



BREXIT

THE WILL OF THE PEOPLE: A PRIMER IN DIRECT DEMOCRACY

Benito Müller / February 6, 2017 / 8

We the People

of the United Kingdom of Great Britain and Northern Ireland, having been given sovereignty over whether the Kingdom leaves or remains in the European Union insist, in the interest of democracy and unity, on being given the opportunity to take an informed decision on the final outcome of the Art. 50 negotiations, as approved by parliament, through a referendum to either accept this outcome or to remain in the European Union.

THE REFERENDUM PREDICAMENT

A lot has been made in the press and in the recent parliamentary debates about the moral obligation for members of parliament to respect “the will of the people” as expressed in the narrow victory for leaving the European Union in the Brexit referendum of last June.

Respecting the will of the people, there can be no doubt, lies at the heart of any democratic system, which is why the accusation of not doing so is so powerful. The predicament members of parliament are facing in the aftermath of the Brexit referendum is having to choose between the responsibilities of elected representatives in a parliamentary democracy, and the will of the people as expressed in a direct democracy referendum.

The former was summed up very succinctly by Geoffrey Robertson QC immediately after the referendum: ‘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.’^[i]

However, as I mentioned in an OxPol blog a week after the referendum: ‘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,’^[ii] 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.’

My fear clearly proved well-founded: in the course of the recent debate Parliament has effectively admitted that it has abrogated its sovereignty to the people on this issue.

WHO IS IN CHARGE?

With parliament effectively renouncing its sovereignty on this issue in face of ‘the will of the people’, there are essentially two options on who is going to have the final say.

OPTION 1: “GOVERNANNY KNOWS BEST!”

THE “BREXITALIBAN”

In the world of the “Brexitaliban” (as “Remoaner”, I cannot resist), the answer who should be in charge has been absolutely clear, almost from the outset,^[iii] following the coronation^[iv] of Theresa May as prime minister: they, in government, and they alone!

It took the Supreme Court to push back on their Henry VIII style interpretation of the royal prerogative and give Parliament at least some say in the process. How much that will be is still an open question, although things do not look good for reasons I alluded to above. Indeed, according to Polly Toynbee reporting on the first reading of the Art. 50 Bill: ‘The mad zeal of the Europhobes, still astounded that their small cult has swept the country, had full rein yesterday. Jacob Rees-Mogg proclaimed this moment stood with Agincourt and Waterloo; most MPs know this is Dunkirk.’^[v]

The debate was opened by Brexit secretary David Davis who urged ‘MPs to deliver the will of the people. He said the “point of no return” had already passed, adding that there would be ‘no attempts to remain inside the EU, no attempts to re-join it by the back door and no second referendum’.^[vi] This “we know best” attitude also permeated the government’s **White Paper**, culminating in the statement that ‘The government is clear that no deal for the U.K. is better than a bad deal for the U.K.’ The government may be clear on this, but it is not at all clear whether the people would share this view, indeed evidence is emerging that they do not.^[vii]

It is one of the many ironies of this sorry story that the party which in the past has been most outspoken in their opposition to the “nanny state”, now seems to be quite happy with their leader playing the role of “infallible-nanny”, the new Tory superheroine.

A “MEANINGFUL” PARLIAMENTARY VOTE

Parliament should indeed have a say in what a Brexit outcome should look like, but as Ken Clarke (Con, Rushcliffe) rightfully lamented in the opening of his heroic speech in the Commons debate:

‘Because of the rather measured position that the hon. and learned Member for Holborn and St Pancras (Keir Starmer) had to present on behalf of the official Labour party, it falls to me to be the first Member of this House to set out the case for why I believe ... that it is in the national interest for the United Kingdom to be a member of the European Union, why I believe that we have benefited from that position for the past 45 years and, most importantly, why I believe that future generations will benefit if we succeed in remaining a member of the European Union. It is a case that hardly received any national publicity during the extraordinary referendum campaign, but it goes to the heart of the historic decision that the House is being asked to make now.’^[viii]

I fully agree with Alan Johnson (Labour, Hull West and Hessle) that ‘the detail of the coming article 50 negotiations will be crucial’ but I am not convinced that ‘there is sufficient cross-party determination to ensure that there is close parliamentary scrutiny, regardless of whether **Labour’s amendments** to that effect are carried or not.’^[ix] And even if there is close parliamentary scrutiny, and as is likely, and if the government remains in charge of deciding what happens if parliament rejects the “final” outcome of their negotiations, parliament is unlikely to take back sovereignty on the issue and decide to remain a member of the EU (as Johnson himself acknowledges in the title of his Guardian article: ‘Ken Clarke is wrong. Parliament cannot defy the EU referendum result’). In short, given the current circumstances, the government will be in charge even with a “meaningful vote” in parliament.

OPTION 2: RESPECT THE PROPER (DIRECT) DEMOCRATIC PROCESS

The only democratic way out of the sovereignty hole that government and parliament have dug for themselves is, in my considered opinion, the one proposed by Tim Farron (Lib Dem, Westmorland and Lonsdale) in his intervention as leader of the Liberal Democrats in the first reading of the Bill:

‘I respect the outcome of the referendum. ... But voting for departure is not the same as voting for a destination. ... There were no plans, no instructions, no prospectus, no vision. No one in this Government, no one in this House, no one in this country has any idea what deal the Prime Minister will negotiate with Europe; it is completely unknown. So how then can anyone pretend that this undiscussed, unwritten, unnegotiated deal in any way has the backing of the British people?’

‘Fine. The Prime Minister has made her choice. She has chosen hard Brexit. But if you are so confident that what you are planning is what people voted for, then you must give them a vote on the final deal. What started with democracy must not end up with a government stitch up. When all is said and done – and plenty has been said – the decision on whether the deal the Prime Minister negotiates is good enough will be decided by someone. Someone will make that decision. Should it be the Prime Minister? Should it be Parliament? Or the people who have to live with that decision. I say it should be the people in a referendum.’

I have to admit that I have changed my mind on the best way forward since my **first blog** on the issue in the immediate aftermath of the referendum. But I did so not because I have been a life-long LibDem supporter or because, as a Swiss dual-national, I believe that direct democracy is necessarily the best of all forms of government, but because of what happened since then: I simply underestimated at the time the power of direct democracy, once its genie is let out of the bottle.

RESPECT THE PEOPLE AND NATIONS!

THE SWISS SOLUTION

A referendum is an instrument of direct democracy, and like any governance instrument it requires proper safeguards against the abuse of power. In light of what has been happening over the last six months, and given the limited UK experience with that form of democracy, it might be advisable to have a look at how it is handled elsewhere with somewhat more of a track record in that field, namely Switzerland, probably the most tried and tested direct democracy in the world.

By collecting 50,000 signatures within 100 days, the people of Switzerland can demand any law and any international treaty passed by parliament to be put to a referendum. The law/treaty will only get onto the statutes if it is approved by the majority of the electorate (not merely, to be clear, the majority of votes cast). Constitutional amendments passed by parliament *must* be put to a referendum and require not only a majority of the electorate, but also a majority of the cantons. Moreover, the Swiss system also allows the people to *propose* a constitutional amendment by collecting 100,000 signatures (about 2 percent of the current electorate).

As we have learned to our peril in the context of the initial Brexit referendum with its ensuing deep divisions between people and between the nations that make up the kingdom, the Swiss safeguards concerning the majorities needed for something to pass a referendum are there for a reason!

WHAT NOW?

There is no doubt that, as Tim Farron [recently pointed out](#), no one in their right mind would have interpreted a 52 per cent to 48 per cent win by the remain camp as licence for the government of the day to force through a “hard/clean remain” by joining the Euro or Schengen without another referendum. Indeed, that would rightly be considered an abuse of power whatever the winning margin. So what are “We the People” meant to do in face of our government deciding they have the right to impose the hardest possible Brexit (“no deal” WTO) option if they turn out to be too inept to get a “good deal” (in their own opinion).

Neil Carmichael (Con, Stroud) is to be lauded for his statement that ‘it is, of course, essential that Parliament has a final say when we get to the endgame, if we actually do. It is not only necessary to talk about voting on whether we have a deal or no deal; it is important that we have a view about where we go if a satisfactory deal does not emerge, or if no deal emerges at all.’^[x] I also concur with David Lammy (Lab, Tottenham) that parliament is ‘being asked to rubber-stamp a blank cheque for the Government to deliver the most extreme version of Brexit imaginable.’^[xi]

Parliament should not be forced to sign a blank check. But nor should the people! The fact is that since the government and parliament have decided to devolve their sovereignty on this issue to the people whose will needs to be respected, the referendum of 23 June cannot be treated as this sovereign issuing a blank check to the government or for that matter to parliament. Thus, for the Brexit secretary to categorically exclude the option of a second referendum is denying the people their devolved sovereign right to re-evaluate their initial judgment in light of more complete information.

Anne Perkins rightly said that ‘the lie that a binary referendum is the beginning and end of a process that sets the country on an irrevocable course must be challenged, and challenged again, for what it is: an abuse of parliamentary democracy’^[xii], but the same holds in this context for the exercise of direct democracy. What can the people do if the Brexitaliban in government insist on refusing them the chance of making an informed choice on the matter of leaving or remaining in the EU? We must insist, be that through pressure on our MPs, through a Swiss-style petition to parliament (once the time is right), and indeed through any other lawful means at our disposal.

As a “Breemoaner” I am not at all confident that such a referendum would go my way, for a majority of the electorate could well be swayed by a “soft” version of Brexit. The reason why I am now convinced that this is the only way forward is not just a matter of direct democratic principle, but also because I believe the government must be given an incentive to negotiate a Brexit outcome that the majority of the people (and nations) would prefer to remaining in the EU, as opposed to letting it get a “bad deal” (blaming Brussels, of course), only to be able to placate their diehard Brexitaliban wing by going for the “no deal” option. Only then will we be able to live with the result and heal the divisions which the Brexitaliban have imposed on us.

REFERENCES

[i] [How to stop Brexit: get your MP to vote it down.](#)

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

[iii] [On the day of the referendum result, all the leaders of the leave camp resigned and did not wish to touch the mess they created with a barge poll.](#)

[iv] [Opposition parties call for early general election following Theresa May ‘coronation’.](#)

[v] [Ken Clarke was magnificent, defying the Brexit zealots.](#)

[vi] [Lib Dem leader accuses Labour’s Corbyn of giving up over Brexit.](#)

[vii] [Public rejects Theresa May’s ‘take-it-or-leave-it’ threat to leave the EU with no deal.](#)

[viii] House of Commons Hansard.

[ix] Ken Clarke is wrong. Parliament cannot defy the EU referendum result.

[x] House of Commons Hansard.

[xi] House of Commons Hansard.

[xii] It's time for Labour to be bold and challenge these Brexit lies.

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