

After Brexit, the UK should have a democratic right of return



*Many people believe that the UK's decision to leave the EU spells trouble for both country and continent, yet by and large think that the exit vote and process, painful though they may be, adhere to the rules and spirit of democratic self-government. **Peter Niesen** and **Markus Patberg** argue that in one important respect this is not the case, since fully democratic credentials require reversibility in decision-making and are incompatible with an irreversible loss of political rights.*

The notion of reversibility may sound treacherous, as it brings to mind a long-standing practice of repeated referendums on EU-related decisions in member states. Where votes ran counter to the goal of an 'ever closer union', governments have had their electorates repeat referendums, as in the case of the two Irish referendums on the Lisbon Treaty in 2008 and 2009. Pleas for reversibility seem to echo the questionable strategy of repeating EU referendums with negative results for as long as it takes for citizens to fall in line with Brussels diktat. We advocate neither a second referendum nor a stop to Brexit. The Brexit decision should be implemented, respecting the democratic decision by referendum and act of Parliament. However, for democratic reasons, we argue that the EU should keep the door open for a return of the UK by a unilateral decision of its people.

One reason for the significance of reversibility is that electorates change. A 52 percent majority of the electorate voted to leave the EU in the 2016 referendum. Already now, there is an imbalance resulting from the fact that the 'leave' vote was significantly higher among older voters than among younger voters. Important demographic changes have taken place since the referendum. [Arguably, even if people have not changed their minds about Brexit, there is reason to think that the majorities will soon be reversed through natural causes.](#) Another, even more significant reason is that people have a right to change their minds. Jean-Jacques Rousseau thought that, to the contrary, once the general will has been fixed, [those in the minority should hasten to adopt the majority view, since they must have been wrong in the first place.](#) Today, most democratic theorists reject this idea. They hold that persisting disagreement is productive, since democracy includes the right to learn from experience, to re-evaluate reasons and arguments, and to reassess issues in light of new information or changed circumstances.

The non-reversibility of exit decisions is a flaw in the institutional design of the EU polity – and it is a significant one because EU withdrawal implies that individuals lose political rights, many of them against their will. Where the will of the people is to become law, and the people cannot be ruled out to undergo a change of mind later on, the revised will of the people must be capable of becoming law as well. Yet, after Brexit, a majority decision with the opposite outcome will not bring the UK back into the EU. The UK may, of course, re-apply for membership, but its citizens will not have a definitive say in the outcome as they do now. They will be treated as petitioners, not co-sovereigns, no different from the nationals of first-time applicants like Turkey or Georgia. Government initiatives to re-apply, and likewise the EU negotiation position, may depend on tactical considerations, so that the people's will toward an eventual re-entry will fail to be conclusive. To ensure reversibility of the Brexit decision, we recommend Article 50 of the Treaty on European Union (TEU) be amended to allow for the re-entry of former member states, by referendum or act of parliament, or, if this cannot be achieved, by providing an identical re-entry clause in the withdrawal agreement (if there be one).

The idea to match the right to unilateral exit from the EU with a unilateral option of re-entry may come as a surprise. Political philosophers criticizing Brexit as undemocratic attack Article 50 for its privileging of nation-state sovereignty. [They believe that because the separation was decided unilaterally, it did not take sufficiently into account all those outside the UK who are and will be massively affected by Brexit.](#) The thought is that where decisions have a huge influence on people's life chances, those concerned should have a say in the decision. We think this view is too simple because it ignores the nature of the EU as a voluntary association. The argument confuses the free consensus to be and remain members of a federation of states with the coercive predicament of the regions and provinces of nation-states. Whereas regions or sub-state nations cannot unilaterally secede from (federal) states, federations of states can be entered into and left freely. The citizens of the EU member states, in contrast to the citizens of, say, the Free and Hanseatic City of Hamburg, as part of the Federal Republic of Germany, have not given up their right to full political self-determination. The democratic dilemma is that, under the current EU treaties, once a people have exercised its freedom to leave, they are not free to reverse their decision.



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In the remainder of this post, we want to sharpen our proposal by contrasting it with two rivalling suggestions. First, some authors have argued that the main problem of Brexit is that people will be losing their European civil rights such as freedom of **movement**, and that it is highly unusual to be stripped of one's civil rights through a simple majority decision. [The material rights at least of those unwilling to lose them should, therefore, be reinstated through an individual application process.](#) This argument sounds attractive, not least since it would give European citizenship a meaningful role independently from nation-state citizenship. But there are several things that are wrong with it.

It is deeply asymmetric in benefitting some UK citizens without ensuring reciprocal openness for other EU citizens (the EU could try to negotiate such an arrangement, but this would obviously go against one of the major motivations of Brexit and render it almost meaningless). At the same time, it propels inequality in the UK since it privileges the interests of the 'movers' over those of the 'stayers' among British citizens. Finally, it addresses EU citizens as private beneficiaries rather than as members of a self-governing collective. It empowers border-crossing social and economic activities, but fails to address the problem of the loss of political rights.

A second idea is [to continue the representation of British citizens in the European Parliament after the UK has left the EU.](#) This scheme agrees with the first in that EU citizenship derives from member state citizenship, but need not completely cease with it. UK citizens would retain their political rights, but not necessarily their substantive European rights, i.e. their freedom of movement. This would ensure that the entire UK citizenry would be recognised impartially, in its Europhile as well as in its Eurosceptic segments. Continued representation in the EP would keep alive the possibility of a re-entry which could be campaigned and lobbied for, and do away with the inegalitarian consequences under a private remain scheme for European citizenship.

What counts in favour of this proposal is that it would put the horse before the cart: it would install political rights to potentially bring back rights to free movement, and not bring back rights without representation as under the first suggestion. A disadvantage of the idea is the institutional weakness of the European Parliament, which is only a co-legislative organ. While UK citizens' ongoing representation would allow them to keep a foot in the door, a re-entry to the EU could not be brought about through this channel. In light of this, the price that EU citizens would have to pay seems too high: to allow UK citizens to continue to influence European legislation, although no longer being subject to it.

Our own idea agrees with the second suggestion in that it finds an irreversible loss of political rights intolerable. While Brexit may or may not be a good idea in its consequences, it is a sure sign of political regression to have one's democratic options reduced. But it is wrong to devise 'business as usual' responses to the exit decision, or to try and hinder an electorate from ceding its European rights alongside its membership in the federation. True, at the nation-state level, we would insist that citizens cannot vote to exclude co-citizens (and themselves) from the rights to political self-determination. But Brexit is different in that UK citizens will not be generally disenfranchised, as they remain members of a nation-state democracy. Our suggestion, therefore, is to establish a privileged return route to renewed membership for former member states, in other words, to let the UK re-enter by a unilateral decision of its people, under the legal and financial conditions of the pre-Brexit *status quo*. The basis for this could be an amendment of Article 50 TEU or a provision in the withdrawal agreement. This would leave UK citizens disenfranchised from EU citizenship, but empowered to re-instate it after Brexit.

In conclusion, we take up two remaining objections. One objection is that such a clause, if provided for in the EU Treaty, could provide an incentive to opt in and out according to the necessities of the day, which would make polity stability impossible. However, given the huge ramifications of entry and exit, it seems highly unlikely that any citizenry would toy around with such an option. A temporary exit could not be used to cover for, e.g., a cheapening of domestic rule-of-law standards, since re-entry would presuppose constitutional continuity with European Union standards.

Another, more principled, objection is that the social and economic consequences of Brexit and similar opt-outs cannot simply be undone. Even if the UK were to re-join the EU under current legal and financial conditions, circumstances will have changed, and perhaps a state of disrepair would be hard to overcome. Even though a democratic society can get in and out of nuclear energy provision, nuclear waste will continue to radiate. But a right to bring back an *ex ante* state of the world is not part of our claim. We argue that political decisions and the revocation of legal statuses need to be reversible, not that a social, natural, or economic *status quo* would have to be preserved to return to.

The important reason in favour of a re-entry clause is that it would make EU withdrawal reversible. It would give the UK electorate the chance to reconsider their decision when and if they wish, and preserve to them the agency so highly prized in the referendum process. It would ensure that there would be no irrevocable loss of political rights, which would then be instrumental in bringing back material rights, although any such rights would have to remain inactive. Former EU citizens would not fall back to the status of third-country nationals but encounter current EU citizens as co-citizens 'on stand-by'.

This post represents the views of the author(s) and neither those of the LSE Brexit blog nor of the LSE.

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