

# How a referendum might actually support democracy

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*A fight has been raging since Brexit over whether the people's will has expressed itself; and if it has, what did it say? **Davina Cooper** explores how a referendum might actually help to support a democracy*

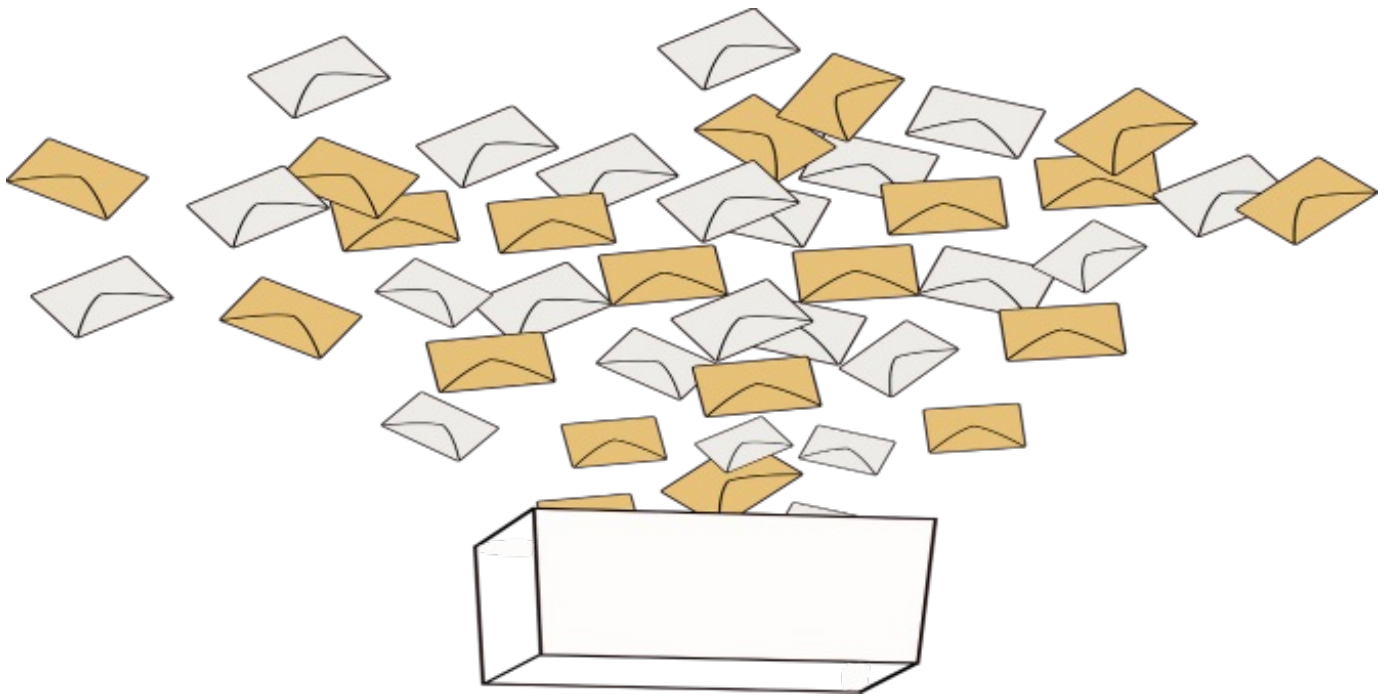


With Brexit now in the face of a [high court judgment](#) placing parliament very clearly before the royal prerogative, the right-wing media insist the people have already spoken. Like the tablets brought down from Mount Sinai, the law has been written and politicians must defer to its will. Labour politicians too, such as [Hilary Benn](#), emphasise that the “British people have made their decision”.

Certainly there has been no shortage of counter-arguments claiming the referendum was purely advisory; the majority in favour of leaving slim; and that, since the summer election, a significant number of “outers” or [non-voters](#) have clarified or changed position. These counter-arguments are important, but what has tended to get neglected in this conflict is a more fundamental problem, and that is the nature of the referendum itself.

What does it say about the level of respect shown towards popular or direct democracy that in a referendum, ostensibly concerned with some of the most important matters a society is facing (and we can debate whether or not this is true), people vote *once* with no requirement on them to contribute to or help shape political debate? Parliament does not pass laws in this way. New legislation is voted on multiple times across two Houses, with usually extensive debate, committee revisions, and a background of reports and enquiries. In the course of readings in the Commons and Lords, the law evolves and changes. While much may be wrong with the parliamentary system, including the content of many laws, what would it be like if the government routinely introduced Bills once, if success or defeat in Parliament depended on a single vote without any structured deliberation?

In other decision-making contexts involving randomly-selected members of the public, discussion and deliberation also take a structured form. The jury system, with which the Brexit referendum is tacitly analogised given the repeat references to the public's “verdict”, combines extensive discussion with regular polls as juries collectively test the water to identify levels of dissent and how close they have got to unanimity or a sufficient majority.



If new legislation and decisions about criminal guilt are subject to debate and multiple votes, why are fundamental constitutional decisions reduced to a single sporting match which one team must win? (Even in many sports, victory depends on several repeat games being played).

But what else is possible? Could a referenda process be developed in which voting was just part of a more complex deliberative system? Going beyond calls for better, more impartial information, or encouraging people to properly discuss the issues (although the proposals of the [Electoral Reform Society](#) are very timely), what formal referendum structures might enable people to become *actively* engaged, not simply as a way of helping them come to better informed decisions, but on the basis that active engagement is absolutely necessary to creating legitimate meaningful outcomes?

Political forms are far from perfect. They reflect existing biases; can produce lousy outcomes and are likely to sustain existing inequalities (even with measures to undercut this). Getting them “right” shouldn’t become the primary focus of left politics; nor should more participatory political structures be treated as a means of corralling and quietening dissent. At the same time, what stands out so sharply in Brexit, and so calls for redress, is the gossamer thin respect actually displayed towards public political engagement.

What could popular participation look like? Scaled up to the national level, this is hard to envisage, but several countries are experimenting with larger-scale forms of deliberative democracy, often involving random selection of participants, with social media a means of getting feedback and opinion from wider publics also. Iceland and Ecuador both have recently used creative democratic forms, with varying degrees of success, to develop new national constitutions.

Could we imagine a referendum process in Britain where, for instance, randomly selected local panels (with municipal representatives perhaps also) met in each constituency to discuss the questions to be posed by the referendum – able to call witnesses, take advice from “experts”, along the lines of an inquiry, and so feed into the legislative process through which a referendum bill is formulated? Once a referendum is called, should two votes be held? An initial national vote (that would perhaps have to contribute to the final decision to reduce “gaming”) to provide context and direction for further panel deliberations. A final vote that could involve a single transferable preference (or ranking system) assuming deliberative referendum pose questions more complex than in or out. In between, local panels might produce discussion papers on the issues in conditions where local media are legally obliged to provide coverage; and where national media engage with the diversity of local deliberations.

Imagining and designing alternative systems, and making explicit what they can accomplish (is the decision final or advisory; what other bodies now need to act?), is about taking popular democracy seriously – treating the democratic rhetoric we witnessed around the Brexit referendum as if it was truly meant. It is about investing resources and creating structures so people have some chance of properly considering the issues before them. The notion that it is too expensive or cumbersome seems absurd in the light of the costs and complexity of unraveling or re-forming Britain's relationship to the rest of Europe. The notion that people are not capable of inquiring into the issues makes a mockery of jury trials, where someone's future depends on a jury's capacity and readiness to sift through often complex evidence; it also makes a mockery of the decision to call a referendum at all. If people cannot understand the issues, why are they being asked to make such a fundamental decision?

The [LSE project](#) to crowdsource a constitution showed how involving people in political processes is educative. Too often people are treated as passive consumers of political expertise by others. But, as the fall-out of Brexit has revealed, not only is it dangerous and wrong to treat wider publics as fodder, but public displays of professional expertise also can show a startling lack of it.

Would a more active version of popular democracy have generated a better understanding of Brexit's implications? Or would it simply have spread the best understandings of the time more widely? While impossible to know, having non-professionals asking unexpected questions, off the politicians' beaten track, in conditions where they are charged with holding local inquiries and producing discussion papers, may have brought certain ambiguities, omissions and complexities to light. But even if it didn't, it would go some way to *creating* a more politically active population, attentive to the responsibility involved in making political decisions.

The referendum structure we currently have minimises that responsibility with its 'winner-takes-all' yes/ no structure. Little is asked of voters except to vote; they have no capacity to respond to the questions asked, or to collectively carry the weight of the decision made. Their required participation lasts no longer than the time it takes to mark an X in a box, a mode of involvement in which their relationship to the public decision being taken is an entirely individualised and unaccountable one. Right-wing talk about the people's will suggests a unitary force has emerged, but this is a will with no agentic power (except for the residual fear that thwarting its fictive speech-act will lead to an explosion of violence as commentators and politicians, such as UKIP's [Nigel Farage](#), now warn).

Treating constitutional politics as if it were a rough sport, in which a bad umpire's call leaves spectators with no mode of involvement but to invade the pitch in order to punch and kick each other, shows a deep lack of belief in the political potential of citizenship.

Far from revealing, and even less *developing*, the so-called will of the people (a will which must always be fractured and plural), our current referendum structure green-lights the government's will (or at least those parts able to deploy the referendum result for their own aims). Voting against the status quo, as the thinnest of political acts, gives the government permission to pursue the settlement they want in a context where withdrawal is of course far from withdrawal but instead the basis of a new form of relationship.

The court, for now, has redirected this power to re-settle to Parliament. While it is unclear how MPs will respond, the crisis this referendum has precipitated *could* provide the impetus to revisit the referendum system. While calls for a second or final referendum vote are appealing for those opposed to leaving the EU, in the absence of more sustained thinking about referendum reform, they feed into a rhetoric of "poor sports" or "petulant children", of losers demanding a replay. The question is: can more democratic and meaningful forms of direct popular democracy be created; and what can Britain learn from other national attempts to do just this?

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**About the author**

**Davina Cooper** is professor of Law & Political Theory at the University of Kent whose work focuses on concepts, spaces of governance, and radical or dissident politics. Her most recent book, *Everyday Utopias: The Conceptual Life of Promising Spaces* (Duke University Press (2014)), was awarded the Charles Taylor prize for interpretive methodologies in 2015. Her current book project, also for Duke, focuses on reimagining the state for progressive politics. Having been a locally elected politician and magistrate, at the heart of her research is the cross-over between political practice and transformative academic methodologies.

