**WORKING PAPER - REFERENDUM SEMINAR: BALANCE, INFORMATION AND ENGAGEMENT**

**ISSUE: IMPACT OF REFERENDUMS IN THE UK**

**JOINT COMMITTEE ON STANDARDS IN PUBLIC LIFE - CONSTITUTION UNIT SEMINAR ON THE CONDUCT OF REFERENDUMS IN THE UK HELD AT ADMIRALTY HOUSE, 22 NOVEMBER 2016**

**INTRODUCTION**

1. This working paper explores the themes arising from the joint Committee on Standards on Public Life (CSPL) - Constitution Unit seminar on the conduct of referendums in the UK.

**AIMS**

2. Following Dr Alan Renwick’s presentation at the Committee’s July meeting, it was agreed we would hold a joint seminar with University College London Constitution Unit to initiate their longer inquiry into referendums. The Committee made it clear that its role would be to provide a forum for the debate and show it was taking seriously the concerns put to it immediately following the EU referendum by members of the public concerning standards of politicians on both sides.

**PREVIOUS WORK**

3. The Committee has previously looked at the conduct of referendums in the UK, undertaking an extensive review of the process and conduct of the referendums on devolution.

4. In addition, our 5th report -*The Funding of Political Parties in the United Kingdom[[1]](#footnote-1)*

- flagged up the emerging significance of referendums in our political system. Although referendums were not the primary focus of that report, there was space at the time for the Committee to raise a number of concerns which have proved well-founded; issues around the funding of campaigns, broadcasting neutrality, foreign donations and the role of government were raised in that 1998 report.

5. The report also raised a more general concern with regard to the place of referendums in the UK context, noting that there remained a certain absence of:

‘...common understandings governing the administration and conduct of referendums and referendum campaigns’ (p. 171).

**THE SEMINAR**

6. The seminar was held at Admiralty House, Whitehall on 22 November 2016. The day was divided into 4 sessions - What are the Problems? - How are Referendums in the UK Conducted? - Can We Draw Lessons from Elsewhere? - What Ideas Are Worth Pursuing?

7. Invited to speak and attend were individuals from a range of disciplines and positions so as to ensure a broad discussion of these issues.

**Session One: What are the Problems?**

8. In a wide-ranging discussion the two main themes to emerge from this session were concerns about the information made available to voters and concerns about balance, both of coverage and the role of the government in referendums.

9. **Bob Posner,** **Electoral Commission** provided a breakdown of the Commission’s post- EU referendum polling which he suggested gave a picture of a referendum characterised by some people doubting the quality of the information available to them, but also by others feeling they had been presented with sufficient information to make an informed decision. Therefore he argued that there is no clear-cut judgement on the quality and amount of information in that referendum.

10. He also explicitly ruled-out the Commission becoming a ‘truth commissioner’, given its breadth of other functions and key roles in referendums.

11. **Cordelia Hay, Britain Thinks** expanded on the issue of information, making the case that it was not so much the quantity but the *quality* of information and the extent to which voters felt they could navigate a terrain when traditional party political lines were blurred. The media coverage, which gave equal airtime to both campaigns, further limited voter’s ability to assess which side had the best arguments to put forward.

12. She raised the issue of baseline engagement and voter knowledge of the topic, which, in contrast to the Scottish referendum, the EU referendum lacked prominence in many voters’ concerns.

13. **Will Moy, Full Fact** also made the point that voter interest and knowledge of the EU was low. Before considering ways we may address the issue of information, he raised the question of *if* we should; arguing that all referendums will have an imbalance of campaigning talent and cautioning against hastily ascribing structural features to referendums and their outcomes.

14. Mr Moy addressed the issue of information and voter knowledge by suggesting a need to have a basic level of information available before the campaign has started, and being able to communicate this in a comprehensible way. For Mr Moy this means having trusted institutions that have a long term stewardship of the issues and that the public are familiar with. One of the flaws in the EU referendum was the absence of any pre-existing long term economic modelling, leaving voters less confident in the information provided.

15. The wider role of trust is also something he raised, referring to the CSPL’s Surveys of Public Attitudes. In the 2008 survey the public placed particular emphasis on basic honesty, financial prudence and selfless dedication to public service. Overall, *telling the truth* remained the single most important consideration.

16. **Professor Dominic Wring, Loughborough University and Dr Emily Harmer, University of Liverpool** gave a presentation on the role of the media in the EU referendum, highlighting the evolving attitudes of the British press towards the issue of Europe. The issue of balance returned as they outlined the diverging editorial lines/coverage and the role of demographics both in terms of coverage and in terms of the voters choice of media and position.

17. They also drew attention to how the campaign coverage became narrowly defined around the issues of economy and immigration, and that these themes acted as a filter for other issues around employment or the NHS. For them as the issues became narrowed so did the range of voices getting coverage to address the campaign.

18. **Professor Sarah Birch** returned to the issue of misinformation during the campaign, suggesting the role of institutional mechanisms might address this.

19. She highlighted why she thought alternative remedies were needed by expanding on the issue of trust and honesty in politics. Professor Birch cautioned that lack of voters’ faith in the information they are presented with during the course of campaigns could exacerbate existing disaffection in politics and politicians. She also argued that there are no effective measures in place at present to prevent misinformation in referendum campaigns.

20. By contrast Professor Birch highlighted the role of slander and libel laws in combatting misinformation in elections and suggested a legal remedy could potentially be considered. She also raised the possibility of incorporating existing regulations against undue influence as a solution.

21. Another potential solution Professor Birch raised was the role of Truth Commission that could be taken up by the Electoral Commission, although Bob Posner had ruled this out.

22. Finally, pre-empting some of the later discussion, Professor Birch addressed the concerns about free speech that many of these measures may raise by saying this should not be more of an issue than it is with existing slander and libel laws which do limit free speech to some extent.

23. **Dr Michael Pinto-Duschinsky,** finished the session by taking up the issue of free speech - arguing that limiting free speech could have serious consequences. He argued that fact checking was less important than the lack of trust that has built up over time with a process that people feel they don’t have control over.

24 Dr Pinto-Duschinsky called for a greater trust in the ability of voters to make up their own minds as well as renewed focus on the regulatory issues of the referendum.

**Session Two: How Are Referendums in the UK Conducted?**

25. In this session the role of the media and the balance of coverage were examined more closely as well as wider themes on the nature and purpose of referendums.

26. **Bob Posner, Electoral Commission** gave an overview of the Commission's role in the operation of referendums; as well as the current framework of the regulations for referendums - starting with the Political Parties, Elections and Referendums Act (PPERA) 2000. He highlighted Section 125 of the Act, which restricts the publication of material by public bodies during the purdah period, and was a contentious issue during the EU referendum. Mr Posner called for a review of Section 125 - arguing that greater clarity was needed to make clear what activities are restricted, when they apply, who is responsible for enforcing the restrictions and what the penalties for breaching them would be.

27. He finished by highlighting the fact that that the Commission can issue fines for criminal offences under the regulatory regime. However at a maximum penalty of £20,000 Mr Posner felt this needed to be be increased as it did not act as a deterrent to campaigns whose funding levels can be in the many millions of pounds.

28. **Simon James, Election Divisions - Cabinet Office**, provided a summary of the role of government in a referendum both in terms of setting the legislative framework, and in providing information.

29. Given that the government had a view on the outcome of the referendum and a need to provide information, as well as a legislative framework to follow, he returned to the issue of Section 125.

30. He finished by saying that the government recognises that Section 125 may need to be tweaked and will continue to listen and confer with the Electoral Commission on this and other areas of concern.

31. **Sir Peter Housden, Former Permanent Secretary, Scottish Government**, gave a presentation on the conduct of referendums from the Scottish perspective.

32. Drawing on the broader theme of truthfulness and information from the previous session, he argued that such issues remain politically weighted and cautioned against the motives of those who want to bring absolutes into this discussion. Echoing Dr Pinto-Duschinsky’s concerns from earlier, Sir Peter suggested there may be unintended consequences from such an approach.

33. The Scottish referendum could be seen a set of political facts - the outcome, the margin and the statutory response, which led to a whole swathe of political consequences. The role of the civil service is to consider the potential consequences for each outcome, which is a challenge because what is plausible can become expanded quite rapidly.

**Sue Inglish, former BBC, Ric Bailey, BBC, Professor Steven Barnett, University Westminster**

34. This session returned to the issue of media coverage, particularly the issues of balance and impartiality.

35. Given its statutory duty to act with ‘due impartiality’ much of the focus was on the broadcast media, with both Sue Inglish and Ric Bailey of the BBC defending the Corporation's role in this regard.

36. Sue Inglish highlighted the unique challenge of covering a referendum, suggesting that such campaigns can quickly lead to an intense and ‘vicious’ debate, focused on narrow issues. Broadcasters need to operate in an arena of predictions about an unknowable feature, meaning fact-checking, no matter how good, still has limits. For her it is key that broadcasters do as wide a range of programming as possible, beyond the mainstream bulletin and that she felt BBC, ITV and Sky go a long way to achieving this, perhaps unrecognised.

37. Ric Bailey, chief political advisor at the BBC is responsible for drafting the guidelines, which they set for each referendum. The key phrase ‘due impartiality’ was in his mind interpreted correctly with every effort to highlight that some statements may be misleading. He said that issue of balance should be understood not in terms of equal coverage, but ‘broad balance’ which is the phrase the BBC use.

38. Professor Steven Barnett took issue with the above, stating that broadcasters failed ‘catastrophically’ during the EU referendum campaign. He argued that they followed the press agenda far too slavishly, magnifying the coverage of misleading claims as a result. He also challenged the notion of due impartiality by broadcasters, saying they slipped into a ‘false equivalence’ in their coverage.

39. **Dr Oliver Daddow, University of Nottingham** maintained the theme of balance in his presentation. He also challenged the idea of ‘due impartiality’, arguing that you can have degree of notional balance but can still be left with built in ‘structural biases’ and this is particularly prevalent in binary referendums.

40. Dr Daddow outlined how the issues of due impartiality and balance are in fact a small part of an overall picture. In the case of the EU referendum these issues were operating within a context that includes the British people's knowledge deficit about the EU, (highlighted by Will Moy and Cordelia Hoy, previously) Britain’s contribution to the EU in policy terms, and the long term relationship between the media and the EU.

41. **Ed Humpherson, UK Statistics Authority** described his body’s role in the EU campaign. The Statistics Authority’s role, he said was to ensure that the statistics produced by the government serve the public good - not to police discourse or judge the truthfulness or otherwise of political statements. It is extremely rare for them to comment on cases and this usually concerns the way they are disseminated to the public.

42. During the campaign, four issues were referred to the UK Statistics Authority - the most high profile being the £350,000,000 claim which he said they sought to clarify repeatedly was a gross, not a net contribution. Other issues were more technical queries regarding ‘the Rotterdam Effect’[[2]](#footnote-2) and the Treasury’s modelling.

43. Touching on one of the day’s themes of misinformation, Mr Humpherson reflected he was surprised at the volume of public contact they received not asking for clarification on a specific figure, but for advice on what to do if they think people are lying. Finally he stated that in hindsight the Authority could have perhaps responded more quickly to the issues, but that he would reject being given any form of statutory power to intervene.

**Session Three: Can We Draw Lessons From Elsewhere?**

44. In this short session, Lord Bew and Dr Alan Renwick outlined some of the alternative approaches to the conduct of referendums found in other countries.

45. Speaking from a personal position, Lord Bew drew on his experience of the Irish model, which is essentially an ad hoc Referendum Commission with an advisory power to investigate the truthfulness of claims and quickly issue statements calling for campaigners to withdraw them. The benefits of this system in his view are that it is representative of the views of a broad range of people and appears to help facilitate a healthy democratic debate. Lord Bew did acknowledge that the UK context would likely provided a tougher challenge for such a model, but it remained worthy of consideration.

46. In contrast to some of the day’s earlier discussion Dr Renwick described the UK as a world leader in providing balance in the conduct of referendums. He identified the UK as being singular in setting the question to be decided, equal spending caps, limiting government's involvement and having requirement for broadcasters to maintain balance.

47. However, Dr Renwick felt the UK had much to learn in the quality of information and discussion that takes place during the course of campaigns. Among the options he cited having a fact-checking model along the lines of the Irish and similar New Zealand model as being potentially effective. More stringent could be a body like the Advertising Standards Authority, with the power to stop campaigners making claims, which is found in some American states.

48. The most stringent example he cited would be to make it an electoral offence knowingly to make misleading statements and to have penalties, fines and even imprisonment for people who violate. This was something touched upon by Professor Birch in the first session and subject to the same freedom of speech concerns highlighted by Dr Pinot-Duschinsky and Sir Peter Housden earlier in the day.

**Session 4: What Ideas are Worth Pursuing?**

49. In a broad discussion many of the day’s earlier themes were put into a theoretical context by the academics present, with Bernard Jenkin MP providing the useful counterbalance of a practitioner's perspective.

50. **Professor Stuart White, Oxford University** presented a ‘utopia of how referendums are done’ which is made up of three institutions - petition, assembly and referendum or PAR.

51.The petition element would be the right of citizens to initiate a petition on a subject or a proposal which if it gets sufficient support would trigger a citizens assembly. The assembly would be a body of citizens chosen at random but so as to represent the population demographically. It would go through a structured process of learning about the issue in question, via hearing evidence etc before deliberating and producing its own recommendations. That assembly would then have the power to put that recommendation in a binding referendum.

52. For Professor White the advantage of the model is that it is anti-elitist in that it gives citizens the power to initiate consideration of an issue. He also felt that it is anti-populist as there was a deliberative function in the assembly element, which could guard against ill-conceived proposals being put on the ballot paper. In addition, these elements may address some of the day’s concerns about the calling of referendums for political gain.

53. **Professor Michael Saward, Warwick University** reflected the day’s discussion by considering the nature of British democratic life. He argued that democracy would always be a mix - be it of liberal, elective, direct or representative elements. It is also always the product of design despite the commonly held beliefs in evolutionary myths of how democracy has emerged.

54. For Professor Saward this applies to UK democracy, with the emergence of more direct elements (ie referendums) meeting a designed set of institutions in recent years. It is the complexity of that design that may help us to understand why such institutions and actors appear uncomfortable with the process and reality of referendums.

55. He argued that if referendums are to be a factor of democratic political life then they need to be consciously designed into relationships with other institutions. He also cautioned that having an agreed constitutional basis for triggering, conducting and seeing what the consequences of a referendum could take decades. Debates such as the ones being had at this seminar make a partial contribution to this.

56. Professor Saward suggested that remedies to the issues of misinformation, truth, facts and balance would come after and sit within the context of rules and procedures that need to be designed and related to other institutions.

57. **Bernard Jenkin MP** gave his views in a personal capacity. He noted that he campaigned for leave but he was not in favour of the referendum, echoing earlier views that it felt like a decision based on political manoeuvring or ‘a polarized bluff call’.

58. Mr Jenkin picked up on Professor Saward’s comments regarding the challenge of overlaying direct democracy on what is basically a representative political culture. In his view what is essential is that the issue must be appropriate, the question must be unambiguous and the effect of voting one way or another must be clear. The degree to which the EU referendum met these criteria was arguable.

59. He repeated the calls for PPERA to be clarified - particularly with regards to the role of the civil service in referendums. Mr Jenkin felt this returned us to the issue of impartiality with the notion of restricting the ability of the civil service to plan for both eventualities clearly at odds with their stewardship role.

**CONCLUSIONS**

60. What emerged from the discussion above was a sense that, whilst there are some clear positives, there are also areas of concern in the way referendums are conducted in the UK. These concerns can be broadly summarised as regarding the quality of information deployed, balance in media coverage, the role of the government and civil service and voter engagement.

61. Suggested remedies range from legislative tweaks to PPERA to truth commissions, constitutional reform, the establishment of new institutions, referendum commissions and new statutory offences with criminal sanctions.

62. The diversity of these suggestions primarily reflects the complexity of the issues that currently feed into the holding of referendums in the UK. The Committee is under no illusion that finding a consensus view on these matters represents a significant challenge.

**NEXT STEPS**

63. The Constitution Unit will draw on many of the issues raised by the day’s discussion as part of its on-going research agenda into the conduct of referendums. Introductory pieces of that research continue to be published on their [website](https://www.ucl.ac.uk/constitution-unit/research/electionsandreferendums/conduct-of-referendums).

64. The Committee will continue to explore the issues surrounding the conduct of referendums in the UK. To this end we are meeting with the Electoral Commission and other stakeholders in early 2017 for further discussion.

1. https://www.gov.uk/government/uploads/system/uploads/attachment\_data/file/336870/5thInquiry\_FullReport.pdf [↑](#footnote-ref-1)
2. The effect of whether you can believe trade figures for the UK and the EU if a high proportion of it is going via Rotterdam to the rest of the world. [↑](#footnote-ref-2)