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**A tale of two UK's European referendums. Some remarks
on British history, politics and the constitution**

Keywords: EU referendum, Britain, European Union, Brexit, constitution, parliament, government.

Słowa kluczowe: Wielka Brytania, Unia Europejska, referendum, Brexit, brytyjska konstytucja, parlament i rząd

Summary

The two European referendums of 1975 and 2016 are examined in their historical, political and constitutional context. The paper provides a short account of United Kingdom's accession and participation in the European Union. The uneasy relationship with the EU is shown, with reference to political process of negotiating Britain's position in the Union. Some political, economic and cultural factors that have shaped British attitudes towards European integration are analysed. A legislative framework for both referendums is described and the dynamics of pre-referendum debates and campaigns are discussed. The political implications of 'Leave' vote (in favour of Brexit) are indicated. Finally, certain constitutional and legal issues surrounding UK withdrawal from the EU are considered, also in the context of the doctrine of parliamentary sovereignty.

Streszczenie

**Brytyjskie referenda w sprawie członkostwa w Unii Europejskiej.
Kilka uwag na temat historii, polityki i ustroju**

Referendum w sprawie pozostania lub opuszczenia Unii Europejskiej, przeprowadzone 23 czerwca 2016 r., okazało się być przełomowym momentem w historii brytyjskie-

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go państwa. Po ponad 40 latach członkostwa w instytucjach integracji europejskiej Brytania rozpoczyna zupełnie nowy rozdział zarówno w relacjach ze swoimi europejskimi partnerami, jak też w kształtowaniu własnego porządku prawnego. Artykuł przedstawia kontekst historyczny oraz uwarunkowania polityczno-prawne, które sprawiły, że drugie referendum unijne przyniosło zupełnie inny wynik niż to pierwsze, z 1975 r. Dynamika procesów integracji europejskiej miała kluczowy wpływ na wydarzenia na scenie politycznej Zjednoczonego Królestwa, a te z kolei generowały określone zmiany w systemie ustrojowo-prawnym. Omówione zostały pokrótce przekształcenia legislacyjne, które warunkowały przeprowadzenie obu referendów, kampanie referendalne i towarzyszące im debaty oraz implikacje konstytucyjne wynikające ze specyfiki brytyjskiego ustroju.

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I.

The United Kingdom has been part of the European Union, or its predecessor the European Economic Community (EEC or Common Market), for over 40 years². This section briefly describes the British road to the EEC and the political turbulence connected with the first few years of UK's European integration and in particular with the 1975 EEC referendum.

In the aftermath of World War II six countries of Western Europe (France, Germany, Italy, Belgium, the Netherlands, and Luxembourg) decided to initiate the process of economic integration, first in the form of the European Coal and Steel Community in 1951, and then establishing the European Economic Community and the European Atomic Energy Community in 1957. The UK chose to stay out, for a combination of factors including the special relationship with the United States and the Commonwealth, along with a sense of retaining a global power position, not to be compromised by close ties to new European institutions.

² There is a long line of analysis regarding the UK's relationships with the EEC/EU, see e.g. A. Geddes, *Britain and the European Union*, Basingstoke–New York 2013; A.S. Bidwell, *Dzieje Wielkiej Brytanii w XX wieku*, Warszawa 2008, pp. 238–247; *The Europeanization of British Politics*, eds. I. Bache, A. Jordan, Basingstoke–New York 2006; K. Robbins, *Zmierzchn wielkiego mocarstwa: Wielka Brytania w latach 1870–1992*, Wrocław 2000, pp. 305–312, 441–453; U. Kitzinger, *Diplomacy and Persuasion: How Britain Joined the Common Market*, London 1973.

However, by the early 1960s it became evident that Britain was lagging behind the EEC countries in economic growth and prosperity. Consequently, the Conservative Government of Harold Macmillan and then the Labour Cabinet of Harold Wilson attempted to join the Common Market. Both British applications were vetoed, in 1963 and 1967 respectively, by French president Charles de Gaulle. After he departed the political scene British membership was finally secured under the Conservative Government of Edward Heath in 1973.

There is a long history of the two largest political parties – Conservatives and Labour – being divided on the question of European integration³. In particular, postwar Labour leaders, who were committed to the policies of nationalisation and generally wide state intervention in the economy, were opposed to Europe because they were afraid that it would prevent the achievement of social democracy goals in Britain. However, under the leadership of H. Wilson in the mid-1960s the Labour Party reversed its position, provided essential British and Commonwealth interests are safeguarded. In the 1970 general election Labour lost to the Conservatives and soon became highly critical of the British terms of entry negotiated by E. Heath with the EEC. H. Wilson, as Leader of the Opposition, promised to renegotiate those terms if Labour was returned to power. Labour was also calling, along with Conservative eurosceptics, for a consultative referendum before entry. On the other hand, the Conservative Government supported parliamentary approval of the EEC membership rather than public approval via a referendum.

Therefore, the European Communities Act was enacted in 1972 by British Parliament, receiving Royal Assent on 17 October. As a result the UK, together with Ireland and Denmark, became a new member of the EEC on 1 January 1973, during its first enlargement which increased its membership from six to nine. The Conservatives lost power the following year and H. Wilson became the Prime Minister of a Labour Government. The general election of 28 February 1974 gave Labour fewer votes but more seats in the House of Commons than the Conservatives and brought a hung parliament and a minority Labour Government. H. Wilson was then returned to power in the next election on 10 October 1974, but only with a majority of three.

³ C. Gifford, *The Making of Eurosceptic Britain*, Farnham/Surrey–Burlington/Vermont 2014.

Both Labour's 1974 election manifestos promised a renegotiation of the UK's terms of membership of the EEC, to be followed by a national referendum to determine if the new terms had been approved by the electorate⁴. Having won the elections the Labour Government started negotiations, asking other EEC leaders for various concessions for the UK, regarding e.g. the Common Agricultural Policy, the UK contribution to the EEC Budget, and regional and industrial policies. The position of the Government included the possibility of a withdrawal from the EEC if the renegotiation was unacceptable. The referendum was deemed binding on the Government but not Parliament. As Edward Short, the Leader of the Commons, phrased it: "This referendum is wholly consistent with parliamentary sovereignty. The Government will be bound by its result, but Parliament, of course, cannot be bound by it. Although one would not expect hon. Members to go against the wishes of the people, they will remain free to do so"⁵.

Having concluded the negotiations its results and continued EEC membership were approved by the Cabinet in March 1975 and in April in the House of Commons, by 396 to 170. Consequently, the European Referendum Bill was introduced, passed and received Royal Assent on 8 May, which paved the way for the first nationwide referendum in British history.

Characteristically, most pro-EEC politicians opposed the referendum while those who wanted to leave the Common Market generally supported it. Margaret Thatcher, the newly elected leader of the Conservative Party and a strong advocate of Britain remaining within the EEC, called the referendum "a device of dictators and demagogues"⁶.

For the referendum campaign the normal convention of collective responsibility was suspended and individual Cabinet members were allowed to campaign on different sides, with seven of the 23 members opposing continued EEC membership. However, the leadership of all main political parties supported a 'Yes' vote, as well as almost all national newspapers and the business

⁴ For a comprehensive overview of a renegotiation process and the 1975 Referendum see e.g. V. Miller, *The 1974–75 UK Renegotiation of EEC Membership and Referendum*, The House of Commons Library Briefing Paper CBP 7253, 13 July 2015. See also V. Bogdanor, *The New British Constitution*, Oxford 2009.

⁵ V. Miller, *op.cit.*, p. 7.

⁶ Quoted in V. Miller, *op.cit.*, p. 20.

community. Two sides of the campaign debate were represented by *Britain in Europe* versus *the National Referendum Campaign*, the latter comprising right-wing Conservatives, left-wing Labour politicians and some nationalist regional parties.

The referendum took place on 5 June 1975 and voters were asked the following question: “Do you think the United Kingdom should stay in the European Community (the Common Market)?” The outcome validated the British membership by a margin of two to one. With the registered electorate of more than 40 million and the turnout of almost 65%, more than 67% of the votes were cast in favour of continuing EEC membership.

However, the outcome of the referendum, as professor Vernon Bogdanor put it, “did not reflect enthusiasm for Europe. It stemmed rather from two other factors. The first was fear of the economic consequences if Britain remained outside. Britain was then the sick man of Europe. [...] The Continent by contrast seemed to be thriving and to have found the secret of economic progress⁷.” The other factor was fear of extremism, as a ‘No’ vote came to be associated with the radical Left or Right, anti-establishment, xenophobic and protectionist.

II.

The 1975 referendum vote looked decisive but it did not settle ‘the Europe Question’ in British politics. Major political parties remained divided on the issues of further integration. Generally speaking, hostility towards European integration was associated with the left of the Labour Party and the right of the Conservative Party. Once again under the leadership of Michael Foot in the early 1980s the Labour Party reversed its position and committed itself to withdrawing from the EEC. The European controversies greatly contributed to the split in the Labour Party and the formation of the Social Democratic Party in 1981. More moderate standing of successive Labour leaders led to a role reversal with the Conservatives by the late 1980s, when Labour grew more pro-European while the Tories became far more Eurosceptic.

⁷ V. Bogdanor, *Europe and the Sovereignty of the People*, “The Political Quarterly” 2016, Vol. 87, No. 3, pp. 348–349.

Almost from the beginning Britain was an awkward member of the EEC and then the EU, with often uneasy and strained relationships with European partners⁸. M. Thatcher's lasting battle about Britain's budget contribution to secure a sizeable rebate, the opt-outs from the single currency (monetary union) and some social policy legislation stemming from the Social Chapter plus the forced exit from the Exchange Rate Mechanism under John Major's premiership, keeping Britain outside Schengen Area, or most recently David Cameron's European referendum initiative, along with frequently emphasised fear of European super state with federal structure – these are just a few examples that shaped the ongoing 'tug-of-war' between the UK and its European partners.

This uneasy approach towards the EEC and later the EU was reflected in popular attitudes among British people, who were consistently much less supportive of further integration than the European average⁹. Additionally, for most of the past 40 years the European issue was not highly prominent for the general public, as "outside elite political debate only rarely has the EU been perceived as the most pressing of issues on the political agenda. [...] Consequently, there has been little serious and sustained debate concerning the relative pros and cons of the UK's experience of membership¹⁰".

During the time of British membership the EEC and now EU has grown from 9 to 28 members. Its scope and purpose has shifted dramatically. New legislation, including several European treaties, has radically altered relationships within the Union. The European institutions have become powerful entities shaping law and policy. All these changes could not have been predicted by those who voted in the 1975 Referendum and under the circumstances required approval by plebiscite.

Over the same period of time British political scene has also undergone profound changes, including those regarding European integration. There has been a rising Euroscepticism, particularly within the Conservative Party, epitomized

⁸ See e.g. A. Menon, R. Minto, D. Wincott, *Introduction: The UK and the European Union*, "The Political Quarterly" 2016, Vol. 87, No. 2, pp. 174–175; D. Kenealy, *How did we get here? Brief history of Britain's membership of the EU*, [In:] *Britain's Decision: Facts and Impartial Analysis for the EU referendum on 23 June 2016*, eds. C. Jeffery, R. Perman, Edinburgh 2016, pp. 13–16.

⁹ A. Menon et al, *op.cit.*, p. 175.

¹⁰ *Ibidem*, pp. 174–175.

by the famous M. Thatcher's Bruges Speech in 1988. It was coupled with the rise of openly anti-European political parties, first the relatively unsuccessful Referendum Party led by James Goldsmith in the mid-1990s and then the UK Independence Party (UKIP) under Nigel Farage, whose political programme was centred on the withdrawal of the UK from the EU. At the same time Tory Eurosceptics began to talk openly of EU exit. The leadership of the Conservative Party under David Cameron (2005–2016) had to respond to those nationalist sentiments. Therefore, it would seem almost inevitable that the question of European referendum returned to the national agenda, as it did in the 2010s.

D. Cameron committed the Conservative party to holding a referendum on the British membership of the EU in his speech at Bloomberg's London headquarters on 23 January 2013¹¹. The Conservative Party was under additional pressure because of the rising popularity of UKIP in the European Parliament elections on 22 May 2014. UKIP came first receiving 26.77% of the votes and winning 24 of 73 UK's seats (up from 13 in 2009), ahead of 20 Labour and 19 Conservative seats¹². It was the first time in more than a hundred years that a party other than the Conservatives or Labour had won a national election. Furthermore, UKIP received nearly four million votes in the May 2015 general election, representing 12.6% of the electorate (up from 3.1% in the previous election of 2010), even though it translated into only one parliamentary seat. The growing strength of UKIP seemed to threaten the electoral position of many Conservative Members of Parliament. Moreover, UKIP's anti-EU message had strong appeal at grassroots level of the Conservative Party. As far as other major parties were concerned, Labour was opposed to a referendum before the general election but then moved to support it, while the Liberal Democrats and the Scottish National Party were against it.

Apart from political considerations there were also new legislative requirements introduced in the European Union Act 2011. Under sections 2, 3 and 6 of the EUA a referendum is to be held, together with an Act of Parliament, to authorise any treaty replacing or amending the existing EU Treaties and certain other 'trigger' events (i.e. decisions enumerated in section 6)¹³.

¹¹ <https://www.gov.uk/government/speeches/eu-speech-at-bloomberg> (10.10.2016).

¹² <http://www.europarl.europa.eu/elections2014-results/en/country-results-uk-2014.html> (10.10.2016).

¹³ <http://www.legislation.gov.uk/ukpga/2011/12/contents> (10.10.2016).

The 2015 pre-election Manifesto of the ruling (in coalition with the Liberal Democrats) Conservative Party promised real change in the relationship with the EU, including an in-out referendum by the end of 2017, after a renegotiation of Britain's position in the Union¹⁴. And the unexpected Conservatives victory in the general election on 7 May 2015 turned this manifesto pledge into governmental policy. Initially, the need for a treaty change was emphasised, but the European partners proved to be ready only for a less formal arrangement. D. Cameron presented his reform agenda to the European Council on 25–26 June 2015 and after a period of discussion and negotiations at various levels a new settlement for the UK in the EU was agreed at the later Council meeting on 18 to 19 February 2016¹⁵.

The British Government was seeking reform in the four broad areas which were described as competitiveness (reduction of administrative burden), sovereignty (a stronger position of national parliaments and exemption from the principle of 'ever closer union'), social security (welfare benefits encouraging EU citizens to seek work in the UK to be reduced) and economic governance (protecting non-Eurozone countries from discrimination)¹⁶.

D. Cameron secured Britain the so-called special status within the EU which included the following arrangements: the UK is not committed to further political integration; a so-called red-card mechanism shall be implemented, allowing 55% of national parliaments to effectively block a Commission legislative proposal; the UK will take full part in the single market but will remain outside the Eurozone and also will not be required to fund Eurozone

¹⁴ <https://s3-eu-west-1.amazonaws.com/manifesto2015/ConservativeManifesto2015.pdf>, pp. 72–73 (10.10.2016).

¹⁵ For an account of the UK-EU negotiations and the content of the agreement see e.g. L. Cram, *Cameron's negotiation: What has been agreed? What difference will it make? What will change in a 'reformed' Europe?* [In:] *Britain's Decision*, op.cit., pp. 38–42; A. Lang et al., *EU Referendum: summary and analysis of the new Settlement for the UK in the EU*, The House of Commons Library Briefing Paper CBP 7524, 26 May 2016; V. Miller, *EU reform negotiations: what's going on?*, The House of Commons Library Briefing Paper CBP 7311, 5 January 2016.

¹⁶ D. Cameron's statement in Lisbon on 4 September 2015; full text at <https://www.gov.uk/government/speeches/migration-and-eu-reform-pm-statement-in-lisbon> (10.10.2016). The UK's negotiating position was further detailed in a letter to Donald Tusk, President of the European Council, on 10 November 2015 see https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/475679/Donald_Tusk_letter.pdf (10.10.2016).

bailouts; migrant workers in the UK will not be prevented to send child benefit money home, as the Conservative Manifesto pledged, but instead payments will be linked to the cost of living in the countries where the children live; migrant workers may not be able to claim welfare payments from the beginning of their stay in the UK, but instead will gradually obtain the right to such benefits, depending on the length of their residence – this solution to be applied only under an ‘emergency brake’ rule.

The new settlement was due to enter into force as soon as the UK Government would notify that the electorate voted in a referendum in favour of the UK to remain a member of the EU. And the agreement was expected to be implemented accordingly by the relevant EU institutions and then to be incorporated into the Treaties at the time of their next revision.

D. Cameron pledged to press for his country to leave the EU if he did not get suitable concessions, but with the new settlement achieved he was able to campaign for the UK to stay in the EU. Nevertheless, the Eurosceptic critics of the agreement claimed that the new status was unconvincing and because the settlement was not written into a treaty it only represented a temporary compromise unlikely to be sustainable¹⁷. Also, it fell far short of satisfying demands of a growing number of Conservative MPs who favoured a solution that would help limit the number of citizens from other EU member states coming to the UK. And most polls at the time of negotiations indicated that a majority of the Conservative membership was pro-Brexit¹⁸.

Only a few days after finalizing the EU agreement the British Government produced a policy paper, under the telling title “The best of both worlds: the United Kingdom’s special status in a reformed European Union”. The paper explained the new British status within the EU and was introduced by the Prime Minister, who stated that “leaving Europe would threaten our economic and our national security. [...] My recommendation is clear: I believe every family, household, business, community and nation within our Unit-

¹⁷ This state of mind was well summarised by the legendary comedian John Cleese in one of his tweets just before the referendum day: “If I thought there was any chance of major reform in the EU, I’d vote to stay in. But there isn’t. Sad.” See <https://twitter.com/johncleese> (10.10.2016).

¹⁸ A. Menon et al, *op.cit.*, p. 176. ‘Brexit’ is a shorthand for ‘British exit’ – the withdrawal of the UK from the EU.

ed Kingdom will be stronger, safer and better off by remaining inside this reformed European Union”¹⁹.

III.

During the negotiations with the EU two other processes were initiated. First, the European Union Referendum Bill was being proceeded in Parliament, and secondly, the pro- and anti-EU membership campaigns began in October 2015. The EU Referendum Bill was introduced in the House of Commons on 28 May 2015²⁰. It had a Second Reading on 9 June and was read the Third time and passed on 7 September. It was then proceeded in the House of Lords between 8 September and 1 December, and returned to the Commons with amendments. After some parliamentary Ping Pong between the two Chambers it was finally passed on 14 December²¹. The Act received Royal Assent on 17 December 2015 and was brought into force on 1 February 2016.

A legislative framework for referendums held in the UK has been provided by the Political Parties, Elections and Referendums Act 2000. However, each referendum still requires primary legislation to set more specific provisions. The European Union Referendum Act 2015 deals with the franchise and conduct of the referendum and also the rules of the campaign. Some of the most debated issues regarded the franchise, the timing and the wording of the question.

As far as the electorate was concerned the regular provisions for a UK Parliamentary general election were slightly modified, allowing Members

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/502291/54284_EU_Series_No.1_Web_Accessible.pdf, p. 6 (10.10.2016).

²⁰ The Conservative Party published a draft of the Bill as early as in May 2013. For an overview of the parliamentary debate and the regulatory context of the proposed legislation see e.g. P.J. Birkinshaw, A. Biondi, *Introduction* [In:] *Britain Alone! The Implications and Consequences of United Kingdom Exit from the EU*, eds. P.J. Birkinshaw, A. Biondi, Biggleswade/Bedfordshire 2016; E. Uberoi, *European Union Referendum Bill 2015–16*, The House of Commons Library Briefing Paper CBP 07212, 3 June 2015.

²¹ For the content of the Act see <http://www.legislation.gov.uk/ukpga/2015/36/contents/enacted> (10.10.2016). The detailed legislative procedure is presented at <http://services.parliament.uk/bills/2015-16/europeanunionreferendum/stages.html> (10.10.2016).

of the House of Lords and Commonwealth and Irish Republic citizens in Gibraltar to vote. Citizens from the EU countries resident in the UK, apart from Ireland, Cyprus and Malta, were not eligible to cast a vote. Generally British, Irish and Commonwealth citizens who were over 18 and resident in the UK were qualified to vote. Also were UK nationals living abroad who had been on the electoral register in the UK in the last 15 years. And the age of voting was not lowered from 18 to 16 as in Scotland's independence referendum in 2014.

The initial wording of the question in the Bill "Should the United Kingdom remain a member of the European Union?" was consulted with the Electoral Commission, which recommended its change to a more neutral wording, not favouring the status quo. It was then agreed to change it to: "Should the United Kingdom remain a member of the European Union or leave the European Union?"

The Prime Minister was authorised to appoint the referendum day and on 20 February 2016 it was announced by D. Cameron that the referendum would be held on 23 June 2016²². Government ministers received the freedom to campaign against the Government pro-EU stance and were allowed a free vote instead of following the normal convention of collective responsibility.

²² There is already an extensive and quickly growing literature on various aspects of the 2016 referendum. A comprehensive bibliography has been provided by the House of Commons Library in its briefing papers, which are available for download at <http://researchbriefings.parliament.uk> (10.10.2016), see e.g. *Reading list on UK-EU relations 2013–16: reform, renegotiation, withdrawal*, The House of Commons Library Briefing Paper CBP 07220, 24 June 2016 and *Brexit reading list: legal and constitutional issues*, The House of Commons Library Briefing Paper CBP 7220, 10 October 2016; see also E. Uberoi, *European Union Referendum 2016*, The House of Commons Library Briefing Paper CBP 7639, 29 June 2016. Several issues of academic journals largely dedicated its contents to the subject of the referendum, e.g. "The Political Quarterly" 2016, Vol. 87, Nos. 2–3, "European Public Law" 2016, Vol. 22, Issue 1. There are also various academic and legal websites with plentiful in-depth analysis of the pre-referendum debate and campaign and post-referendum constitutional and legislative challenges and political repercussions, e.g. UK Constitutional Law Association Blog – <https://ukconstitutionallaw.org/blog> (10.10.2016), The University College London Constitution Unit – <https://www.ucl.ac.uk/constitution-unit> (10.10.2016), Centre on Constitutional Change – <http://www.centreonconstitutionalchange.ac.uk> (10.10.2016), Brick Court Chambers – <https://brexit.law> (10.10.2016), The Conversation – <http://theconversation.com/uk/topics/eu-referendum-5556> (10.10.2016).

The pro-EU campaign was led by *Britain Stronger in Europe*, while *Vote Leave* was advocating a departure from the EU. Generally speaking, most of Labour MPs and the leaderships of the Liberal Democrats, SNP, Plaid Cymru (Wales) and Sinn Fein (Northern Ireland) supported continued membership, along with about half of Conservative MPs. The official Government position was in favour of 'Remain', but still five (out of 24) Cabinet ministers and some veteran Tory politicians campaigned for 'Leave'. UKIP, running its own campaign, was firmly for UK withdrawal from the EU and so was Northern Ireland's Democratic Unionist Party. Big business was, with a few exceptions, supporting 'Remain' option, as a more stable and predictable solution²³. The national media were split, with much of the highly influential popular press in favour of Brexit²⁴. Characteristically, 'Brexit' and not 'Bremain' dominated the language of the debate.

Given the limited space of this paper I must largely leave out of consideration specific issues of the pre-referendum debate. However, certain observations on a more general level can be made about the character of the campaign. First, it took only around four months to consider a decision of such complexity and paramount importance for both current and future generations living in the UK. It was a much shorter period of time than, for instance, two years of campaign before the Scottish independence referendum of 2014. Secondly, the standard of the debate was widely criticized as insufficient to enable the electorate to make an informed choice on the day of decision. As Jan Eichhorn of the University of Edinburgh characterized it, "the quality of debates during this referendum have to be evaluated as appalling – irrespective of which side of the argument oneself may have been. There is no need for a repetition of the numerous claims and counter-claims that have been made which were massive exaggerations at best and objectively false at worst²⁵. Moreover, warnings from respected academics and economists as to the costs of Brexit were rejected and the word 'expert'

²³ Cf. e.g. <http://www.bbc.com/news/uk-politics-32810887> (10.10.2016).

²⁴ For an interesting analysis of some aspects of the issue see J. Seaton, *Brexit and the Media*, "The Political Quarterly" 2016, Vol. 87, No.3.

²⁵ [Http://www.centreonconstitutionalchange.ac.uk/blog/brexit-reflections-dpart-note-brexit](http://www.centreonconstitutionalchange.ac.uk/blog/brexit-reflections-dpart-note-brexit) (10.10.2016). Dr J. Eichhorn was writing on behalf of the d|part think tank committed to research and public debate on the topic of political participation.

began to circulate as a term of abuse. Significantly, a group of over 250 academics signed an open letter published on the Telegraph website on 14 June, in which they criticised campaigners on both sides of the debate for the deliberate misinformation, to the extent that it might threaten democratic legitimacy of the referendum vote²⁶.

And finally, the fundamental character of the forthcoming decision was such that uncertainty was in the nature of it. Even the experts differed on the impact of potential Brexit, with only partial information available. The economic implications of leaving the EU were simply unknown, as they would depend not only on internal circumstances but also on the reaction of European partners and global environment. As David Bell, Professor of Economics at the University of Stirling, put it: "A recurrent theme has been the lack of 'facts' to help voters decide. The problem with the future is that there are no 'facts, just predictions'"²⁷. He also reminds the reader that economic forecasts are prone to error.

Adding insult to injury, the campaign came to a sudden halt only a week before the referendum date, when the Labour MP Jo Cox was shot and killed in her constituency. She was the first sitting MP to be killed since 1990, when a Conservative politician Ian Gow was assassinated by the IRA. Jo Cox was a vocal supporter of the 'Remain' side while the perpetrator of this crime is believed to have had far-right sympathies along with a history of psychiatric problems. Campaigning was suspended as a gesture of respect and it resumed three days later.

So far as the referendum debate is concerned the Government provided several policy papers and analyses on EU membership on a number of issues, including the immediate and long-term economic consequences of either retaining EU membership or leaving the EU and possible models for the UK's relationships outside the EU²⁸. However, as far as specific effects were evaluated only educated guesses could be made, and they were quick-

²⁶ [Http://www.telegraph.co.uk/opinion/2016/06/13/letters-both-remain-and-leave-are-propagating-falsehoods-at-publ](http://www.telegraph.co.uk/opinion/2016/06/13/letters-both-remain-and-leave-are-propagating-falsehoods-at-publ) (10.10.2016).

²⁷ [Http://www.centreonconstitutionalchange.ac.uk/blog/david-bell-problem-future-there-are-no-facts-just-predictions](http://www.centreonconstitutionalchange.ac.uk/blog/david-bell-problem-future-there-are-no-facts-just-predictions) (10.10.2016).

²⁸ [Https://www.gov.uk/government/topical-events/eu-referendum/about](https://www.gov.uk/government/topical-events/eu-referendum/about) (10.10.2016). For a potential impact of Brexit see also *Britain's Decision*; op.cit.

ly overcome in the debate by what some commentators called a plebiscite on immigration²⁹.

Generally two issues took centre stage in the ‘Leave’ campaign – sovereignty and aforementioned immigration, which reflected major concerns of the electorate, with more emphasis on economic arguments in the ‘Remain’ campaign.

Many voters felt the frustrations and threats stemming from globalisation and the influx of immigrants, factors which they perceived as affecting levels of employment, standards in public services and also resulting in wage restraint and cheap housing shortages. The Eurozone and refugee crises also had some impact on the tone and content of the debate. And popular disaffection with mainstream political institutions and a profound mistrust of politicians were taking its toll.

From the 2015 general election to May 2016 most of opinion polls indicated that more people supported ‘Remain’ than ‘Leave’. But the polls conducted in June often showed ‘Leave’ option in the lead and just before the referendum both campaigns were running neck and neck³⁰.

IV.

The Electoral Commission declared the final result of only the third nationwide referendum in UK history at 7:15 AM on 24 June³¹. The UK has decided

²⁹ Cf. e.g. <http://www.aljazeera.com/blogs/europe/2016/06/eu-referendum-uk-politics-ugly-160618174233645.html> (10.10.2016), <http://www.bbc.com/news/uk-politics-eu-referendum-36573220> (10.10.2016), <http://edition.cnn.com/2016/06/16/europe/brexit-britain-immigration-referendum/index.html> (10.10.2016).

³⁰ For the results of public opinion polls regarding ‘Leave’ and ‘Remain’ preferences see e.g. <https://www.ipsos-mori.com/researchpublications/researcharchive.aspx?page=2> (10.10.2016); V. Miller, *EU reform negotiations...*, pp. 34–35. And for British views on European integration in a wider historical context see e.g. J. Curtice, *A Question of Culture or Economics? Public Attitudes to the European Union in Britain*, “The Political Quarterly” 2016, Vol. 87, No. 2; A. Henderson et al., *England, Englishness and Brexit*, “The Political Quarterly” 2016, Vol. 87, No. 2; <http://theconversation.com/polling-history-40-years-of-british-views-on-in-or-out-of-europe-61250> (10.10.2016).

³¹ For full details of the result see <http://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/upcoming-elections-and-referendums/eu-referendum/electorate-and-count-information> (10.10.2016).

to leave the EU by 51.9% (17,410,742 votes) to 48.1% (16,141,241). The 'Leave' side won the majority of votes in England (53.4%) and Wales (52.5%), while the 'Remain' option prevailed in Scotland (62.0%) and Northern Ireland (55.8%). Only one out of nine English regions – London – voted for 'Remain' (59.9%). The turnout, at 72.2%, was the highest in a UK-wide vote since the 1992 general election, and generally higher in the Leave areas.

On 23 June 2016 the residents of Britain exercised their democratic rights of territorial and political self-determination. And the outcome was described as “Black Friday for one half of England, Independence Day for the other half³².” V. Bogdanor, an authority on British constitutional and political history, summarized the results as “a recall. The referendum was a genuine grass-roots insurgency, a revolt from below. Such revolts are very rare in British politics. Indeed, perhaps the only similar revolt from below took place as long ago as 1922”³³.

The 'Leave' vote on 23 June has already had and will undoubtedly have far-reaching constitutional, legal, political, economic, and social consequences for everyone involved. It has also quickly raised many essential questions of constitutional and political nature³⁴.

On the morning of 24 June, shortly after the results were declared, D. Cameron announced his intention to resign the office of Prime Minister. Theresa May, the Home Secretary in his Cabinet and a 'Remain' supporter in the campaign, became the new Prime Minister on 13 July, in charge of taking

³² T.G. Ash, Professor of European Studies in the University of Oxford, on the day after the referendum commented its result under a telling title *As an English European, this is the biggest defeat of my political life*; see <https://www.theguardian.com/politics/commentisfree/2016/jun/24/lifelong-english-european-the-biggest-defeat-of-my-political-life-timothy-garton-ash-brexit> (10.10.2016).

³³ V. Bogdanor, *Europe...*, p. 350.

³⁴ The referendum outcome and its consequences have already been the subject of a great deal of comment in books, government papers, journal articles, and academic blogs – see the footnote 21; also cf. P. Bowers et al., *Brexit: some legal and constitutional issues and alternatives to EU membership*, The House of Commons Library Briefing Paper CBP 07214, 28 July 2016; R. Gordon, R. Moffatt, *Brexit: The Immediate Legal Consequences*, London 2016; P.A. Joseph, *Brexit: a view from afar*, UK Constitutional Law Blog – available at <https://ukconstitutionallaw.org> (10.10.2016); *Brexit: impact across policy areas*, ed. V. Miller, The House of Commons Library Briefing Paper CBP 07213, 26 August 2016; *Parliament and the Rule of Law in the Context of Brexit*, The Bingham Centre for the Rule of Law Briefing Paper, London 2016.

Britain out of the EU. She famously declared that “Brexit means Brexit” and in early October promised to trigger Article 50 of the Treaty on European Union (TEU), which will begin the withdrawal negotiations, before the end of March 2017. At the same time ‘Remain’ supporters called for a second referendum to be held on a future withdrawal agreement. This call took the form a Private Member’s Bill, presented to Parliament on 6 July 2016 by Geraint Davies, Labour MP. The Bill has been scheduled for 2nd reading on 21 October 2016. Also, a petition signed by more than four million people called the Government “to implement a rule that if the remain or leave vote is less than 60% based a turnout less than 75% there should be another referendum³⁵.” The issue was debated in Parliament on 5 September and the Government’s response was approved, when it declared that the EU Referendum Act 2015 did not set a threshold for the result or for minimum turnout and the decision taken by over 33 million people in one of the biggest democratic exercises in British history must be respected³⁶.

There have been major concerns and uncertainties associated with an extremely challenging negotiations process with the EU and revision of the enormous legacy of EU laws and policies, as the UK’s relationship with the EU has had implications for most aspects of British life. There is a large number of highly conflicting issues to be determined in negotiations, with EU leaders not necessarily sympathetic to the British cause, as for fear of creating further precedents they may want to demonstrate that secession is costly.

And there is no precedent for a seceding country as no member state had ever held a referendum and then left the EU³⁷. There are different models of

³⁵ <https://petition.parliament.uk/petitions/131215> (10.10.2016). It was the most signed Government petition since the institution was introduced in 2011. Interestingly, the petition was set up by a Brexit supporter ahead of the referendum, see <http://www.independent.co.uk/news/uk/politics/brexit-government-rejects-eu-referendum-petition-latest-a7128306.html> (10.10.2016).

³⁶ <https://petition.parliament.uk/petitions/131215> (10.10.2016).

³⁷ Under very different circumstances Greenland, as autonomous part of Denmark, staged a referendum on 23 February 1982 in which 53% of its participants voted ‘No’ to the question whether it should stay in the EC, and consequently left the Community in 1985, after 12 years of membership and almost 3 years of negotiations. The turnout was 74,9% and the number of voters did not exceed twenty-four thousand; cf. <http://english.eu.dk/en/faq/faq/greenland> (10.10.2016).

the EU co-operation with various countries, for example in the form of the European Economic Area. They have embraced the ideas of a single market or a free trade zone to accommodate the differences in interests and attitudes towards more integration. However the British dilemma to retain full access to the EU single market and at the same time to restrict free movement of people from the EU is not compatible with the fundamental principles of European integration and does not seem to be approved by other European leaders.

While there are too many unknowns to be certain of anything in future negotiations, it can be assumed without exaggeration that tasks that lie ahead are simply daunting. But until Britain completes the process of withdrawal from the European Union, it remains subject to all of its EU obligations and will continue to abide by EU treaties and laws, but already without taking part in any EU internal decision-making. Also, the new settlement for the UK in the EU, negotiated a few months earlier by D. Cameron at the level of the European Council, will not come into effect. And one thing seems to be certain – there is no ‘business as usual’ after the British vote.

As far as the relationships between the Government in Westminster and the devolved territories of Scotland, Wales and Northern Ireland are concerned, the contrasting referendum outcomes in England and Scotland may exacerbate tensions in the Britain’s territorial constitution and could lead to the break-up of the country³⁸.

Nicola Sturgeon, the leader of the SNP and Scotland’s First Minister, did not rule out a second Scottish independence referendum as it would be “democratically unacceptable” for Scotland to be taken out of the EU despite voting to ‘Remain’³⁹. She also declared the need for Scotland and London to be involved in Brexit negotiations and eventually for a constitutional arrangement to secure some kind of referendum opt-out for both regions.

Another constitutional implication of the referendum is a debate regarding who – the Government under Royal Prerogative powers or Parliament – should ultimately decide the timing and procedure of the European Council notification under Article 50 of TEU and what should be the role of Parliament

³⁸ For a potential impact of Brexit on Northern Ireland see e.g. J. Tonge, *The Impact of Withdrawal from the European Union upon Northern Ireland*, “The Political Quarterly” 2016, Vol. 87, No. 3.

³⁹ Cf. <http://www.bbc.com/news/uk-politics-32810887> (10.10.2016).

in triggering the process and in the negotiations. The issue was raised, for instance, in a report by the House of Lords Select Committee on the Constitution, in which it was claimed that “it would be constitutionally inappropriate, not to mention setting a disturbing precedent, for the Executive to act on an advisory referendum without explicit parliamentary approval – particularly one with such significant long-term consequences. The Government should not trigger Article 50 without consulting Parliament. [...] In our representative democracy, it is constitutionally appropriate that Parliament should take the decision to act following the referendum. This means that Parliament should play a central role in the decision to trigger the Article 50 process, in the subsequent negotiation process, and in approving or otherwise the final terms under which the UK leaves the EU⁴⁰.” Because the position of the Government did not conform with this view the appropriate judicial review proceedings have been implemented to challenge the Government’s ability to trigger Article 50 without first obtaining authority by an Act of Parliament. But it must be said that either way the referendum result is not legally binding and in accordance with the doctrine of parliamentary sovereignty Parliament still has to pass relevant laws that will enable Britain to terminate its membership of the EU, including the repeal of the European Communities Act 1972.

The concept of parliamentary sovereignty had been firmly entrenched in British constitutional doctrine and practice. But it was challenged legally upon entering the European Economic Community in 1973, after the adoption of the European Communities Act 1972, which invoked the principle of the supremacy of European law. Then, the change in sovereignty came about through political process, with the principle of the sovereignty of the people which was introduced in 1975 with the EEC referendum.

The 2016 referendum has influenced the UK’s constitutional landscape in yet another way. It showed the conflict between principles of direct and representative democracy. The will of the people, as manifested through the referendum, contradicted the preferences of Members of Parliament. As V. Bog-

⁴⁰ *The invoking of Article 50*, The House of Lords Paper 44, 2016, pp. 8–9. Cf. also P. Bowen, *Parliament or Prime Minister: who can start the process of the United Kingdom’s withdrawal from the EU under Article 50 TEU?*, London 2016; *Leaving the EU: Parliament’s Role in the Process*, The House of Lords Library Note, 2016; V. Miller, A. Lang, *Brexit: how does the Article 50 process work?*, The House of Commons Library Briefing Paper CBP 7551, 30 June 2016.

danor observes, “the Commons is required, perhaps for the first time in its history, to follow a policy [to leave the EU – K.Ł.] to which around three quarters of MPs are opposed. The sovereignty of Parliament is now to be constrained— not legally, of course, but for all practical purposes—not by Brussels but by the people”⁴¹.

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⁴¹ V. Bogdanor, *Europe...*, p. 350.

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