

In some respects the Brexit referendum was a violation of human rights

 blogs.lse.ac.uk/brexit/2017/01/31/the-brexit-referendum-was-a-violation-of-human-rights/

31/01/2017

*In some respects the Brexit referendum itself was a violation of human rights, argues **Adrian Low**. Three substantial groups were denied the opportunity to vote when inclusion of any [two of those groups](#) would almost certainly have reversed the result. Rational democratic decision-making was negated by a campaign of exaggeration and lies and unnecessary last-minute poll predictions encouraged complacency in the turnout for Remain.*



The connection between human rights and democracy is well known. It is written into many national constitutions, in the UN declaration on human rights and in the EU treaties. Statements typically say that individuals, irrespective of country, culture and context, are equal in dignity and rights and a country's democratic processes should protect the individual's opportunity to influence their governance and uphold their human rights.

The European Court of Human Rights, for example, has highlighted the [human right to elected representation](#) and has developed case-law guidance on the [rights of citizens to vote](#).

The [UK Human Rights Act](#) includes three areas where the Brexit vote has, or potentially will, deny human rights. These are Article 3 of Protocol 1: the right to *the free expression of the opinion of the people*, (in elections/referenda); Article 14 which makes it *illegal to discriminate on a wide range of grounds including ... national or social origin*, and Article 5: *the right to liberty and security*.

The Brexit vote potentially affects many EU and UK expats' ability to retain their current home, the current education of their children, to be able to afford health care, to own property and businesses, to employ others to live securely and to travel freely etc. It is a basic human right for each such individual to have a voice and to have a vote.

Three groups were denied the right to vote at the referendum. They were not offered the opportunity to influence the outcome.



UN Human Rights Council chamber. Image by Maina Kiai (CC BY 2.0).

Denial of resident rights

The first group comprises most EU (non-UK) citizens resident in the UK. This is the largest group of about 3.3 million people or 5% of the population of the UK. There are two human rights issues.

Firstly the issue of unequal treatment based on nationality. Essentially the UK has [two electoral registers](#). One is for local and EU elections, the other for Westminster elections. The first register includes all EU residents in the UK. The second register only includes residents from the EU who are citizens of the UK, Eire, Malta and the Republic of Cyprus. On 25th May 2015 the UK government chose to use the second register plus Gibraltar (only 30,000) for the referendum on Britain in the EU. Consequently, although some residents from the EU who are not UK citizens were allowed to vote, most were not. The right to vote depended on which country they came from. Denying the opportunity to vote in such a crucial referendum simply because the UK resident is a citizen of country A (France, for example) rather than country B (Malta, say) is a denial of the human rights of the UK resident who is a citizen of country A, contrary to Article 14 of the UK Human Rights Act where discrimination is not allowed on the basis of national origin.

Citizens of the commonwealth (such as Australia, Canada, New Zealand, Pakistan, India, Bangladesh, but also including Malta (EU) and Republic of Cyprus (EU) etc.) who were resident in the UK were given a vote. Citizens of Eire resident in the UK, Eire being in the EU but not in the Commonwealth, were also given a vote. Citizens of Gibraltar were given a vote in Gibraltar. Other EU citizens resident in the UK were not permitted to vote. Had it been a European election or a local election they would have had a [vote](#). That use of this electoral register, in this case, denied *universal and equal suffrage* precisely when the issue is crucial to EU residents. It was a major error of judgement that was also contrary to the [UN declaration of human rights](#) (Article 21(3)):

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage...

Secondly the right to a voice. Residents in the UK most likely to be affected by a decision to leave the European Union are precisely those EU citizens who are working in the UK with families in schools, with their own businesses, some employing UK staff, many owning their own homes and most contributing to the tax income of the UK. They are now in no man's land with respect to their future. This potentially denies them in the future their *liberty and security* in this country. Denying those most affected any say in their future is denying a basic human right. (*Article 5 UKHRA*)

EU residents in the UK comprise about 3.3 million people. The referendum majority for Brexit was 1.3million and it is likely that most EU citizens resident in the UK would have voted to remain. With no say in the referendum any eventual removal of the non-UK EU residents from the UK were that to be the result of negotiations, would effectively amount to the UK implementing a nationalistic ethnic cleansing.

Denial of expat rights

The second group is the expats who have lived outside of the UK for 15 years or more. Some of them work abroad because that is what their employer requires of them. Others choose to live there for reasons of health or living standards, some retire there precisely because, embedded in EU legislation, there are reciprocal residency, education, land ownership and healthcare rights. The Conservative Party manifesto in 2015 recognised this 15-year limit to be an anomaly and they have begun to reverse the position enabling all expats to vote in a consultation document ironically entitled [A democracy that works for everyone](#). But that is too late for the Brexit vote. Many countries impose no time limit. The USA, for example, gives the right to vote for life whilst still a US citizen.

There is also a long-standing principle that if you pay tax to a country you have the human right to have your voice heard in the politics of that country. The concept of [no taxation without representation](#) came about when America, in 1765 was a colony of the British, who tried to tax the colony without giving them any voice in the UK legislature. The current 15-year limit is arbitrary and therefore neither *universal nor equal*. Estimates suggest about 700,000 such

expats live in the EU. It is likely that most would vote to remain.

Denial of youth rights

The third group only emerged as a group in 2014. When the Scottish independence vote was taken, UK law allowed regional votes to include young people aged between 16 and 18. The argument made for their inclusion was that they would live long with the consequence. They are not allowed to vote in national votes, but only in regional votes. That is neither *universal* nor *equal*.

The Scottish referendum was a national vote for Scotland, the nation. Many feel that the UK Brexit referendum is at least as important as the Scottish independence referendum. According to the National Union of Students, [76% of the 16-18 age group wanted to vote](#). It is a broken system that allows the young people to be heard in referendum A, a referendum key to their future but not in referendum B, equally, key to their future. That is a denial of their human rights. There are about 1.5 million 16-18 year olds and those in the 18-24 age group who voted did so 75% for remain.

Denial of the proper factual basis of a right of free choice

Democracy requires truthful campaigns and the quality of both Brexit campaigns was very poor. When campaigners tell lies and some elements of the media exaggerate them, somehow the electorate is expected to discover the lies and make a rational decision on truth. That is not always possible. If some hear the lie and do not hear the counter argument then they may vote accordingly. Both campaigns exaggerated. The Leave campaign had a battle bus suggesting that the UK paid £350million per week to the EU without pointing out that the EU pays £283million per week back to the UK. The net outflow is £67million per week. Further posters displayed the suggestion that the same £350million every week could, instead, be given to the NHS if the UK were to leave the EU. That was a gross lie and the country would be bankrupting itself if it attempted to do so.

Deciding which way to vote based on exaggerations or on lies is not democracy. Democracy depends on people voting after some forethought based on a truthful debate. The Brexit campaign and heavily biased media corrupted the democratic process. Hearing the truth is a human right which should not be denied for political ends.

Late Polls – a problem in themselves

Compelling arguments about the influence of last-minute polls have been made in both the Brexit referendum and the US presidential vote. Where polls indicated one outcome was likely it meant some voters who would have voted for that outcome, did not bother to vote because they believed the outcome was already in the bag. Indirectly, therefore, last-minute polls undermine the proper democratic process. It is no coincidence that the vast [majority of polls](#) both before and since the referendum have shown that the country favours staying in the EU.

The proper democratic response

There are four alternatives

1. Unpalatable it may be, but the preferable way forward is to re-run the referendum, recognising the previous referendum as (a) a failure to engage with all those who should fairly have had a voice and (b) that truth was badly compromised in much of the campaign. A second referendum should be called when the original referendum bill has been amended to include all the groups that should fairly be allowed to vote and when the (local/EU) electoral register has been duly updated. That will not happen overnight. The campaign should be re-run with proper legal safeguards on advertising and rhetoric, without any published polling in the final two weeks of the campaign.
2. Alternatively, any final negotiations should be put to the UK public, with due care for human rights in the use of the right electoral register. As in 1. above, facts should be clear and not driven by newspaper headlines or political rhetoric, but by the truth.

3. The Supreme Court now expects parliament to vote on whether Article 50 should be invoked. Given the significant abuse of human rights argued in this article, the answer should be that it is not invoked. Then alternative 1. should be implemented to be sure of a proper way forward.
4. If none of these is possible then there should be an appeal to law in the UK, or the EU Court of Human Rights, brought by some EU (non-UK/Malta/Eire/RU Cyprus) residents of the UK claiming the denial of their human rights and the opportunity to vote on a critical life issue for many of them.

Doing one of these will begin restoring faith in the democratic process and only then will the country become less divided, recognising the proper fairness of the democratic systems and respecting the human rights of all affected by any subsequent decision.

This post represents the views of the author and not those of the Brexit blog, nor the LSE. Image by [Maina Kiai](#) (CC BY 2.0).

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