

Why a British referendum on EU membership will not solve the Europe question

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British politics has long revered parliamentary sovereignty as the expression of the United Kingdom's unbroken and incremental path towards democratic self-government. Such a political culture ought to be hostile to direct democracy, yet all the most important constitutional decisions of the past two decades have been decided by referendums in one or all constituent parts of the UK.¹ The first UK-wide referendum was held in 1975 and concerned whether to stay in the then European Economic Community.² Britons' decision to maintain membership then has had wide-ranging constitutional ramifications and sparked an enduring political debate on the country's relationship with European integration. Forty years later, an in/out referendum on EU membership is increasingly seen—especially by the Conservative Party—as the best way to settle the 'Europe question' of how far to pursue closer political union. But while the resort to direct democracy is unsurprising in the context of referendum-led constitutional evolution, the expectation that a popular vote can actually settle the vast number of political issues EU membership raises is puzzling.

Belief in resolution by referendum crosses party divisions over European integration. The 2010 coalition government introduced a 'referendum lock' whereby any new EU treaty bestowing more powers on Brussels must be ratified by a popular vote.³ Prime Minister David Cameron wishes to go further by holding an in/out referendum in 2017 if the Conservative Party wins the 2015 general election. The Eurosceptic United Kingdom Independence Party (UKIP) has offered to support a Conservative government committed to such a vote, while Labour leader Ed Miliband has pledged to change the existing referendum lock so that there can be 'no transfer of powers without an in/out referendum'.⁴ Labour's idea is identical to one contained in the 2010 manifesto of the pro-EU Liberal Democrats.

¹ These votes have concerned devolution in Scotland and Wales (1997); the Belfast Agreement (1998); the attempt to replace first-past-the-post voting (2011); and Scottish independence (2014).

² Julie Smith, 'The 1975 referendum', *Journal of European Integration History* 5: 1, 1999, pp. 41–56.

³ This provision is contained in the European Union Act 2011. The Act also obliges ministers to give a reasoned opinion in cases where treaty revision is not understood to meet the conditions for holding a referendum, thereby opening up the possibility of judicial review of this opinion. See Dermot Hodson and Imelda Maher, 'British brinkmanship and Gaelic games: EU treaty ratification in the UK and Ireland from a two-level game perspective', *British Journal of Politics and International Relations* 16: 4, 2014, pp. 645–61.

⁴ Ed Miliband, speech at the London Business School, 12 March 2014, <http://press.labour.org.uk/post/79351017940/speech-by-ed-miliband-to-the-london-business>, accessed 12 Jan. 2015.

Although British politics is divided over the merits of European integration, both pro- and anti-EU figures assume that an in/out referendum is a mechanism uniquely capable of settling the issue satisfactorily. As London's Conservative Mayor Boris Johnson argued in 2013, putting the question directly to the people means that 'we will all have to focus not on the feud—so toxic, so delicious, so gloriously fratricidal—but on what is actually right for the country'.⁵ Ed Miliband objects to Cameron's referendum promise on the ground that the Prime Minister has refused to commit himself to one side or the other, not that the process itself is problematic. The same criticism of Conservative policy holds for the Liberal Democrat leader Nick Clegg, whose 2010 party manifesto proposed an in/out referendum with a campaign to stay in, precisely because the 'EU has evolved significantly since the last public vote on membership'.⁶ Hence it is possible for opponents and supporters of integration alike to advocate resorting to a popular vote on EU membership.

This article scrutinizes the widely shared expectation that such a referendum could resolve the myriad issues—likely to play a key part in the 2015 general election—surrounding British participation in European integration. Before explaining why exactly this faith in direct democracy is misplaced, however, it is necessary to examine how the pressure for a referendum has manifested itself and what chance there is of the terms of UK membership being renegotiated prior to such a vote, as Cameron himself has pledged to do. What this examination shows is that Britons are being asked to vote on the very principle of adhering to the project of European integration with little chance of a major recasting of the UK–EU relationship prior to a referendum.

Especially in the event of a withdrawal prompted by voters still dissatisfied by any attempted renegotiation, the politics of simple solutions will not resolve the debate over Britain's place in Europe. As a short-sighted measure intended to pacify internal party strife, an in/out referendum is ultimately unlikely to prove a cathartic exercise. Euroscepticism will remain a live political force even if EU membership is confirmed, a situation that would further exacerbate fractures within the Conservative Party; withdrawal leaves unanswered vexing questions over participation in the single market. Like the fluctuating constitution of the EU itself, therefore, the British debate on Europe will continue to evolve—inside or outside the club—and play a dynamic role in party politics.

The Europe question in British politics

Today's pressure for holding a popular vote stems from internal party dynamics, particularly within the Conservative Party, as well as from political competition with the increasingly successful UKIP.⁷ However important this well-documented

⁵ Boris Johnson, 'We must be ready to leave the EU if we don't get what we want', *Daily Telegraph*, 12 May 2013.

⁶ Liberal Democrats, *Manifesto 2010*, http://www.astrid-online.com/Dossier--R3/Documenti/Elezioni-2/libdem_manifesto_2010.pdf, accessed 5 Jan. 2015.

⁷ These pressures are well chronicled in Julie Smith, 'The European dividing line in party politics', *International Affairs* 88: 6, Nov. 2012, pp. 1277–95.

party political dimension may be, it is also vital to explore why British participation in European integration itself can no longer be separated from the demand for an in/out referendum. The connection stems from British exceptionalism, an attitude encapsulated by Winston Churchill when declaring that ‘we are in Europe, but not of it’.⁸ A similar sentiment echoes in William Hague’s statement that ‘Britain should be in Europe, but not run by Europe’.⁹ Demand for a referendum to determine Britain’s status in relation to the EU is an extension of this exceptionalist mindset, which ‘largely exclude[s] a normative commitment to the European ideal and ... evoke[s] British superiority’.¹⁰

All countries in Europe have to negotiate their relationship with the integration process; some countries, such as Switzerland or Norway, have opted for a quasi-membership while other non-members (including secessionist-minded regions) aspire to full entry in due course. Yet the United Kingdom is the only EU member state where the possibility of withdrawal is openly discussed in mainstream political debate—despite the fact that the 2004 enlargement paved the way for a substantially more ‘British’ Europe.¹¹ Where other countries have held referendums on specific EU treaties—rerunning them in the event of popular rejection, as in Denmark or Ireland—the proposal by a party of government to hold an in/out vote is unique to Britain, as is its having already done so once in 1975.

The necessity behind this kind of referendum, according to David Cameron, is the exceptionalist claim that ‘democratic consent for Britain’s membership has worn wafer thin’.¹² A vote on EU membership itself is supposed to allow Britons to render their judgement on the project of ‘ever closer union’ after a generation of living with its unexpected consequences. Thomas Jefferson might well have approved of holding this vote 40 years after a two-thirds majority of Britons elected to remain in the EEC. Jefferson, basing himself on eighteenth-century mortality statistics, argued that: ‘Forty years [after a] Constitution ... was formed ... two-thirds of the adults then living are ... dead. Have, then, the remaining third, even if they had the wish, the right to hold in obedience to their will and to laws heretofore made by them, the other two-thirds who with themselves compose the present mass of adults?’¹³ Applied to the EU, the point is less about being shackled by decisions of the dead than about how dramatically the institutional structure and its policy effects have evolved since the last time Britons voted.

This constant constitutional evolution has certainly met with the approval of Westminster—indeed, it could not be otherwise, since parliament has to ratify every single EU treaty change. In common with politicians in other member states, British parties have tended to ‘de-politicize’ questions relating to

⁸ Winston Churchill, ‘The United States of Europe’, *Saturday Evening Post*, 15 Feb. 1930.

⁹ William Hague, quoted in *Independent*, 30 June 2014.

¹⁰ Chris Gifford, ‘The UK and the European Union: dimensions of sovereignty and the problem of Eurosceptic Britishness’, *Parliamentary Affairs* 63: 2, 2010, pp. 321–38 at p. 329.

¹¹ On the significance of the changes wrought by enlargement, see Robert Cooper, ‘Britain and Europe’, *International Affairs* 88: 6, Nov. 2012, pp. 1191–203.

¹² David Cameron, ‘The EU is not working and we will change it’, *Daily Telegraph*, 15 March 2014.

¹³ Thomas Jefferson, letter to Samuel Kercheval [1816], in Jean M. Yarbrough, ed., *The essential Jefferson* (Indianapolis: Hackett, 2006), p. 244.

integration.¹⁴ The result is that general elections are not lost or won on the Europe question. Even the generally pro-European government of Tony Blair deliberately sought to limit the public salience of EU matters, with Blair offering the electorate two referendums to defuse controversy surrounding potential adoption of the euro and ratification of the Constitutional Treaty.¹⁵

For the wider public, seldom reliably informed by British political parties about the intricacies of EU politics and still attached to the ideal of sovereignty,¹⁶ referendums offer a seductive promise of the chance to select the desired level of integration with Europe. In particular, at the core of the anti-EU demand for an in/out referendum is the replacement of the common market British voters actually accepted in 1975 with a political union. Referring to the earlier referendum, Nigel Farage explains that ‘the British people were not getting—and have never got—what we were led to believe we were voting for’.¹⁷

The differences between 1975 and 2015 are indeed glaring. Over this period the EU has acquired a directly elected and influential parliament, greatly reduced the veto power of member states, engaged in civilian and military operations abroad, created a border-free travel area (the Schengen Area) and established its own currency with concomitant stringent rules for national budgetary supervision. Taken as a whole, these developments distinguish the EU as unique among other forms of regional association with trade at their heart.¹⁸ However, there is a striking contradiction at the centre of the British debate. The UK has chosen not to participate in Schengen or the euro, while actively supporting, within certain limits, the reduction of veto power in the Council and the expansion into foreign policy capabilities. So it is not the case that radical institutional and policy changes have simply been foisted upon an unwilling or unwitting participant.

The contradiction, then, is that, despite the UK having profoundly shaped competence allocation in the past generation—even creating a bespoke system of policy participation that belies the accusation that Britain is completely ruled by Europe—British complaints about the deleterious impact of the EU often relate to core first principles of European integration. The kind of foundational matters that exercise anti-EU sentiment include the rights afforded to EU citizens by the treaties, notably free movement of workers, which is associated with rights to welfare, and the accompanying supremacy of the EU legal order. Complaints about free movement, legally binding common rules or the treaty commitment to ‘ever closer union’ strike at the heart of the European project, which is why they can provoke such hostility abroad.¹⁹

¹⁴ Peter Mair, ‘Political opposition and the European Union’, *Government and Opposition* 42: 1, 2007, pp. 1–17.

¹⁵ Kai Oppermann, ‘The Blair government and Europe: the policy of containing the salience of European integration’, *British Politics* 3: 2, 2008, pp. 156–82.

¹⁶ Gifford, ‘The UK and the European Union’.

¹⁷ Nigel Farage, *A referendum stitch-up? How the EU and British elites are plotting to fix the result* (London: UKIP, 2012).

¹⁸ The reason why the EU appears *sui generis* is laid out fully in William Phelan, ‘What is *sui generis* about the EU? Costly international cooperation in a self-contained regime’, *International Studies Review* 14: 3, 2012, pp. 367–85.

¹⁹ It is hard to discern where exasperation ends and hostility begins, as evident in Michel Rocard, ‘Amis anglais, sortez de l’Union européenne mais ne la faites pas mourir’, *Le Monde*, 5 June 2014.

This dissatisfaction with first principles demonstrates that the in/out referendum advocated by the Conservative Party is not necessarily a vote on whether to accept, in a quasi-Jeffersonian fashion, what the EU has become. Rather, it is ultimately an appeal to judge whether European integration—in theory and in practice—is compatible with British interests and British identity. This dual questioning is redolent of the stance of non-member states such as Switzerland or Norway, where neither matters of identity nor matters of interest have generated sufficient support for full membership. Whereas other EU members debate the costs and benefits of integration—for instance, the effects of the euro in France or Italy—governments in these countries do not call into question their normative commitment to integration *per se*. Robert Schuman's words that European nations share 'a community of destiny'²⁰ still resonate in the elites and populations of other EU countries, including newer member states from the former Soviet space.

To square the circle of being a full EU member state with such a sceptical population (or at least party system), David Cameron promises to deliver a referendum only on the back of renegotiated terms of UK membership of the EU.

For Cameron, it is only on the basis of determining the extent of possible reform that a decision on whether to support staying in the EU can be made: a truly exceptionalist position among member states otherwise pledged to the ideal of ever closer union.

Exceptional demands: renegotiating UK membership

That the question of whether to adhere to the very project of European integration is central to the proposed referendum is further confirmed by Cameron's insistence on seeking renegotiated terms of EU membership. In his January 2013 speech, the British Prime Minister set out his plan to 'ask for a mandate from the British people for a Conservative government to negotiate a new settlement with our European partners in the next parliament' as a prelude to an in/out vote.²¹

In fact, by this stage the British government had already launched a Review of the Balance of Competences exercise to audit the costs and benefits of UK membership. Although not designed to generate policy recommendations, this exercise was implicitly intended to inform potential renegotiation discussions. Each of its 32 separate reports, organized thematically with different departmental leads, canvassed a variety of opinions to judge whether the EU should do more or less in specific policy areas. Overall, this consultation has shied away from making significant claims about the need for a radical reconfiguration of the relationship between the UK and the EU. In perhaps the most politically sensitive area, free movement of persons, the official conclusion is that 'the Government considers that now is an appropriate time to review the EU level rules with a view to modernisation and ensuring they are fit for purpose in the EU of today'.²²

²⁰ Robert Schuman, *Pour l'Europe* (Paris: Nagel, 1963), p. 43.

²¹ David Cameron, 'The future of the European Union', speech at Bloomberg London, 23 Jan. 2013.

²² HM Government, *Review of the balance of competences between the United Kingdom and the European Union. Single market: free movement of persons* (London, 2014), p. 57.

Similarly, the position on the EU customs union, which Eurosceptic detractors see as a major impediment to UK exports outside Europe, is that trade in goods requires common rules, meaning that it is 'considered necessary for the EU to be given competence in this area'.²³

It is another example of British exceptionalism that the larger party in the coalition government is seeking to renegotiate EU membership despite the official review's not finding significant areas for unilateral improvement in some of the most important facets of integration. Of course, renegotiation is nothing new for the UK, again marking the country out as an awkward European partner. The budget rebate obtained by Margaret Thatcher in 1984 was a rewrite of the rules on financing the then EEC. More pertinent to the current attempt to reconfigure the UK's legal commitments is the diplomatic wrangling that preceded the 1975 vote on remaining in the EEC.

In the general election of February 1974, at a time when membership of the Common Market remained controversial, especially on the left, the Labour Party pledged to renegotiate the terms of accession to the EEC. Over the course of the following year, the Labour Prime Minister Harold Wilson succeeded in obtaining the creation of a fund for regional development alongside the establishment of a correction mechanism for budgetary contributions, albeit with a plethora of strings attached.²⁴ It was on the basis of these new terms—'Britain's New Deal in Europe', as the government's official referendum pamphlet put it—that voters were asked whether they wanted to remain in the EEC.²⁵

Tellingly, Wilson's renegotiation gambit actually began in the hope of amending the terms of the UK's accession treaty but ended as a set of largely cosmetic changes considered sufficient to allay Labour voters' fears.²⁶ This outcome reflects a tension also present in today's demand for renegotiated EU membership. New terms of membership can come in one of two ways: unilateral changes to benefit the UK alone or overarching reform of the EU in line with UK preferences. The referendum pledge is, in this context, a tool for extracting concessions as it makes withdrawal more realistic, thereby creating pressure for other EU countries to pre-empt a British exit—'Brexit'—by cutting a deal.

As in 1975, then, the dilemma for the UK government is twofold: how far to push for EU reform as opposed to unilateral guarantees for British interests, and which approach might find the more sympathetic reception in the major partner capitals. In the prelude to the 2015 general election, David Cameron has relied upon a mixed message, advocating general EU reform while also mooting the possibility of UK-specific changes to the treaties. As he himself put it: 'If there is no appetite for a new treaty for us all then of course Britain should be ready to

²³ HM Government, *Review of the balance of competences*, p. 59.

²⁴ The complex conditions are laid out in Geoffrey Denton, 'Re-structuring the EU budget: implications of the Fontainebleau Agreement', *Journal of Common Market Studies* 23: 2, 1984, pp. 117–40.

²⁵ The referendum ballot read: 'The Government has announced the results of the renegotiation of the United Kingdom's terms of membership in the European Community. Do you think that the United Kingdom should stay in the European Community (Common Market)?'

²⁶ See *inter alia* Smith, 'The 1975 referendum'.

address the changes we need in a negotiation with our European partners.²⁷ Hence successful renegotiation is presented as something that ‘will have transformed the European Union and Britain’s relationship with it’.²⁸ Although somewhat vague on policy specifics, Cameron’s list of desired reforms includes changing the rules for migrant workers’ eligibility for welfare benefits, removal from the treaties of the ‘ever closer union’ pledge, and more blocking powers for national parliaments over EU legislation. Channelling the hard end of Conservative Euroscepticism, Boris Johnson argues that ‘if we can’t get that reform, then the second option [leaving the EU] is also attractive’, because ‘a generous exit’ can always be arranged.²⁹ So before answering the question of what a referendum can settle, it is necessary to examine what possibility there is for meaningful renegotiation and whether its absence could embolden the anti-EU camp.

Prospects for a new settlement

Reform and renegotiation both depend on finding consensus within the EU. The chances of success for measures that require formal treaty change, such as removal of the ‘ever closer union’ phrase—whose presence predates Britain’s accession—and increased powers for national parliaments, appear nugatory. Under the simplified revision procedure (article 48 of the Treaty on European Union), which allows for treaty change without calling an Inter-governmental Conference (IGC), unanimity is required, followed by 28 individual ratification processes. However, this simplified mechanism is limited in application and cannot be used to alter the role of national parliaments or the preamble that mentions ever closer union. A simple majority in the European Council is required to initiate an IGC but this option—where every country could then propose its own amendments—is exactly the Pandora’s box that member states prefer to leave unopened. The outlook for decisive UK leadership in such an event is very poor. The last IGC, which produced the Lisbon Treaty, was tightly managed by German Chancellor Angela Merkel.³⁰ Moreover, the European Council’s 2011 negotiations over the so-called Fiscal Compact, again under the impetus of Germany, produced a novel settlement that bypassed UK objections: the Council adopted a new treaty for shoring up the euro through an intergovernmental procedure separate from EU law. Merkel considered this unprecedented move necessary to scupper Cameron’s attempt to link UK acceptance of treaty change to renegotiation of the Working Time Directive and the reintroduction of unanimous voting for financial regulation.³¹

In these circumstances the most plausible scenario for a new deal is something akin to the 1975 arrangement, namely policy changes in line with UK preferences,

²⁷ Cameron, ‘The EU is not working and we will change it’.

²⁸ Cameron, ‘The EU is not working and we will change it’.

²⁹ Johnson, speech at Bloomberg London, 6 Aug. 2014.

³⁰ German leadership on what became the Lisbon Treaty is narrated in detail in David Phinemmore, *The Treaty of Lisbon: origins and negotiation* (Basingstoke: Palgrave, 2013).

³¹ David Cameron was concerned that without UK-specific concessions the treaty change might not muster the Commons majority necessary for it to enter into law. See Derek Beach, ‘The Fiscal Compact, Euro-reforms, and the challenge for the Euro-outs’, *Danish Foreign Policy Yearbook*, 2013, pp. 113–33 at p. 118.

especially regarding welfare rules for EU migrants and reduced regulatory burdens on small and medium enterprises. It is also possible that the European Council will accept a gentlemen's agreement to treat as a de facto veto the existing 'orange card' procedure that allows national parliaments to act in concert to challenge Commission proposals. William Hague made exactly this proposal in a speech in Germany in 2013,³² but soon thereafter 95 backbench Conservative MPs wrote to the Prime Minister asking for the introduction of a unilateral parliamentary veto (incompatible with European law) over EU legislation.³³

Hence there is a fundamental mismatch between the expectations of the hard Eurosceptics and the government's margin for negotiating concessions on top of the existing opt-outs. Indeed, the realization that reforms short of treaty amendment are the best hope for renegotiation might explain the British government's attitude to the choice of President of the European Commission after the 2014 European elections. Cameron's opposition to Jean-Claude Juncker on the grounds of his federalist instincts suggested that the Luxembourger was not considered someone who would countenance the change of direction sought by the UK.

Expectation of gaining significant unilateral concessions explicitly applicable solely to Britain is far-fetched for two reasons. First, the UK already benefits from a number of important opt-outs that nevertheless do not dilute participation in the single market under shared rules. Most notably, despite not adopting the euro, UK banks are able to access the eurozone payment system TARGET—making the City of London the biggest player in euro-denominated transactions—in line with the principle of single market equality.³⁴ UK interests in the financial sector have been accommodated further by the double majority voting system agreed upon for the European Banking Authority in 2012.³⁵ This principle shields the UK from protectionist regulatory actions by making decisions dependent upon majorities of both countries within the eurozone and countries outside it.

It is precisely in the field of financial regulation that the UK has to be vigilant,³⁶ and that it can build successful coalitions to ensure the single market is not distorted by rules favourable to the eurozone. Juncker's nomination of the British Commissioner Lord Hill for the financial services portfolio is thus no coincidence. However, undermining the level playing field of rights and responsibilities by seeking exemptions from health and safety or environmental rules for British companies—as the Fresh Start group within the Conservative Party has advocated³⁷—is not a price other member states are likely to pay just to retain British membership of the EU. Therein lies the second reason why expectations that the UK has the political or economic clout to gain unique regulatory

³² William Hague, 'Britain and Germany: partners in reform', speech to Königswinter Conference, 31 May 2013.

³³ Letter by 95 Conservative MPs to the Prime Minister, *Daily Telegraph*, 11 Jan. 2014. The suggestion of a parliamentary veto runs counter to all EU jurisprudence.

³⁴ *The economic consequences of leaving the EU* (London: Centre for European Reform, 2014), p. 53.

³⁵ *The economic consequences of leaving the EU*, p. 60.

³⁶ Legal proceedings were begun in July 2014 at the Court of Justice of the European Union as a result of the UK government's challenge that a European Central Bank proposal, calling for clearing houses dealing in euro transactions to be incorporated in the eurozone, would be discriminatory under single market rules.

³⁷ Fresh Start Project, *A manifesto for change: a new vision for the UK in Europe* (London, Jan. 2013).

advantages are unrealistic. A skewed framework in which the UK businesses have fewer legal obligations is anathema to the EU, as even third countries that are part of the single market (e.g. Norway or Switzerland) have to abide by its terms without having had a say in forming them. Britons, then, will vote on whether they want the country to leave the EU, but without the benefit of substantial, treaty-based reforms that recalibrate the advantages and disadvantages of UK membership.

In this scenario, it will be all the harder for an already fractured Conservative Party to make a utilitarian case for staying in the EU. Consequently, the siren calls of Euroscepticism, which promises a better future outside an unreformable EU, are likely to make for a very volatile referendum campaign. Unpredictability was a feature of the 1975 British EEC vote;³⁸ the potential for a large swing vote is also evident in later referendums held to overturn EU treaty rejection. In Ireland, 54 per cent of Irish voters initially opposed the Nice Treaty, but it was adopted a year later with a 63 per cent majority; the Lisbon Treaty similarly failed the first time after 53 per cent of voters rejected it before subsequently receiving the backing of 67 per cent of the population.³⁹ In the Irish case, successful rerun referendums are associated with higher turnout achieved through party mobilization and, especially, intensive government campaigning. Naturally, this kind of get-out-the-vote initiative is much easier when governing parties and the opposition put on a united front in support of the EU. Hence in a British context of a deeply divided governing Conservative Party an in/out referendum is a highly risky strategy. The risk is not just that the public will reject continued membership on essentially current terms—polls suggest that renegotiation would lead to a significant boost in EU support.⁴⁰ In addition, leaving the EU necessarily raises a host of thorny policy problems that will dominate British politics in turn. Brexit by referendum cannot resolve the question of the UK's relationship with the EU. If anything, withdrawal will push European integration into a more central role in British politics in the short and medium terms.

What an 'out' vote would mean

Despite the seductive lure of simple solutions, a complete break with the EU is impossible: British political and economic interests dictate that the UK must in some way institutionalize its relations with Europe. Reconfiguring that relationship from the outside will resemble putting Humpty Dumpty back together. The day after a referendum result rejecting EU membership nothing would have changed, but everything would be different. Formally, the United Kingdom will

³⁸ Polls at the beginning of the campaign showed a 16-point lead for withdrawal among Scots; the final result in Scotland was 58% in favour of remaining in the EEC. See Robert Saunders, "An auction of fear": the Scotland in Europe referendum, 1975', *Renewal* 21: 1/2, 2014, pp. 87–95.

³⁹ Figures from Hodson and Maher, 'British brinkmanship'.

⁴⁰ A June 2014 YouGov poll shows a 13-point difference (57% vs 44%) between those in favour of staying in the EU on renegotiated terms and those in favour of remaining on current terms: YouGov/Sun Survey, 17 June 2014, http://d25d2506sfb94s.cloudfront.net/cumulus_uploads/document/65qzen2gxe/YG-Archive-Pol-Sun-results-160614.pdf, accessed 12 Jan. 2015.

remain a member of the EU until parliament declares otherwise;⁴¹ up to that time courts across the land will continue to enforce primary and secondary EU legislation. During this interlude, the primary business of British politics would be the refashioning of the UK's economic and political relationship with Europe and the world.

Most challenging of all in these circumstances would be what to do about participation in the single market—the location for half of UK trade and a magnet for foreign investment. Complete withdrawal from this market would be self-destructive, forfeiting British access to privileged trading terms beyond the 'most-favoured nation' terms protected by the WTO,⁴² and thereby significantly hurting the UK economy.⁴³ Different degrees of association with the EU as a non-member are nevertheless possible. Switzerland negotiates access to the single market bilaterally; Norway and Iceland are part of the European Economic Area (EEA), which entails full single market participation in return for domestic implementation of EU rules. There is no point complaining, though, about Brussels' regulatory zeal and then remaining committed to enacting single market rules on a non-voting basis. So EEA membership is nonsensical. The most plausible model for the UK if outside the EU is thus a bilateral one, even if in the Swiss case it has taken years of negotiations (and a number of issue-specific referendums) to put into practice.

Central to securing outsider participation in the EU's market is choosing how far to be bound by the different 'fundamental freedoms'—EU-speak for the free movement of capital, goods, services and people. Mobility of capital is so vital an interest for the UK that concessions over bank regulations are to be expected. But adhering to EU regulatory authority over banking is unlikely to be sufficient in itself to protect Britain's financial services industry. Swiss financial institutions, for instance, are not entitled to do business directly in the EU.⁴⁴ They are required by EU regulators to establish subsidiaries within a member state; most choose to locate in London.

The other three fundamental freedoms pose more serious difficulties still. Free circulation of goods and services is the product of removing non-tariff barriers, which often depends on EU-wide standardization of procedures regarding production and sale in the single market. Similarly, there are common minimum standards for health and safety at work, covering issues such as working time, break periods, contract rules for temporary workers and maternity rights. These are one-size-fits-all policies that Eurosceptics invariably pinpoint as the source of considerable direct and indirect costs.⁴⁵ Such criticisms are used to justify freeing British SMEs from burdensome Brussels regulations, but EU negotiators will not

⁴¹ Specifically, UK withdrawal will require parliamentary repeal of the 1972 European Communities Act.

⁴² Under article 24, regional free trade areas can offer favourable terms of trade that do not extend to third countries.

⁴³ As a non-member state, 90% of UK exports by value would become subject to EU tariffs. See 'Leaving the EU', Research Paper 13/42, House of Commons, 2013, p. 27.

⁴⁴ *The economic consequences of leaving the EU*, pp. 62–4.

⁴⁵ For instance, a study in 2005 estimated regulatory burdens as imposing costs equivalent to at least 6% of UK GDP. See Patrick Minford, Vidya Mahambare and Eric Nowell, *Should Britain leave the EU?* (Cheltenham: Edward Elgar, 2005).

concede ground unilaterally. The right to participate in the single market with fewer rules for UK firms is not an attractive proposition for other EU countries as it would put their own businesses at a disadvantage in competing for British consumers.

Moreover, the free movement of individual citizens—often at the heart of the sharpest British critiques of EU integration—affords enormous reciprocal gains. The obligation to treat Britons and EU/EEA citizens equally is the ground for unrestricted access by EU migrants to education and welfare on the same terms as British nationals. In return, Britons have the right to study, work or retire across all these countries. Repudiating this arrangement wholesale will hurt UK businesses, which benefit from a much bigger pool of skilled workers (2.4 million non-British EU citizens live here),⁴⁶ and risk petty retaliatory measures against Britons abroad.⁴⁷

Brexit negotiations would thus involve a highly delicate balancing act: one of deciding how far to participate in single market areas while meeting EU obligations, now and in the future. All this would take time and sap business confidence as future terms of trade would be shrouded in uncertainty. Undertaking this negotiation thus makes a modicum of sense only if serious concessions—better than any possible as a full EU member—can be obtained by a bespoke, bilateral deal.

There are reasons for deep scepticism here regarding what Boris Johnson terms ‘a generous exit’. The OECD figures on product market regulation reveal that the UK already has less red tape than the United States and any other EU member apart from the Netherlands; a similar tale applies to labour regulation, albeit with more rights for temporary workers than apply in the United States and Canada.⁴⁸ Hence the EU already affords flexibility for the UK, meaning that Brexit cannot suddenly open the way for relaxation in key areas of business regulation. On the money question of contributions to the EU budget, it is important to note that both Norway and Switzerland pay into the EU’s coffers in return for their market access. The costs involved are much lower than those for the UK as an EU member state because these non-members do not participate in the expensive Common Agricultural Policy; but, as acknowledged by even the most thought-through plan for UK withdrawal, savings in this area would be offset by having to funnel taxpayers’ money to support farmers and rural communities.⁴⁹ There would also continue to be—assuming British foreign policy continues to promote a European approach to global issues—ad hoc costs associated with participation in EU civilian and military operations abroad, as these can involve partnerships with non-EU countries.

A final uncertainty surrounding Brexit negotiations concerns the future vulnerability of any bilateral UK–EU market arrangement. Within the EU judicial

⁴⁶ Estimate by Eurostat (2013), http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Non-national_population_by_group_of_citizenship_and_foreign-born_population_by_country_of_birth,_1_January_2013_YB14_II.png, accessed 12 Jan. 2015.

⁴⁷ The Home Office estimates that 1.4 million Britons live in another EU country. See Home Office, *Emigration from the UK*, Research Report 68 (London, 2012).

⁴⁸ Cited in *The economic consequences of leaving the EU*, pp. 44–5.

⁴⁹ Iain Mansfield, *A blueprint for Britain: openness not isolation* (London: Institute of Economic Affairs, 2014), p. 20.

space, member states are not entitled to resort to tit-for-tat measures if they feel another government is fudging common rules. It is the job of the Commission to investigate and for the Court of Justice of the European Union to arbitrate if such evidence is found.⁵⁰ Outside the EU, matters are different. Should the UK government unilaterally change the terms of trade through new, discriminatory regulations, the EU will respond in kind. Thus, after the Swiss referendum to restrict EU immigration was passed in 2014, the European Commission swiftly retaliated by excluding Switzerland from participation in the Erasmus university exchange and the €80 billion research funding programme Horizon 2020, which the Swiss help to finance.⁵¹ In other words, even if Humpty Dumpty can be patched up, the risk is that the Brexit deal would have to be revisited periodically in response to domestic pressures potentially coming from both sides.

Catharsis by referendum?

A referendum vote to go it alone or else one to legitimize the status quo seemingly offers simplicity allied with decisiveness. It is probably for this reason that John Major has claimed that a new popular vote could prove cathartic for the country, 'heal[ing] many old sores and hav[ing] a cleansing effect on politics'.⁵² Judging from the fate of claims made in 1975, the reality is likely to be different. Speaking the day after the decisive 'yes' verdict, Harold Wilson proclaimed that the result brought to a conclusion 'fourteen years of national argument'.⁵³ Subsequent history has proved these portentous words to be quite wrong: four decades later, the Europe question remains unresolved in British politics. Whatever verdict may be returned in 2017, a referendum will not heal various splits over Britain's relationship with European integration.

Withdrawal from the EU, as explained above, would necessitate the crafting of a new multilateral arrangement with European trade partners or else a series of bilateral deals. Part of this settlement would need to cover British financial contributions to the EU, as Brussels expects contributions in exchange for participation in the single market and education research. Additionally, any proposed commercial treaties with third countries would have to accommodate certain residual regulatory standards arising from the new UK relationship with the EU. Hence parties in the House of Commons would still have to debate a whole range of European policy issues even if the UK were no longer an EU member state. Arguably, then, integration could become *more* politicized with Britain outside the EU.

One guaranteed domestic effect of UK withdrawal would be to reopen the question of Scottish independence, as the Scottish National Party (SNP) is pledged

⁵⁰ On the absence of reciprocity (i.e. tit for tat) in the EU system, see Phelan, 'What is *sui generis* about the EU?'

⁵¹ In late 2014 a compromise was reached allowing Swiss universities to participate in some EU-funded research until 2016, after which continued participation is dependent upon Switzerland accepting the extension of free movement to Croatian citizens. Press Release, Swiss Federal Council, <http://www.sbf.admin.ch/aktuell/medien/00483/00586/index.html?lang=de&msg-id=55555>, accessed 12 Jan. 2015.

⁵² John Major, 'The referendum on Europe: opportunity or threat?', speech at Chatham House, London, 14 Feb. 2013.

⁵³ Smith, 'The 1975 referendum', p. 54.

to keep Scotland in the EU. The SNP can be expected to use an England-only majority vote to leave the EU as the grounds for rerunning the independence referendum. Such an outcome would therefore reopen the divisions within the Union that were so evident in September 2014. Successful Scottish secession from the UK would leave the British government with a new European complication: a land border with a country destined for EU accession.

Conversely, a UK vote to remain in the EU might put the immediate possibility of withdrawal to bed, but without healing divisions occasioned by the Europe question. The status quo settlement whereby the UK is a fully fledged EU member state would remain contentious. For a start, being on the losing side of a referendum is seldom accompanied by complete capitulation. Campaign dynamics provide handy reasons to explain unwelcome defeat. Recriminations over the conduct of the 1975 vote still rumble on, the anti-EEC camp lacking the funds of the government-supported pro-EEC movement.⁵⁴ Referendums on the same question can remain on the political agenda for years, as in Denmark over joining the single currency or in Norway regarding EU membership, as politicians seek a second chance to articulate their message.

More importantly, Eurosceptics are likely to remain a significant element of the UK political landscape. In this respect Britain is not really an outlier: the 2014 European Parliament elections confirmed the sedimentation of Euroscepticism within the political culture of the EU. Indeed, the residual prospects for the anti-EU camp within the UK are likely to be positive notwithstanding a failure to win round a majority of voters. EU free movement principles will remain pertinent to the politics of immigration, a linkage that naturally arises in the event of further enlargement in the Balkans or Turkey. So long as there is dissatisfaction with the scope of renegotiation achieved prior to a referendum there will also be talk of a 'better deal for Britain'; whenever the UK is at odds with the regulatory preferences of the single currency bloc—which now forms a group sufficient in voting weight to pass legislation in the Council of the EU—mention of this better deal is bound to resurface. Following on from the *Spitzenkandidaten* process that saw the main EU party groups select presidential candidates, the next European elections will again provide a platform for domestic anti-EU partisanship in the shape of UKIP. All the elements are thus present for Euroscepticism to remain entrenched within British party politics.

Another divisive consequence of a referendum result confirming UK membership of the EU concerns the fate of the Conservative Party, destined to sunder for the duration of the campaign into Europhile and Eurosceptic factions. How successfully antagonists in a fiercely contested fight could be reintegrated within the same party is unclear. Arguably, the party has been cobbled together since Major's day, but the level of animosity would surely increase in the context of a fevered national debate. In a context where the logic of party competition

⁵⁴ While the Britain in Europe campaign raised £1,825,000, all the anti-EEC National Referendum Campaign could generate from donors was a paltry £8,610, which came on top of the £125,000 state funding both camps received. See Smith, 'The 1975 referendum', p. 51.

suggests coalitions might continue to be required to govern, there is great potential for upheaval on the right. Defections by Conservative MPs prior to the general election highlight the temptation Eurosceptic Conservatives face to join or, perhaps, take over UKIP—a move that in turn would precipitate the refounding of the centre-right. Indeed, this kind of tectonic shift is precisely what happened to the Labour Party in the aftermath of the 1975 vote, where the enduring cleavage within the parliamentary party led to the formation of the Social Democratic Party. A Conservative split could well occur in the absence of a referendum, but it seems fanciful to believe it would automatically be prevented by the cathartic effect of such a vote.

Conclusion: a debate without end

Britain's attempt, beginning in the 1960s, to join the European Economic Community was an inherently political decision, albeit one with a significant economic rationale.⁵⁵ In other EU countries, the debate over the costs of participating in ever closer union is counterbalanced by an enduring normative aspiration to overcome nationalism and strengthen democracy through European unity. Shorn of this latter dimension, the Europe question in Britain is posed in an exceptional fashion that allows EU withdrawal to be considered openly in mainstream politics.

As with the 1975 referendum, the current decision to appeal to the *vox populi* is motivated by the short-term interests of a party in government completely at odds with itself on the merits of European integration. To defuse potential harm to Labour's immediate electoral chances, Ed Miliband promises to link ratification of new EU treaties to an in/out vote, a situation that may well arise within the next parliament.⁵⁶ Today the referendum idea is thus presented as a means to resolve the EU issue in a way that, ironically, the earlier referendum was intended to accomplish.

This article has shown that expectations that a popular vote constitutes a rather neat solution to a long-running saga do not match the reality of what an in/out vote can actually offer. The pledge to hold a referendum, sometimes conceived of as a strategic device to gain a better arrangement for the UK, cannot change the fact that there is limited scope to alter the terms of British membership of the single market. Moreover, the notion that a referendum will administer a cathartic purge to British politics is belied by what such a vote can plausibly resolve. A vote to remain in the EU will not eradicate contestation over the desirability of European integration; a vote to withdraw cannot clarify what the future holds in store for the UK. If anything, a negative result would bring more uncertainty than ever by virtue of the need to craft a hugely politicized and highly complex post-

⁵⁵ As Harold Macmillan explained to the House of Commons in 1961 regarding his government's application to join the EEC, 'this is a political as well as an economic issue': Hansard (Commons), 31 Jan. 1961, col. 928.

⁵⁶ Article 16 of the Treaty on Stability, Coordination, and Governance in the Economic and Monetary Union (2012), which the UK did not sign, specifies that within five years of its entry into force (i.e. before 1 Jan. 2018) 'the necessary steps' shall be taken to incorporate its content into EU treaty law, thereby presenting any future government with a new treaty headache.

Brexit settlement with the EU—one, indeed, unable to bring a host of unilateral benefits for the UK.

Consequently, the simplicity and decisiveness that a referendum, particularly one that spurns the EU, promises is merely a mirage. Indeed, the nature of European integration precludes a neat ending to the Europe question. The EU is an evolving institutional arrangement without a fixed end-point. Even if integration is treated purely as a means to an end, the debate over Britain's relationship with the EU will not cease because of a referendum result. Inside or outside the club, as countries such as Switzerland, Norway and Turkey know full well, relations with the EU will dominate a host of policy issues and party political conflict. British political parties are presenting an in/out referendum as a simple solution to a complex problem. The reality is that direct democracy cannot resolve the Europe question—and nor should it: political and economic ties with the EU necessarily form part of an enduring British political conversation.