

The Case for a Written Constitution

In the following article I seek 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.

I came to the UK in the autumn of 1974 and took up a position as statistician within a major city.

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 to a layman they are nothing but faceless bureaucrats.

Unfortunately the UK electorate has not been consulted on specific 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.

The failure to include the general population directly in the development of the relationship with the EU and the other 27 countries is 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.

From the first beginning the Danish electorate have 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 contended 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.

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 UK each new referendum requires its own primary legislation as did the 2016 referendum with the EU Referendum Act 2015 which is not a proposal in itself and 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.

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** (1729-1797), one of the fathers of British representative government who set out some guiding principles for the British parliamentary democracy. He states that an MP must sacrifice his or her own interests in preference to those of the electors'. At the same time he/she must use his/her own opinion, mature judgment and enlightened conscience when making decisions.

However, these principles have 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."

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 general unrest.

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 may go a long way to solve the present crisis and help prevent future crises of a similar nature.