

The Case for A Written Constitution

This article is an attempt to explain why there has been very little discourse and open public disagreement about the relationship with the European Union, the other 27 members on the one hand and the country of Denmark on the other. Comparing this to what is now a full blown constitutional crisis within the UK. This despite Denmark sharing many of the reservations the British have about the EU, its institutions and the direction in which it is travelling.

I am building this explanation on my experience in political involvement in Denmark in the early 1970s and subsequently in the UK until the present day and as a keen follower of the debate about this relationship especially within the UK.

The early 1970s was a period of economic turmoil in Denmark, my country of birth. Unemployment and redundancies of which I became a victim shot to unprecedented levels and inflation stood at over 20%.

My parents had met in England and there had been a lot of English people coming and going in our family home. Furthermore I had a qualification in Town & Country Planning of which England is supposed to be the country of origin. So the decision to move to the UK was fairly easy.

However, while still in Denmark I took an active part in the campaign to keep that country out of what was then the European Economic Community (EEC). The view of myself and my fellow campaigners was that the EEC primarily was formed as an operating platform for big companies from big countries with ambitions for expansion and assimilation of smaller companies from smaller countries.

It was also a strongly held view that the EEC as well as its successor the European Union (EU) has a significant democratic deficit, confirmed by the limited powers of the European Parliament, the complicated procedures for the appointment of the Commission and its president and the Commission's extensive powers. However virtuous the qualities of Messrs Barnier, Juncker and Tusk may be, it is difficult to think of them as anything other than faceless bureaucrats.

More recently the agreement Germany has entered into with Russia for a gas pipeline through the Baltic Sea despite opposition from all other member states make any solidarity within EU seem very brittle.

Some also hold the view that the inclusion of the Eastern European countries in the organisation has more to do with keeping Russia out of Western Europe rather than building a union for peaceful, stable cooperation across the European continent. Is that the kind of organisation we wish to be part of?

Arriving in Britain I followed with interest the debate that led up to the referendum in 1975. I was particularly fascinated by the change in the opinion polls that took place once the question to be asked in the referendum was published.

Up until that point there had been a consistent negative response to questions of support for the EEC, but when the question – “Do you think that the United Kingdom should stay in the European Community (the Common Market)?” - was published,

the response changed to a consistent positive “Yes” and it stayed that way until shortly before the referendum in 2016.

Unfortunately the UK electorate has not been consulted on any other treaties to develop the European Union.

Prime Minister Gordon Brown's decision to reject a referendum on the new European Union Reform Treaty (Treaty of Lisbon) on the grounds that it was ‘only’ dealing with “technical” matters and therefore not important enough to merit a referendum is a case in point. This despite having promised a referendum in the 2005 general election manifesto.

On the part of the British political establishment one sense a reluctance to embrace the use of referendums. They can be unpredictable and they are seen as a sign of weakness and indecisiveness.

The failure to include the general population directly in the development of the relationship with the EU and the other 27 countries is undoubtedly seen as a sign that the political establishment do not trust the electorate. It further contributes to a feeling that the electorate have been misled. What was believed to be purely an economic and trade arrangement is behind our backs being developed into a full scale political union leading to a United States of Europe. Contributing to these feelings has been the fact that the British media rarely report on EU matters.

With regard to the relationship between the nation state and the EEC and subsequently the EU since the referendums in the early 1970s the situation in Denmark and the UK differs in some major respects.

Firstly since the referendum in Denmark on the 2nd of October 1972 there has been seven (7) subsequent referendums on various aspects of the development of the EU. Four of these resulted in a ‘Yes’ to closer cooperation, three resulted in a ‘No’, most famously the ‘No’ to the Maastricht treaty of 1992 which happened to coincide with Denmark winning the UEFA championship with a 2-0 win over Germany.

More and more populations all over the world demand to be included directly in the political decision making progress and the Danish electorate made their demand known in no uncertain terms. From the first beginning they have therefore been included in decisions to develop the relationship with the EU and the other member countries on several occasions. They cannot therefore legitimately claim to have been misled or that decisions on these matters were taken behind their back. Unlike the British electorate they have therefore been contented if not exactly happy.

The decision to hold a referendum had been taken already early in 1971 and straight away a national debate began, supported by generous grants from private and public organisations including the government. A lot of literature was produced some of which was of course naked propaganda designed to frighten people to vote ‘yes’ or ‘no’ to the question of whether to join the EEC. However, there was also a lot of genuine informative literature attempting to inform people of the background and reasoning for the standpoint of a particular political party, a trade union or some other organisation.

Prior to the UK referendum in 2016 I saw no attempt at a reasoned, objective informative campaign. It all seemed to me to be half-truths and wild guesses in some cases disguised as professional predictions and dominated by personalities whose sole aim was to further their own political ambition without any idea what might be in the national interest. For example there were wild claims as to how the UK would forge links with some of the world's biggest trading nations – USA, India, China, Brazil etc. – without any evidence as to whether these countries would be in agreement.

Another major difference between the situation in Denmark and the situation in the UK is that Denmark has a written constitution (Grundloven of 1953) which sets out strict criteria for what can and what cannot be subjected to a referendum. Sovereign powers can be surrendered to organisations such as the EU by act of parliament, but require a 5/6 (83%) majority in the parliament. If that cannot be achieved the proposal may be put to referendum.

The constitution sets out further detailed procedures that need to be followed to bring about the referendum.

The Danish constitution also assumes that the government has made a proposal which a proportion of the parliament wish to be put to a referendum. There is therefore both a legal and a political imperative when the issues are put before the electorate. The constitution also states that if the referendum results in a 'No' the government's proposal must be withdrawn forthwith. The question of whether the referendum is binding or advisory does therefore not arise.

Within the last half a century the UK has held two nationwide referendums concerning membership of the EEC in 1975 and subsequently the EU in 2016 and other referendums concerning parts of the UK such as home rule or even independence for Wales and Scotland. It seems to make strides towards setting the use of referendums on a firmer footing within the UK constitutional framework eg by getting the Political Parties, Elections and Referendum Act 2000 on the statute book.

Nevertheless each new referendum still requires its own primary legislation as did the 2016 referendum with the EU Referendum Act 2015. This is not a proposal in itself and it does not contain any prescriptions as to whether the outcome of the referendum would be binding or advisory. It is in reality merely an administrative tool that determines who can vote, and what the interested parties can spend and other such details. The political dimension is therefore ignored and has become separated from the legal imperative.

Legally the situation is that the UK does not have constitutional provisions which would require the results of a referendum to be implemented, unlike for example the Republic of Ireland.

However, many commentators and observers suggest that there is a political obligation for the government to implement the outcome of the referendum not least following the pronouncement in the information pamphlet issued before the referendum: "The Government will implement what you decide."

This flies in the face of the thinking of **Edmund Burke**, one of the fathers of British representative government: *"It is his (the MP's) duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But his unbiased opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living."* (Speech to the electors of Bristol, 1774.)

That an MP should sacrifice his or her own pleasures and prefer the electors' interest to his or her own, but at the same time use his/her own opinion, mature judgment and enlightened conscience whenever making decisions is an essential pillar of most if not all modern, parliamentary democracies including the British. However, it has not been written into any act of parliament or any other document, and the general populace is therefore in ignorance of this principle. So much so that at the time of writing this (16th of January) a member of the public was heard on TV telling an MP: "I want you to **abide** by the referendum."

By contrast paragraph 56 of the Danish constitution state unequivocally: "Members of Parliament are solely bound by their conscience and not by any dictat of their electors." No ambiguity here!

It seems to me that the long drawn out debacle leading up to the referendum in 2016 has suffered from one major problem that nowhere has a clear set of rules for holding referendums been drawn up. Without such rules clearly set out in writing there is no common reference point with generally agreed definitions such as what can be put to referendum, whether a referendum is binding or advisory, what the role of an MP is or should be and so on. Without these matters in writing every MP and every other interested person can form their own individual opinion and discussions will go on forever leading to strife, discourse and maybe unrest within the general population.

The British parliament, originating in the 13th century, is sometimes hailed as being the mother of all parliaments. However, like all mothers of that age it probably needs a thorough health check and a solid injection of 21st century thinking. It might have gone a long way to solve the present crisis and help prevent future crises of a similar nature.

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