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The EU has a Lot to Learn from Brexit June 29, 2016



The victory of the leave campaign, while long predicted, nonetheless came to many as a shock. The consequences of Brexit are complex and may take a decade to manifest. However, two things can already be concluded. Firstly, the consequences will be much stronger felt in the UK than the EU. Secondly, it simply seems very unlikely that in the globalized 21st century a country would be in an economically stronger or 'more sovereign' position after withdrawing from the European Union. Yet a majority of Brits has voted 'leave', many of whom were English and Welsh, above 45 years old, not living in an urban area, and without higher education. If the vote was not 'rational' (whatever that may be), how can it then be explained? And how should the EU consequently react?

The English vote: that which does not destroy us, makes us stronger.

The leave voters have made this choice *despite* the expectation that a withdrawal from the EU will have negative consequences for the UK economy and likely for them personally. However the leave vote was, after all, a vote of hope. It was a vote fuelled by a vision that a break with the EU will lead the UK into a brighter and 'more sovereign' future. Regardless of how misinformed and inward-looking it may seem from an 'outside' EU perspective, this sentiment is not unique to the UK and it is not short-lived either.

Main lesson: Brexit is a reminder of the EU's vanishing ability to connect with the wider public.

The remain campaign, which was criticised for fearmongering, in any event was not able to convey a positive vision of the EU. It desperately failed to connect to the imagination of a large share of the population. This is not a UK phenomenon. The EU at large is increasingly unable to connect with a growing share of the population that could be described as anti-establishment and anti-globalisation. Hence the EU is partially the scapegoat for much broader sentiments; yet it serves so well as a scapegoat because it is indeed an elite project that demonstrates the consequences of globalisation on a European scale.

How could this be fixed?

The EU should above all seize Brexit as an occasion to reconsider. Donald Tusk has indeed announced a period of reflection for the EU 27(!). Merkel promised the remaining 27 to push forward with the European project. Hollande even called for a new European Union. The EU however should be careful not to make the same mistakes it made after the failure of the Constitutional Treaty. In the period following the failure of the Constitutional Treaty the main focus

was on finding ways and means to press on with integration. What the EU needs now is not a reflection on how to press on despite Brexit. It needs to truly take Brexit as a symptom of a much broader phenomenon and try to fix it.

To be sure, there are no quick fixes for the divide between those who see themselves as winners of globalisation and those that see themselves as losers. The young and the old. The urban and the country population. Yet the EU will have to take on the challenge and see how it can better paint a compelling positive vision of what it means to be part of the EU. Brexit could ultimately help focussing on that positive vision, while keeping an eye on the negative consequences of withdrawal across the channel.

The response of the EU will need to include at the least two elements. First, an 'ever closer Union' cannot be the ultimate objective, which then justifies an integrationist interpretation of all EU law through the phenomenon of 'teleological interpretation'. The EU must stop the ripple effect of a rather blurry vision of a continuous process of integration (see also my previous blog on Brexit). Secondly, any response cannot ignore the sentiments of large parts of the population that they have lost control over the EU and that EU decisions do not work in their favour, however irrational these sentiments may seem at times.

Brexit is an extreme illustration of lack of commitment of national politicians.

First of all, the EU should ponder how it could set an end to the habit of national politicians of using the EU as a means to improve their national position. Cameron's choice to call for a referendum is the extreme example of this well-known phenomenon, which has long kept anti-EU feelings simmering. It demonstrates that in a changed political landscape of anti-elite and anti-globalisation sentiments this habit can actually let the anti-EU feelings boil over. Brexit is a turning point where the unwillingness of national politicians to own EU decisions has consequences.

Can sincere cooperation be used to increase ownership?

The EU should consider what the principle of sincere cooperation may mean for national politics. Sincere cooperation is accepted to play an important role to safeguard the EU's unity towards the outside. It should also be seen as triggering certain obligations of protecting unity internally. It originates in the principle of good faith, which rule out contradictory behaviour. Hence, the principle of sincere cooperation should be interpreted to entail certain duties on the part of the Member States to own EU decisions, in the making of which they participated. In practice this should be interpreted as a negative duty not to misrepresent EU politics in the national setting.

Admittedly, this would be difficult to put into practice. The Council and the Commission meetings take place behind closed doors. Traditionally the Council continues discussion until a consensus is reached. It hardly ever actually votes. Hence votes in the Council are often recorded without or with very few abstentions or no-votes. Yet since the entry into force of the Lisbon Treaty in 2009 legislative procedures in the Council have become more transparent. Votes are recorded and at the end of the day if votes are recorded without opposition all governments should support them.

It is of course impossible to drag national politicians to the Court if they misrepresent EU decisions as imposed on them and so create a narrative of 'us and them'. What is very well possible is to highlight these discrepancies and make them part of the public debate. More precisely, Brexit should be taken as an occasion to further increase the transparency of the decision-making in the Council. The Commission should see pointing at breaches of sincere cooperation as part and parcel of its 'watchdog' role, including in cases where such breaches purely consist of political rhetoric (examples of this can already be found here). Yet, not only the Commission should be

stranded with this thankless task. Both national and EU media should see it as a particular challenge to bring these discrepancies to light. Finally, scholars participating in public debates should draw more attention to these discrepancies.

At the same time, this only reaches politicians in power. As we have seen in the immediate attempts of the 'leave' camp to postpone triggering the formal withdrawal proceedings and nuance their statements on the UK's ability to fence off its labour market, it is even easier to use the EU as a scapegoat if you are in the opposition.

Brexit demonstrates the gap between law and politics.

Also, turning to the principle of sincere cooperation may be criticised as a search for answers in law rather than in politics. Brexit demonstrates the growing gap between law and politics, where law continues to be an engine of integration while public opinion pulls in the opposite direction. Yet, this growing gap needs to be addressed from both sides: the political and the legal side, see also my previous blog on Brexit.

On balance the EU is much further developed as a legal order than it is as a political one. Containing the 'automatic' integrative forces of EU law, while not being the *only* solution, must be part of the solution. Hence, a period of reflection should start, not only in the European Council, but also in the more 'supranational' EU institutions, namely the Court of Justice, the European Parliament, and the Commission. From a legal perspective the most pressing questions are: How should EU law be interpreted to achieve a balance of integration and decentralisation? How can the gap between law and politics be narrowed from the law side? How can law control and contain the centripetal forces pushing power towards the centre?

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■ EU Policy-making, Global Europe, Member States, UK in Europe

🗨 No comments

◆ , Brexit; Dis-integration