

Ken Clark's *daft opinion poll* comment is about more than just Brexit

Frances Cowell
October, 2018

Its about democracy itself.

In a recent interview on the BBC's Newsnight programme, former chancellor Ken Clark referred to the 2016 EU referendum as a "daft opinion poll".

Many people who voted for Brexit are understandably cross that their vote could be overridden by a second referendum. But their arguments are refutable. The most frequent, that the result of the first Brexit referendum should be respected, seems fair enough. But by that logic, the result of the vote in 1975 in which a majority of votes was to remain in the EC, as it was then, should stand.

Leaving aside the practicalities of holding a third Brexit referendum, there is a case for allowing people to change their minds as circumstances demand. Although the circumstances of Brexit have not changed since the 2016 vote, they have become much clearer, and many people have changed their minds in response. If the 1975 result can be overturned, why not the 2016 one?

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Now the argument seems to shift to: What is a decent interval between votes? We have precedent here. In a 2009 referendum marred by an intensive mis-information campaign, Irish voters initially rejected the EU Lisbon Treaty, before ratifying it four months - and a clearer presentation of the facts - later. Had voters taken the view that the second plebiscite was an affront to the first, they surely would have repeated the earlier result. But they didn't, suggesting that there was indeed good reason to ask them a second time. What is a reasonable minimum interval? There isn't one.

In fact, voters frequently change their minds in short order: look at the UK general election results of 2015 and 2017. But that is to compare apples and pears, which we should avoid doing: a vote to change the tenant of Number 10 is one thing; a vote to change the constitution and strip the population of a big chunk of its rights is quite another.

Britons are proud of their mostly make-it-up-as-you-go constitution, and indeed this formula is in many respects formidable. Its appeal is that it has few hard-coded diktats. One is the sovereignty of Parliament, but the UK constitution is mute about what it takes to change it. So we seek guidance in other, similar democracies. Most demand some kind of super-majority of legislators or a clear majority of eligible voters, which is why constitutional changes are so rare. In parliamentary democracies similar to the UK, anything less than a clear majority of eligible voters renders a referendum result merely consultative and the Parliament can choose to

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ignore it. Indeed, in a representative democracy such as Britain, the Parliament has a duty to overrule a consultative result that works against the country's interests. This is an important point that we'll return to in a moment.

First for some arithmetic. The 2016 referendum did not result in 52% of the electorate voting to leave the EU. In a 72% turnout, just under 52% of votes were for Leave. That is, 37.5% (52% x 72%) of eligible voters: a small proportion for such a big decision. How the 28% would have voted is debatable, but one suspects that those who had thought about it assumed that Remain was a foregone conclusion so they may have attended to other Thursday evening imperatives as shopping for family necessities. Its not unreasonable to suppose that, for most people, the status quo is de-facto the default option.

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Most seasoned politicians think referenda a bad idea. A few moments' thought and you can understand why. Direct democracy, where a country is governed by direct voting in referenda, has been tried in a number of places. In Switzerland, for example, it seems to work well. The population of Switzerland is nine million people and relatively homogeneous. By contrast, with a highly diverse population of 40 million people, direct democracy made California nearly un-governable, as the electorate voted for incompatible laws, such as to increase spending while lowering taxes, leaving an untenable hole in the budget. Britain has 66 million people and is also very diverse, so the likelihood of success for direct democracy there would therefore have to be poor.

The other sort of democracy is representative democracy, whereby voters vote for people to represent them in a parliament or congress. Most modern democracies work this way. When working properly, elected representatives use the - often privileged - information they have at their disposal to vote in their constituents' interests. If voters are dissatisfied with their representative they have the opportunity from time to time to throw him or her out.

Thus, were the Parliament functioning properly, a second referendum would be not only unnecessary, but quite daft. But as Ken Clark also points out, the Parliament is not functioning as it was intended to. Rather than use their judgment and information to make the best decisions, MPs seem to be slaves to their most vocal constituents, resulting in government by the noisiest.

We seem now to be in a no man's land between direct and representative democracy. Her Majesty's Loyal Opposition is serving as a cat's paw for the Brexit elite, while the Prime Minister, far from leading the country, is caught in a game of piggy-in-the-middle of Westminster and Brussels.

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In the absence of a functioning Parliament, perhaps the only way out of this wilderness is indeed to retrace our steps, rerun the referendum and, unless at least 50% of eligible voters vote to leave, treat both as the consultative plebiscites they are, stay in the EU - and get on with our lives.

This article was first published on EuropaUnited.eu in October, 2010. It can now be views in the archives of TheEuropeanNetwork.eu.