

The democracy bomb: Brexit and the need for a written constitution

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8/8/2016

Brexit may have aborted the careers of David Cameron, George Osborne, and all the main Brexit leaders. But rest assured, the reality is worse writes [Jean-Paul Faguet](#). The referendum was a toxic measure that leaves the new government in an impossible situation, damned whatever it does. And although the UK's uncodified constitution provides guidance on many issues, we nonetheless lack clear ground rules for how decisions of the highest national importance must be taken.



Leaving the EU will inevitably decrease employment, increase poverty, and undermine British power and prestige. It may also end the 300-year-old union with Scotland. (Last year's Scottish referendum pitted Scots' hearts against their heads. Brexit aligned the two.) Most MPs understand this, which is why they supported Remain. By contrast, many Brexit voters do not understand. They were promised easy access to the common market, no free movement of people, and more money for the NHS. When the impossibility of that combination sinks in, voters will become angrier than they are now at the lies they were told.

But the alternative – setting aside the Leave vote – is surely worse. Having been told the nation's fate was in their hands, voters would react to betrayal with levels of anger unlike anything yet witnessed. Already suspicious of politicians and metropolitan elites, people will become enraged that the referendum was, in effect, a hoax. The effect would transcend specific politicians and parties, and undermine faith in democracy itself. At a time when Europe is buffeted by economic and migratory shocks, and the siren call of right-wing populism rings loud on both sides of the Atlantic, this alternative should provoke horror.



How on earth did we get here? Like automobiles, medications, and financial securities, unregulated democracy can be dangerous. Constitutions regulate democracy. But the UK doesn't really have one.

The proximate cause of the debacle is the amateurism of David Cameron and his team, who promised an EU

referendum with feckless disdain for consequence. Faced with a hundred Tory MPs who complained loudly about Europe, Cameron launched a referendum to buy their silence. This is an instant-classic example of what Mahvish Shami and I call “[instrumental incoherence](#)”: when politicians pursue discrete, short-term objectives via deep institutional changes whose effects are long-term, multidimensional, and highly unpredictable. The key point is that the goal politicians seek – no Tory infighting over Europe – may be completely unrelated to the effects their reform – leaving the EU – are likely to have. The logic of instrumental incoherence makes exaggerated, or even false, claims in support of reform even more likely, as we have seen.

But the deeper cause is both more important and more interesting: the UK has no written constitution, and so no clear rules for how such matters should be decided. I have had spirited discussions with sophisticated lawyers who point to reams of books in academic libraries and assure me a UK Constitution does exist. June 23rd gives the lie to that view. It shows clearly why tradition and unwritten norms do not suffice. Without doubt, Britain’s unwritten – and hence informal – constitution provides guidance on many questions. But it is incomplete. On a number of important issues it is either silent or – worse – ambiguous. Without a written constitution that everyone can see, the nation lacks clear ground rules for how the state should be structured, where the bounds of democratic contestation lie, and how decisions of the highest national importance should be taken.

Hence Cameron’s decision to subject EU membership to a 50%-plus-one referendum was perfectly legal. But it was also perfectly foolish. In principle, any referendum could be won by a single vote. Does anyone seriously think such questions should hang on one-vote majorities? If not, why invoke such a mechanism? Imagine what would follow a referendum won by one vote? This is no way to run a country.

In most mature democracies, institutional reforms require higher bars of approval, and often extended processes of ratification. A plebiscite may be involved, but one result is not decisive. The question put to the British people recently is not like selecting this year’s favourite song or even choosing the national mascot. It is, rather, a deep structural issue that will affect the nation’s politics, economy, and international relations for generations to come. It is much more akin to amending a constitution, which in the US requires two-thirds super-majorities in both houses of Congress, and separate approval by three-fourths of the states. This is a much, much higher hurdle than 50%-plus-one, and well it should be. The point is not only to increase the difficulty of approving big changes, but also to reveal large, stable majorities for these changes across different aggregations of the electorate. If such majorities do not exist, the reform will fail. Where deep changes to institutions are concerned, this is correct.

Constitutions protect democracy from its own extremes, and the loss of legitimacy that follows. The EU referendum was the democracy bomb that blew up the government and may yet break up the country. God knows how, or if, the situation can be remedied. But if it leads the UK to write, debate, and agree a Constitution, at least it will have done some good.

About the Author

Jean-Paul Faguet is Professor of the Political Economy of Development at the [Department of International Development, LSE](#), where he is programme director of the MSc in Development Management. He is also Chair of the [Decentralization Task Force of the Initiative for Policy Dialogue](#) at Columbia University.



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