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Research Article

## The Democratic Legitimacy of the 2016 British Referendum on EU Membership

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## Abstract

This article addresses the input legitimacy of the British EU membership referendum of 2016. It considers who was given a vote in the first place, and whether those given a vote could make a reasonable choice in light of the campaign. More precisely, it assesses the following four criteria: the franchise, the presence of clarity, the amount and quality of information and the quality of public debate. Applying these criteria to the EU referendum shows it fell short of the first two whilst it could have done better as regards the last two. The article concludes by briefly discussing what can be learnt from this referendum for the future.

## Keywords

Brexit; EU referendum; European Union; Democratic legitimacy; Input legitimacy

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Much has been written about the referendum on British membership of the European Union (EU) since the 23 June 2016. Commentators have mostly focused on the demographics of the result and the factors that determined voters' choices. By contrast, there has been little scholarly reflection on *how democratically legitimate* the referendum *process* can be said to be (but see Bellamy 2019). The legitimacy of the referendum process forms the topic of this article. In particular, I shall address normative questions of input legitimacy concerning who was given a vote in the first place, and whether those given a vote could make a reasonable choice in light of the campaign.

I consider it possible to argue that a 'good' referendum can strengthen the democratic legitimacy of a constitutional decision, such as remaining in or leaving the EU (Rose 2013). My aim here, however, is not to discuss the legitimacy of referendums per se. Instead, I shall look at how democratically legitimate a referendum process can be said to be. There is a wealth of relevant criteria one could look at which address this question. For instance, one might want to address the role Parliament plays in the process (Chalmers 2017), or the no less important constitutional questions of how to deal in a democratically legitimate way with different majorities in the devolved regions or of which role the devolved nations should play in the process of leaving the EU (Soares 2016; McHarg and Mitchell 2017). While these questions are democratically relevant, the focus of this article is on input legitimacy. A number of factors motivate this focus.

First, referendums are widely discussed as a means of increasing the input legitimacy of democracies. Second, while output legitimacy in general also matters for democracies, democratic processes are instituted in part to decide matters that people disagree about, including whether to belong to the EU. As a result, the core of their legitimacy rests on democracy offering a fair process to decide these disputed matters, so that the results will be acceptable also to the 'losers' of a specific decision. Third, and relatedly, while certain outcomes can be regarded as straightforwardly illegitimate, such those that curtail basic rights, illegitimacy in most areas cannot be a matter of outcome per se, but only of the process that leads to outcomes. Fourth, then Prime Minister David Cameron presented input legitimacy as a driving factor behind calling the referendum, suggesting that support for the EU would

be strengthened by a referendum. Of course, most agree that the decision to call the referendum was really driven by party politics, with Cameron hoping to win back voters who might otherwise have considered voting for the United Kingdom Independence Party in the 2015 general election (Tournier-Sol 2015; Copsey and Haughton 2014).

The article proceeds as follows. The next section justifies the focus on input legitimacy and defends four criteria that, in my view, need to be addressed to assess it: the franchise, presence of clarity, the amount and quality of information, and the quality of public debate. I shall also reflect on how to weigh these criteria. In the following section, I shall define the four criteria in more detail and evaluate how far the referendum process met them, taking each one in turn. As we shall see, the way the criteria played out was very much the result of Brexit politics, in other words, of the balance of the political forces at play. I shall contend that the referendum fell short of the first two criteria whilst it could have done better with respect to the last two. As a result, I shall conclude that the 2016 referendum enjoyed little input legitimacy. The final section discusses the implications of this analysis, and what can be learned for future referendums.

### THE INPUT LEGITIMACY OF REFERENDUMS

Before analysing input legitimacy, it seems useful to firstly clarify whether having a referendum about EU membership in the United Kingdom (UK) was even constitutional. After all, if it were not then it would have lacked legitimacy from the start, given that paragraph 1 of article 50 of the Consolidated version of the Treaty on European Union requires that a Member State deciding to withdraw from the Union does so 'in accordance with its own constitutional requirements'.

However, the answer appears straightforwardly that it was constitutionally legitimate. True, parliamentary sovereignty is the prime constitutional norm in the UK, so that referendums in the UK can, as a matter of constitutional principle, only be advisory. They can never bind parliament or a government and do not place a *legal* obligation on government, and the 2016 referendum did not do so. However, if Parliament passes the required legislation they can take place, as was the case here. The European Union Referendum Bill was introduced to the House of Commons on 28 May 2015, passed its third reading on 7 September 2015, and was approved by the House of Lords on 14 December 2015, after which it was given Royal Assent on 17 December 2015. The first clause of the bill read that 'A referendum is to be held on whether the United Kingdom should remain a member of the European Union'. This bill made the EU membership referendum constitutionally legitimate.

While constitutionally legitimate, one can still ask how *democratically* legitimate this referendum was from a normative perspective. When defining legitimacy, scholars typically look at input and/or output criteria (Scharpf 1999). Looking at the latter, and asking whether leaving the EU will produce more just policies and improve everybody's welfare as well as enhance the UK's sovereignty and democracy, is certainly important. Indeed, some consider it is so unlikely to achieve this result that they argue there ought not to have been a referendum in the first place (see Fossum 2017). However, it remains a distinct question whether the referendum process leading to the result possessed input legitimacy and so was itself democratically legitimate. The quality of the democratic process is crucial to ensuring that conflicts within democratic political systems can be managed peacefully and for those disagreeing with the outcome to nevertheless accept the result, even if only in a preliminary way. In this way, democratic legitimacy is largely a matter of input, rather than of output (Buchanan 2002).

How, then, can we define input legitimacy? A common definition of input legitimacy is that it derives from a process in which all relevant parties are entitled to have their views and interests treated with equal respect and concern (Scharpf 1999). So far as referendums are concerned, input legitimacy involves considering the following criteria:

- (1) How the franchise is defined.
- (2) The presence of clarity.
- (3) The amount and quality of information.
- (4) The quality of public debate.

These criteria help determine whether a democratic process has been both sufficiently inclusive and that the issues presented to the electorate have been sufficiently clear and balanced. This is necessary for the process to be considered to have treated those involved with enough equality of concern and respect for it to possess input legitimacy. The definition of these criteria and their application to the referendum process is the object of the below study. As we shall see, the way and degree to which these criteria were (or were not) met were shaped by the political forces at play, as was the case in previous referendums in the UK, which included a different constituency of voters, different provisions for thresholds, and different provisions as to how legally binding the referendum should be.

I will propose that the four criteria should be weighted in the order in which they have been listed above and will be discussed below. Who is entitled to vote, the question of the franchise, is indeed the most important question, given ‘any referendum result will have been influenced by the design of political community’ (Shaw 2017: 560). The second most important question is that those who are entitled to vote know what the vote is about – the presence of clarity. If those legitimately entitled to vote know what to vote on, the availability of truthful information and proper debate in the campaign might still influence their decision. To make sure that information does not remain isolated but instead is contextualised and embedded in wider arguments, we need a high-quality public debate. In sum, all four criteria are important, but the first two are crucial and it is difficult to imagine how a referendum which failed to meet them could be legitimate.

## **DEFINING AND ASSESSING FOUR CRITERIA OF INPUT LEGITIMACY**

I will now define each of the four input criteria in more detail and assess them empirically in turn.

### ***The Franchise***

The franchise answers the question of ‘who belongs to the people?’ The standard view of political community is that entitlements to a say over collective matters should follow membership, formalised as citizenship. Importantly, citizenship in modern democracies has been linked to nation-states. This standard view is well reflected in the stakeholder account of political rights and obligations, in which the claim to being a citizen of a given political community belongs to those whose freedom and rights are inherently linked to the collective self-government and flourishing of this polity over time (Bauböck 2015). In this account, one would include those individuals in the franchise who enjoy citizenship of the given country. However, due to increasing social and political entanglements as well as changing ethics, this reading of membership in a political community has been increasingly challenged, and a number of scholars argue for an extension of participation rights to citizens who so far are not included in the franchise.

Some authors have argued in favour of the all-affected principle (AAP). This principle contends that those whose interests are affected by a decision should be entitled to participate in making it (Goodin 2007). The AAP thus determines the scope of the people on the basis of the scope of the decision at hand. The obvious problem with this approach is its ‘over-inclusiveness’ (Goodin 2007: 49, 57). That is not surprising given the cosmopolitan drive of many supporters of the AAP, but means it fails to

distinguish degrees of affectiveness. In many, possibly even most, decisions, some citizens' interests will be affected more than others', thereby introducing the challenge of having to weigh interests and allocating proportional voting rights (Warren 2017: 9; Miller 2009: 216).

Other scholars have argued in favour of the all-subjected principle (ASP). Unlike the AAP, the ASP links democracy to the nation-state and argues that 'all those subjected to political rule within its boundaries ought to have a say in its making' (Näsström 2011: 117), a proposition that comes fairly close to the idea of 'no taxation without representation'. As a result, the ASP has been used to demand greater political inclusion, mostly of migrants, within the nation-state. For if resident aliens are obliged to abide by the rules of a state, why should they not have the right to participate in its decisions (Gould 2006: 49)? Anything else, so the argument runs, results in the 'effective disenfranchisement' (Benhabib 2004: 215) of permanent residents from national politics.

I propose that a mix of the stakeholder principle and the ASP should have prevailed in the 2016 British EU referendum in order for all *relevant* views and interests to be treated with equal concern. This mix results from the fact that the stakeholder perspective appears too narrow whereas the ASP appears too broad.

On the one hand, the strong link that the stakeholder account establishes between presence, attachment to the political community and citizenship rights and obligations is not fit for purpose in a context characterised by freedom of movement between EU member states. Freedom of movement within the EU has created reasonable expectations for EU citizens who have settled in the UK that they could stay without having to naturalise. Without a willingness to legislate, prior to the vote, that permanent resident rights established prior to a potential Brexit should continue after Brexit, those expectations could not be met. As a result, the agreement of the British people to free movement under the EU Treaties implied an obligation to include EU residents in the UK in the referendum. Some might object that extending the stakeholder principle to those EU citizens resident in the UK is not sufficient and that the UK is not the relevant polity for the stakeholder principle (which instead is the EU) (Olsen and Rostbøll 2017). However, when applying normative criteria to real world processes, one needs to take the concrete context of those processes into account. In the present case, that means taking into account:

- (1) That the nation-state has not lost its meaning and function to such a degree that governments and citizens could be expected to let individuals participate in political choices about their 'own' country when those individuals may never have lived on the territory concerned.
- (2) That the EU allows for a member state to leave the EU 'in accordance with its own constitutional requirements' as per article 50, without consulting the other member states or their populations.
- (3) That we have freedom of movement in the EU and that EU citizens living in the UK at the time of the referendum had acquired rights that EU citizens outside the UK had not.

On the other hand, the weak link that the ASP sees between presence, attachment to the political community and citizenship rights and obligations fails to acknowledge that people move in different capacities. For instance, some citizens will have spent their holidays in the UK on 23 June 2016 and as such were subject to British law on that day. Yet, that should not have entitled them to a vote. The same can be said of short-term guest workers, who by definition will have left long before any of the consequences of the vote will materialise, as well as potential future migrants who have not yet become residents in the UK and so have no acquired rights. By contrast, EU citizens residing in the UK are directly and strongly affected by the decision, particularly in the case of a leave vote. Many of them came and settled because of free movement entitlements within the EU. As a result, they should have been included in the franchise.

Turning to the empirical assessment, the franchise for the 2016 referendum on UK membership of the European Union was defined in the European Union Referendum Act 2015. People eligible to vote had to be over 18 years old, and at least one of the following: a British or Irish citizen resident in the UK; a qualifying Commonwealth citizen; a British citizen who is a service voter or overseas voter (British citizens can register as overseas voters up to 15 years after leaving the UK); a Member of the House of Lords; or an Irish or Commonwealth citizen who would be entitled to vote in European elections in Gibraltar. This definition of the franchise is based on the stakeholder account with some additional provisions stemming from the UK's colonial past.

The exclusion of around 2.15 million adult EU citizens resident in the UK, most of whom pay taxes in the UK, does not appear justified (Low 2017), nor does the exclusion of those 1.3 million British citizens living in the EU but outside UK territory. Indeed, some of those 'most likely to be strongly affected by the decision ... were precisely those deprived of a voice' (Shaw 2017: 567). The exclusion of these groups of citizens seems all the more questionable given the citizens of Malta, Cyprus and Ireland who resided in the UK were eligible to vote. Their eligibility arose not from their status as EU citizens, but rather from the fact that these states are members of the Commonwealth. However, article 18 of the Treaty on the Functioning of the European Union stipulates that 'any discrimination on grounds of nationality shall be prohibited', and such discrimination seems precisely to have been in place here.

Why was the franchise defined in the way it was? The House of Commons Library Briefing Paper 07212, published on 3 June 2015, told all Members of Parliament (MPs) and members of the House of Lords that the results of a referendum would not need to be implemented (Uberoi 2015: 25) and so would not be binding on Parliament or government, a point which was repeated by the Minister for Europe later the same month. This was 'the reason given for not extending the franchise appropriately' (Grayling 2017: 190). In a situation, where Prime Minister Cameron sought to appease the Eurosceptic part of his own party, did not think he would lose the referendum (see Shipman 2016) and where the referendum result was only going to be advisory, Cameron thought it acceptable to let the Eurosceptics in his party define the franchise and exclude important parts of the citizenry who would probably have overwhelmingly voted 'remain'. As I noted above, 'any referendum result will have been influenced by the design of political community' (Shaw 2017: 560), and the present one was certainly shaped by the absence of the vote of EU citizens living in the UK.

In sum, I have shown that not all relevant parties could see their views and interests represented with equal concern and respect, and the franchise was therefore not defined in a legitimate way. As a result, the input legitimacy of the process suffered.

### *The Presence of Clarity*

The next criterion of democratic participation implies that for all the concerned parties to be able to form a view on the decision that represents their interests, it is crucial that there is clarity about the question being asked and what is at stake in how it is answered. In our case, this means that not only the question to be asked in the referendum needs to be clear (LeDuc 2015: 141), but also what follows from either answer to the question (Renwick, Palese and Sargeant 2018: 546). Clarity only exists, therefore, when 'the various sides of an argument are well known and well established in the public discourse' (LeDuc 2015: 142-143). If asked to tick a box without knowledge of what each option represents, one is not casting a meaningful vote. Indeed, these principles are also laid out by the British Electoral Commission: 'Informed voters are fundamental to a well-run referendum, and this means that those eligible to vote ... should be able to understand the referendum question, the possible outcomes and the campaign arguments' (Electoral Commission 2016: 37). Clarity of the question as well as the implications of either choice is a crucial precondition for a meaningful debate during the campaign as well as a meaningful vote.

Turning to the empirical assessment, the referendum question read ‘Should the United Kingdom remain a member of the European Union or leave the European Union?’ The question as such is very clear. The trouble is that ‘Remain’ or ‘Leave’ never were *just* one option. For instance, ‘Leave’ is a term for a number of alternatives, such as staying in the single market and/or the customs union, or adopting Norway, Canada or World Trade Organization style frameworks, and so on. Once we look at the different ‘Leave’ options, we see that a majority for ‘Leave’ does not express the will of the people in respect of any one of those alternatives. Research from the Electoral Commission has found that 45 per cent of polled people found it ‘difficult to access information about what would happen in the event of a Leave vote’ whereas 41 per cent found this easy (Electoral Commission 2016: 44). These numbers suggest that the public was deprived of clarity about what would happen in the case of a ‘Leave’ vote, thereby rendering a meaningful vote difficult. Let me illustrate this point with a different example.

Imagine 40 per cent of the population is vegetarian, 30 per cent loves pork but abhors beef, and the remaining 30 per cent love beef but cannot eat pork. A vote on the question ‘who wants to eat meat tonight?’ could yield a 60 per cent majority. Yet both the pork and the beef options are rejected by 70 per cent of the population. The reason is simple: ‘meat’ is not actually a real option. ‘Meat’ means something different to different voters, and the 60 per cent majority in favour of ‘meat’ is the sum of mutually incompatible beef and pork eaters. To make things worse, any skilled politician can evade criticism of the ‘meat’ option by switching from one definition to the other as convenient.

Having more than two options for voters to choose from arguably comes with its own problems (Weale 1999: 132-137). Nevertheless, transferred to the 2016 EU referendum, the binary choice and the vagueness of the ‘Leave’ option in particular allowed its campaign to cast the widest net of all, encouraging each voter to keep their most favourable version of Brexit in mind, however far that may be from reality. It allowed proponents of hard and soft Brexit, free-market fundamentalists and protectionists, open-door internationalists and xenophobes to all add their votes together (Grayling 2017: 194), creating a coalition of incompatible voters. One might object that at a higher level of aggregation, most ‘Leave’ voters agreed with the slogan of ‘taking back control’ so as to achieve fuller sovereignty somehow and also be able to control borders. However, this ‘agreement’ rested by and large on a false knowledge of the status ante quo and/or false expectations as to what might be achievable in terms of sovereignty and border control post Brexit and/or different degrees to which voters agreed to the slogan as well as the type of policy they would like to see implemented post Brexit. Consequently, most ‘Leave’ voters would not be able to get the Brexit they thought they voted for.

In sum, the question posed by the referendum was not answerable because the implications of ‘Leave’ in particular were unclear, and the different alternatives were not sufficiently specified (Renwick, Palese and Sargeant 2018: 546; Allen 2018: 110). Whilst there was a (slight) majority for some version of ‘Leave’, we do not know the real preferences of those who voted ‘Leave’. In other words, the referendum hid the different preferences that underline ‘Leave’. As a result, the democratic legitimacy of the process was harmed.

### ***The Amount and Quality of Information***

The third criterion relates to the amount and quality of information needed for a legitimate process. A precondition for a fair and impartial process during which both sides can produce similar amounts of information is that spending in the campaign be regulated so as to ensure that neither side overspends and has similar chances to put their arguments forward. It is furthermore important that the information be circulated even-handedly, ensuring voters receive information from both sides and can make an informed decision. The media has a crucial part to play in assuring that information is reported in a balanced way and that the arguments of both sides are made available to the public. However,

information needs not only to be available, it must also be of sufficiently high quality to be deemed 'accurate, impartial, accessible to as many people as possible, and relevant to people's concerns' (Renwick, Palese and Sargeant 2018: 549). For voters to make a free and reasoned choice, trustworthy information should be readily available to them. If their choice is based on deceit or misinformation, they cannot be sure of voting in a manner that best serves their own interests. Furthermore, their capacity to hold office holders and campaigners to account will be reduced.

Turning to the empirical assessment, let us first see whether both sides of the campaign had access to similar amounts of funding. Campaigners were 'subject to the PPERA [The Political Parties, Elections and Referendums Act 2000] regulatory framework which places limitations on spending by campaigners and provides transparency about sources of funding' (Electoral Commission 2016: 9). For each campaigner, regulation foresaw a spending limit of £7 million. Altogether, Remain campaigns collectively spent £19,309,588 whereas Leave campaigns spent £13,332,569 (Electoral Commission, n.d.), making for the most expensive referendum campaign in British history. Remain thus outspent Leave by almost £6 million, which is a considerable imbalance. However, the officially designated Leave campaign, Vote Leave, fronted by Boris Johnson and Michael Gove, was fined £61,000 in July 2018 for breaches of electoral law during the referendum. It exceeded its £7 million spending limit by almost £500,000 by funnelling £675,315 through pro-Brexit youth group BeLeave (Electoral Commission 2018). The over-spent cash went into online advertising, targeting people based on individual psychological profiles. According to evidence heard by the House of Commons Digital, Culture, Media and Sport Committee in March 2018, those profiles were built through Facebook and other data, without consent or knowledge of voters. The profiles were first sold to Cambridge Analytica LLC and then to a Canadian corporation, Aggregate IQ Ltd, hired by Vote Leave to target UK voters (Rawlinson 2018). It is impossible to know how much this overspending affected the referendum result, though Vote Leave campaign director Dominic Cummings said, in a quote since removed from the Aggregate IQ website 'We couldn't have done it without them' (Cadwalladr 2018). What we do know is that electoral law was breached, which decreases the democratic legitimacy of the process, though it did not seem to impress the government.

With regard to the amount of information, voters had access to a multitude of sources of information, both online and offline. Online sources consist of the websites of media, government bodies, academia, think tanks and social media. Offline sources consist of printed media, television, political events and peers. Though it is fairly safe to assume that the average voter will not explore all of these sources to inform themselves, it is also fair to assume that taken together, these different sources produced a good amount of information. However, as mentioned above, voters perhaps did not necessarily get all the relevant information, as indicated by research that shows that the media mostly focused on three issues only: the conduct of the campaign, the economy and immigration (Deacon, Harmer, Downey, Stayer, et al. 2016: 3). Indeed, when asked, 84 per cent of respondents said that they knew 'a great deal' (34 per cent) or 'a fair amount' (50 per cent) about what the referendum was for (Electoral Commission 2016: 44). However, when respondents were asked whether they had enough information to be able to make an informed decision, only 62 per cent agreed whereas 28 per cent disagreed (Electoral Commission 2016: 45). Likewise, it is telling that it was on the day after the referendum (not before) that the search phrase 'what is the EU' spiked on Google (Fung 2016).

This brings us to the quality of information. According to a poll by the Electoral Reform Society, one week before the referendum 33 per cent said they were well or very well informed, whereas 28 per cent said they were poorly or very poorly informed one week before the referendum (Brett 2016). These are low levels of informedness, which indicate that the quality of the information was questionable. Indeed, the campaign was plagued by little lies, half-truths and misinformation (Renwick, Palese and Sargeant 2018: 546). The most prominent example of this was the £350 million a week figure that the Leave campaign and many of its prominent supporters, including Boris Johnson,



suggested would go to the NHS once the UK left the EU. It has become clear since that this will not happen. By way of another example, a key theme of the Leave campaign was the idea of ‘taking back control’ and restoring a classic notion of Parliamentary sovereignty. This slogan was based on a false characterisation of the pooling of sovereignty that membership of the EU involves. Whilst it is true that the Court of Justice of the European Union can de facto overrule national courts and national Parliaments, it is also true that Parliament had previously *decided* to give away some of its ‘sovereignty’ to the EU, because it was of the view that within a globalising world it is necessary to sign up to international treaties, not least with immediate geographic neighbours. On the other side, the Remain campaign repeatedly used unverified numbers to support the idea of an economic breakdown in the case of the UK exiting the EU. In sum, both sides of the campaign were not wholly honest to voters.

As a result, only 34 per cent of the respondents in post-referendum research agreed with the statement that the conduct of the campaigns was fair and balanced, with a mere 12 per cent agreeing strongly (Electoral Commission 2016: 47). The main reasons given for the negative view were that the campaign was ‘one-sided / unbalanced / biased / partial’ (31 per cent) and the information was ‘inaccurate and misleading’ (31 per cent) (Electoral Commission 2016: 47). Indeed, supporters of both sides of the campaign have acknowledged that ‘truth was badly compromised in much of the campaign’ (Low 2017), so much that nearly half of all voters (46 per cent) thought politicians from both sides were ‘mostly telling lies’ (Brett 2016). It is not surprising, therefore, that voters increasingly turned towards social media, family and peers as sources of information and confirmation (Brett 2016).

To some extent, the media is to blame for the poor quality of information. The media continue to be an important source of information for the public, and it is their responsibility to inform and educate in an unbiased way. It has been suggested that the media did not do enough to retract lies, misinformation or unsubstantiated insinuations (Seaton 2016). Even the BBC has seen itself confronted with criticism for treating all arguments ‘as of equal value, giving equal airtime to unequal arguments’ (Parker, George and Bulmer 2017: 7). As a result, the arguments that were presented in debates often were unbalanced and not fact-checked, leaving half-truths unexplored and insufficiently countered (Seaton 2016: 335-336).

Some might say that all the information was available, not least through fact-checking provided by the BBC and *The Guardian*, but people simply did not want to know or listen (Bellamy 2019). However, the average citizen will not go to EU websites (or even the BBC) to find out whether a claim made by either side of the campaign is true or not. Citizens depend on party actors and the media to give them cues, also in regard to European integration (Hobolt and de Vries 2016: 422). To some extent, they do not even go as far as that and instead rely on peers in their echo chambers, though again cues there will have more often than not originated in some media outlet, and will often revolve around what some politician has said. Therefore, what party actors and the media offer in terms of information is highly important, though it is also true that many citizens are active carriers of misinformation (Kuklinski, Quirk, Jerit, Schwieder, et al. 2000) and will not change their view regardless of what information is passed on to them (Flynn, Nyhan and Reifler 2017). For example, there are well-established discrepancies between public perceptions of immigration levels in the UK and the statistical realities (Duffy and Frere-Smith 2014).

In sum, the assessment of this criterion is mixed. Taken together, Remain campaigns spent more than Leave campaigns, whilst the official Vote Leave campaign was found to have overspent and targeted voters in an inappropriate way. Information was available on both sides of the campaign, though it did not cover all relevant aspects by any means, and additionally was often misleading. Overall, it is fair to say that the democratic process was harmed by breaches of electoral law as well as the half-truths and misinformation involved.

### *The Quality of Public Debate*

The last criterion concerns the quality of public debate. Public debate is crucial so that arguments can be exchanged, defended and weighed against one another. Public debate should be organised around alternative conceptions of the public good. It is where information, views, arguments and counter arguments on relevant issues ideally are expressed and tested as well as channelled into policymaking. As such, it serves different purposes. Public debates can act as processes that convey information. Given no individual alone possesses all the relevant information about any given policy, sharing information in public debates is important. Likewise, the different views that actors hold are rarely if ever known by the wider public, rendering a public sphere and debate where they can become known essential. Public debate reveals issues that are of significance for the whole society and contributes to the solution of problems. Furthermore, public debate should feed into parliamentary debates as well as government policies. If there is no public debate, then the link between society and government and state is weakened and democracy becomes elitist. Public debates also help to hold MPs and administrations to account. It is through these different functions that public debate contributes to democratic legitimacy (Habermas 1962). These days, public debate takes place mostly through the mass media, but also increasingly through social media, as well as public meetings, which indicates that there are different forums with different publics, rendering it more difficult to realise the above described ideals. Therefore, both the media and the political actors involved have a responsibility for the quality of public debate, the former because they provide the forum where debates occur, and the latter because they are the subjects of the debate.

Turning to the empirical assessment, did the media make arguments from both sides equally available to the public? It is possible to claim that *overall*, one could find different arguments in the media. However, there are two caveats.

First, whereas in broadsheet newspapers one could find arguments both in favour and against staying in the EU, the arguments put forward in tabloids were much more unidirectional and less balanced. As a result, the audience of the pro-Leave tabloids was mostly exposed to one-sided, Eurosceptic arguments. Second, of the nine main national daily newspapers, five supported the Leave campaign. These were the *Sun*, *Daily Express*, *Daily Star*, *Daily Mail*, and *Daily Telegraph*. Three newspapers were mostly pro-Remain: *The Guardian*, *Daily Mirror*, and the *Financial Times*. Of these only the *Mirror* has a circulation that compares with that of the Leave newspapers. The other main national daily, *The Times*, adopted a more or less neutral position (Levi, Aslan and Bironzo 2016). As a result, 80 per cent of people who regularly bought a daily newspaper bought a title favouring Leave (Levi, Aslan and Bironzo 2016), implying that the Eurosceptic discourse of the main tabloids reached a much larger audience. The combined effect of these two factors, the unidirectional reporting of the tabloids and their wider reach, was that 48 per cent of all referendum-focused articles were pro-Leave and just 22 per cent pro-Remain (Levi, Aslan and Bironzo 2016; Deacon, Harmer, Downey, Stayer, et al. 2016). This is perhaps unsurprising given that most British tabloids have run a campaign against the EU for several decades (Daddow 2012). Indeed, research by *The Economist* (2016) found that the British press 'has a long and well-observed tradition of fabricating facts about Europe'.

When looking at the quality of the public debate, we also need to look at the role of political leaders. Did they debate their opposing arguments in public? This happened to some degree in televised debates and when prominent representatives of either side made public speeches. However, politicians mostly put forward an argument about the advantages of their respective perspectives (or, with the Remain campaign, the disadvantages of leaving the EU) without directly engaging with each other's arguments or the 'facts' that the other side used. Instead, we witnessed a cherry-picking of numbers and arguments depending on which perspective was adopted. Two prominent examples illustrate this point. The first is the question of whether or not the UK can manage the scale of immigration into its territory while a member of the EU. Leave suggested it cannot and that being a

member of the EU meant signing up to the principle of free movement for EU nationals. Whilst this is correct, it missed the point that migration to the UK is more than just intra-EU migration. 'Remain' in turn said that if the government chose to, the UK would be able to turn EU nationals away for reasons of public security or health. Whilst this is also correct, it did not really engage with the argument put forward by the Leave side. The second example concerns the amount of legislation coming from Brussels. 'Leave' claimed that up to 60 per cent of all the UK's laws are made in Brussels whereas 'Remain' suggested that the number is closer to 13 per cent. Interestingly, both sides got their numbers from the same source (Miller 2010), and both claims were equally correct. It all depends on what is included in the definition of EU law. The estimates at the higher end of the spectrum included EU rules that are not laws in a meaningful sense, such as administrative decisions, and regulations that are not relevant to the UK. However, this difference was not explained to the public, and arguments were not properly discussed.

Another feature of the debate was the disdain for expertise that some of the actors displayed. Infamously, Michael Gove, co-chair of the Vote Leave campaign, when asked to name a single independent economic authority who thought Brexit was a good idea, replied 'I think people in this country have had enough of experts', and that he would side with 'the British people' instead. This fits with a political climate where those involved in public debates increasingly challenge conventional standards of evidence (Levandowski, Ecker and Cook 2017) and instead focus more on the emotional bases of policymaking (Siles-Brügge 2019), even if the overwhelming majority of publicly available evidence backs the facts. It echoes a general development towards increasing relativism towards facts (Mooney and Kirshenbaum 2009; Mohammad 2012), where sentiments rather than scientific evidence are increasingly accepted as common currency, while 'facts' are disputed and 'experts' are derided. It is a backlash against the paradigm of 'evidence-based policy', which since the 1990s served as a means of 'technocratic repression' (Widmaier 2010; Siles-Brügge 2019: 23) in an allegedly post-ideological age that had no regards for the felt experiences of citizens.

Let us sum up. The first criterion, the definition of the franchise so as to include all who are permanently subject to British law on British territory and over 16, was not met. The second criterion, the presence of clarity, was met half-way. Whereas the referendum question itself was clear, the particular implications of 'Leave' were anything but. As a result, it was difficult, if not impossible, to make an 'informed decision'. The third criterion was the amount and quality of information. There was a sufficient amount of information which was accessible to many people. However, it was not always accurate. Instead, voters were exposed to a series of half-truths and misinformation, and print media was largely biased in favour of Leave. As regards the fourth and final criterion, public debate, different arguments were made both by politicians and by the media. However, the quality of the debate was poor because there was a cherry-picking of arguments, these arguments were not discussed against each other but in isolation, and some politicians rejected scientific expertise altogether.

## CONCLUSION

In this contribution, I have looked at the democratic legitimacy of the British EU referendum in 2016. I have suggested that its input legitimacy depends on four normative criteria, namely the franchise, presence of clarity, amount and quality of information, and the quality of public debate. The empirical analysis of these criteria showed that the referendum fell short of the first two whilst it could have done better for the latter two. In light of this, the referendum failed to meet the expectations of input legitimacy as defined in the context of this contribution.

One might ask whether the criteria put forward in this contribution are not too stringent. After all, we do not suggest that general elections are illegitimate if the foregoing campaigns included misinformation. Whilst this is a fair objection, we need to recognise there are important differences

between general elections and one-off referendums that aim to strengthen the democratic legitimacy of political systems. If elected politicians hand over very important decisions to voters, then this comes with an even greater responsibility on their part to stay truthful and not seek to manipulate the electorate. However, elected politicians have less of an incentive to remain truthful in referendum campaigns compared to general elections. This is because referendums are one-off events and politicians do not stand to lose office if their recommendations and discourse prove to be flawed or false. In the present case, this argument weighs particularly heavily since leaving the EU will shut the door to renewed British EU membership for the foreseeable future whilst having a considerable, and probably negative, impact on the economy in the short to medium term (Tetlow and Stojanovic 2018). In other words, the fact that elected politicians cannot be held to account by voters after the ballot increases the need for them to act in ways consistent with stringent criteria, such as those proposed here. This point is reinforced by the fact that the referendum was interpreted as politically binding after the fact, whereas it only enjoyed advisory status legally, and that a number of relevant decisions, for example regarding the franchise, had been taken due to the referendum's advisory status.

Handing over very important decisions to voters also places greater responsibilities and obligations on the electorate, not least the obligation to inform itself more and better than it would do in the context of general elections. In representative democracy, voters are normally content to delegate the responsibility to govern and steer to those elected politicians who, in turn, are happy to make it their full-time job and as a result have access to more information on specific policies than the average voter. However, in forms of direct democracy such as referendums, this duty to be informed and act responsibly lies with both elected politicians, who have decided to hand over a decision to voters, and the voters themselves. It is difficult to see how such a democratic process could claim legitimacy if both sides did not accept their responsibilities.

This assessment of the input legitimacy of the recent EU referendum points to a number of lessons. The first, and single most important, lesson is that governments should not call referendums if they cannot be very clear about what each option on the ballot paper involves. Cameron's commitment to a referendum did not come from a careful analysis of what an EU membership referendum would involve, what the implications of a 'Leave' vote might be and how leaving the EU could be implemented. Instead, he sought to appease backbenchers within his own party and prioritised winning the next general elections (Renwick, Palese and Sargeant 2018: 546). The consequences of holding a referendum on as important a question without it having been clear from the start what 'Leave' would mean can be observed in British politics ever since. Not only has the country been divided since the vote, but also MPs as well as the government struggle to know what type of Brexit they should deliver, if any, to the point that leaving the EU without any deal remains a possibility as late as summer 2019. In sum, 'a referendum is a mechanism for deciding between two options. It is not in itself a mechanism through which the form of those options can be developed' (Renwick, Palese and Sargeant 2018: 547).

The second lesson regards the campaign, where it might be worthwhile considering using deliberative forums such as citizens assemblies more. In a political environment in which the media landscape is as polarised and ideological about an issue as the British tabloids are about the EU, and where citizens mistrust politicians to a high degree, it is worth experimenting more with forms of citizen education and enabling. Though only ever a few voters can participate in these forums, their results can be made broadly available, and might be trusted more by peers than distant media or politicians. Positive experiences have been made with citizen assemblies prior to the second Irish referendum on the Lisbon Treaty, and they have also begun to enter the British debate about how to surpass the political deadlock in Westminster.

The third lesson concerns referendums in general, and in particular in democracies where they are used rarely. In such cases they should be complementary to representative democracy and not a

substitute for it. In the present case, Cameron's decision to hold a referendum on EU membership was driven by party-political goals. Instead, it should have been embedded in a discussion process in Parliament where government and opposition parties could have debated the problems they saw and how they might best be addressed, as well as which options should be put to the voter, if any.

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