it is not altogether clear whether the government would have to take note of a parliamentary vote [on Brexit], it stands to reason that since the unconventional route of a popular referendum did not produce sufficient grounds to act on, the government has at least a moral duty to listen to the opinion of the body to which it is after all accountable.”

As it happens, there have been numerous pronouncements by senior legal experts – who, contrary to [Michael Gove’s view](#), are trusted by the public, significantly more so than politicians – arguing “that as a matter of domestic constitutional law, the Prime Minister is unable to issue a declaration under Article 50 of the Lisbon Treaty – triggering our withdrawal from the European Union – without having been first authorised to do so by an Act of the United Kingdom Parliament.”<sup>[7]</sup>

‘Sovereignty’ – as Geoffrey Robertson QC reminds us in [How to stop Brexit: get your MP to vote it down](#) – “resides in Britain with the ‘Queen in parliament’, that is with MPs alone who can make or break laws and peers who can block them. Before Brexit can be triggered, parliament must repeal the [1972 European Communities Act](#) by which it voted to take us into the European Union – and MPs have every right, and indeed a duty if they think it best for Britain, to vote to stay.”

Philip Allott, a Cambridge senior international public law expert, has furthermore argued<sup>[8]</sup> that a triggering of Article 50 by the government would be an exercise of legal powers and that “It is of the essence of legal powers that they have limits. ... For this reason, the courts are particularly firm in keeping public authorities within the limits of their powers. UK withdrawal from the EU would affect the legal situation of every person in the UK, and the legal situation of many other people elsewhere. At the request of a person directly affected by the exercise of a power, a

court may conduct a so-called judicial review to determine whether the exercise of a public power on a given occasion is, or is not, within the limits of the power. This applies to all public powers at all levels of government and administration.”

This is indeed what may happen, particularly since “[Brexit can be started without parliament vote, government lawyers say](#)”. A leading London law firm has already started proceedings on behalf of a group of clients “to ensure the UK Government will not trigger the procedure for withdrawal from the EU without an Act of Parliament. ... Article 50 simply cannot be invoked without a full debate and vote in Parliament. Everyone in Britain needs the Government to apply the correct constitutional process and allow Parliament to fulfil its democratic duty which is to take into account the results of the Referendum along with other factors and make the ultimate decision.”[9]

The referendum outcome, the firm argues, “is one of the considerations that Parliament must take into account when they vote, along with many other issues including those who might have since changed their minds and the knock on effects on the UK splitting with a further Scottish referendum. Making sure the correct process is followed is essential to ensure future unity.” As to ‘next steps’, the firm was “waiting to see the Government’s position. If there is no agreement it will be a matter for the Court to determine in due course.”

## THE POLITICAL CASE

Geoffrey Robertson’s article sums up the political background very succinctly: “Our democracy does not allow, much less require, decision-making by referendum. That role belongs to the representatives of the people and not to the people themselves. Democracy has never meant the tyranny of the simple majority, ... Democracy entails an elected government, subject to certain checks and balances such as the common law and the courts, and an executive ultimately responsible to parliament, whose members are entitled to vote according to conscience and common sense.”

While I again agree with him that, as a matter of principle, “MPs will have to do their duty to vote according to conscience and vote for what’s best for Britain. It’s a matter for their consciences. They have got to behave courageously and conscientiously,”[10] I fear that faced with the referendum outcome, it might be difficult for them to be courageous and conscientious enough to put the interest of the country before their personal (perceived electoral) interest.

No doubt, there should be a thorough parliamentary debate on the issue, but instead of forcing a decision in this parliament, which could well be as controversial and divisive as the ill-fated referendum, I strongly agree with Nick Clegg that by far the best and most dignified way out of the current mess would be to ask the people in the proper constitutional way by calling an [snap general election](#):

“This election would also give all parties the opportunity to set out their stalls on what our new relationship with Europe should be.[11] Importantly, the election must be held before any attempt is made to activate article 50, the legal mechanism triggering the negotiations for EU exit. ...The baton then moves to the newly elected parliament. It will have two tasks: MPs must scrutinise the government’s specific plan to ensure it is legal and work able, and, crucially, article 50 should only be triggered following a vote of consent from MPs.”[12]

And who knows, a collateral benefit of this course of action might even be a long-overdue renewed interest in politics by our youth. In any case, now might be the right time for people who support this view to lend their support to another, this time post-referendum petition to parliament to “Let Parliament decide whether or not we remain a member of the European Union”

Let me end on a personal note. I have once been told, in jest, “Benito, you may be British but you will never be English”. This, of course, is absolutely true. Indeed, when I applied to be ‘naturalised’ (!), I did not apply to become a citizen of England, let alone ‘Little England’. I applied to become a citizen of the United Kingdom of Great Britain and Northern Ireland as a member of the European Union (being Swiss, I already had a citizenship outside the EU). Given the potential disastrous consequences of Brexit to the Union of the Kingdom, I consequently reserve the right to fight for the issue of EU membership to be dealt with through the proper constitutional channels. And should there be resistance by government or parliament, I propose the following battle cry:

**“It might be in your own interest to sit there, but it is not in the national interest. For heaven’s sake members: dissolve your parliament and go!”**

## REFERENCES

[1] Poll reveals young remain voters reduced to tears by Brexit result.

[2] According to that article, the estimated population of 20 -24 year olds in 2015 was 3,806,471 while only 492,306 applied to register to vote in the months running up to the election. In other words, had the whole of that population segment voted with the same proportion of remain votes, the ceteris paribus outcome would have been 18.8 million ‘Remain’ versus 18.3 million ‘Leave’. So, in practice it would never really have been possible for the youth vote to swing the vote to ‘Remain’.]

[3] Leave donor plans new party to replace UKip – possibly without Farage in charge.



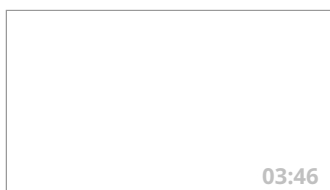
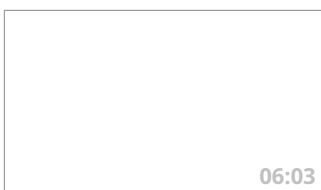
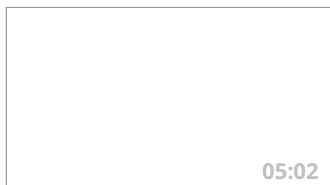
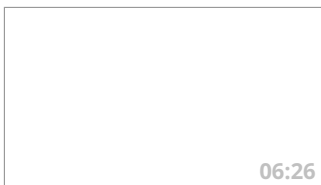


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[4] See, for example, Boris Johnson exclusive: There is only one way to get the change we want – vote to leave the EU.

[5] .Nigel Farage wants second referendum if Remain campaign scrapes narrow win.

[6] Mr Healy has duly distanced himself from it as having “been hijacked by the remain campaign”.

[7] Barber, Hickman and King, UK Constitutional Law Association.

[8] Forget the politics – Brexit may be unlawful.

[9] Article 50 process on Brexit faces legal challenge to ensure parliamentary involvement.

[10] ‘It’s not over yet’: Top legal expert says Brexit vote has ‘no force whatsoever’.

[11] Some parties (Liberal Democrats pledge to keep Britain in the EU after next election) are already clear about this, but unfortunately not all.

[12] Britain must have a general election before activating article 50.

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