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# Should there be another Brexit-referendum? Risks and opportunities

**Dr. Sandra Kröger**

Guest author at the Jacques Delors Institute Berlin



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*This paper zooms into the debate around a second referendum on British membership in the EU. It shows pros and cons of such a referendum and then moves on to discuss a central legal issue of a potential second referendum: the referendum question. Concluding, the paper discusses what a second referendum will not achieve and what it might achieve.*

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# 1 Introduction

The British Prime Minister (PM), Theresa May, has suggested, ever since she became PM, that ‘Brexit means Brexit’. Re-opening the question of British EU membership, so the argument runs, would be a coup against democracy. It would mean betraying democratic values and disrespecting the ‘will of the people’. However, one can object to this claim. The phrase about the ‘will of the people’ only makes sense when a) the people know what they are voting for and b) there is unanimity amongst the people<sup>1</sup>. Neither of these conditions held in the first referendum. Furthermore, two and a half years after the referendum, party politics on Brexit is in a complete deadlock, and it is difficult to see how the current government could move out of the impasse it has created. Therefore, the key questions at this stage of Brexit politics are: Is another referendum in order? Or is there a case to be made that Parliament ought to ‘take back control’ of the process? <sup>2</sup>

In theory, a case can be made for either. A case for Parliament to take control can be made on the grounds that it was Parliament that authorised the referendum in the first place. Indeed, given Parliamentary sovereignty, it could be argued that ultimate authority lies with Parliament. If Members of Parliament (MPs) considered that leaving the EU is not in the UK’s best interest, and that representing the country’s interests means being a trustee rather than a delegate, then giving the last say to MPs would be justifiable. In practice, however, it seems that *if* there would be another vote, then the final say would need to be with ‘the people’. Anything else would in all likelihood not be accepted by the large majority of citizens (nor perhaps, bizarrely enough, by the majority of elected office holders). Moreover, the idea that there should be another referendum has found increasing support among the public as well as amongst politicians (see below). And indeed, at the time of writing, in mid-January 2019, there is a vivid debate, amongst MPs and beyond, about having a second referendum, which not many would have predicted a year ago. If another referendum has since become a real possibility, then because of the apparent incapacity of elected representatives to come to an agreeable deal, as expressed earlier this week in the massive rejection of deal that the PM negotiated with the EU.

This paper is interested in the pros and cons of a second referendum, and so neglects other possible routes that the Brexit process in the UK might take, such a cross-party compromise that is currently being discussed amongst British MPs, as well as a no-deal scenario (which only a small portion of MPs wants) or revoking Article 50 all together (which, whilst the Court of Justice of the EU has said would be possible, lacks the personal to enact it) just as it does not address the European precondition of another referendum, namely the extension of Article 50 beyond 29 March 2019. Indeed, now that the vote of confidence tabled by Labour earlier this week has failed, political pressure for another referendum is rising cross parties. In the Labour party, over 70 MPs have sent an open letter to Jeremy Corbyn on 16 January 2019 to throw its weight behind a second referendum as per the last party conference motion<sup>3</sup>; there now is a Tory Campaign backing another referendum; Scottish Prime Minister Sturgeon has said that the Scottish Nationalist Party will not discuss Brexit options with the PM unless Theresa May will consider a second referendum; and the LibDems refuse to back Labour in further confidence

<sup>1</sup> Weale, Albert (2018), *The Will of the People. A Modern Myth*. Cambridge (Polity Press).

<sup>2</sup> The author, Dr. Sandra Kröger is Senior Lecturer in the politics department of the University of Exeter. This year, she also is a Robert Schuman Fellow at the European University Institute in Florence. Contact: [S.Kroeger@exeter.ac.uk](mailto:S.Kroeger@exeter.ac.uk) The opinions expressed herein do not necessarily reflect the opinion of the Jacques Delors Institute.

<sup>3</sup> <https://labourlist.org/2018/09/labours-brexit-composite-motion-in-full/>

votes unless Corbyn would support a second referendum. All these pressures and developments increase the likelihood of another popular vote.

This is not the place to enter the principled debate of whether referendums can ever be democratic. Let us assume that they have some role to play even in representative democracies; that direct and representative democracy can, under certain conditions, complement each other; and that, a ‘good’ referendum might strengthen the democratic legitimacy of a contentious policy, such as remaining or leaving the European Union (EU)<sup>4</sup>. Let us further assume, that certain decisions can be of such magnitude that the consent of the people is needed in order to legitimise them – , for instance, questions such as who constitutes the demos, or how should the demos be governed, or when a decision is irreversible yet with major political and/or economic implications. Let us finally assume that such ‘big reasons’ were given in regard to the question of whether the UK should stay in the EU or leave it, and that it was, as a consequence, right to hold a referendum on the matter. With these assumptions in place, this contribution reviews arguments in favour and against another referendum on British EU membership, cautiously concluding that whilst another vote would not be able to free the UK from its toxic Brexit politics, it is the way forward that should be taken.

A larger amount of questions would need to be addressed to pave the way for another referendum, not all of which can be discussed in this paper, for instance, the process leading up to a second referendum<sup>5</sup> or whether there might be a majority in the Commons, for another referendum. The paper thus is consciously selective and zooms into some of the most discussed and contentious issues about having a referendum or not in the first place. . It cautiously argues for another referendum which it sees as one available as well as democratic way out of the current deadlock of British Brexit politics.

## 2 Three good reasons for another referendum

In addition to the ‘big reasons’, which for the sake of this paper we assume as given, there may be other reasons for having another vote which are more endogenous to the current politics of leaving or staying in the EU. Let us consider three.

### 2.1 Questionable democratic quality of the first referendum

A first reason for a second referendum arises from questioning the democratic quality of the first referendum<sup>6</sup>. The quality of the democratic process is crucial to ensuring that conflicts can be managed peacefully and for losers to be able to accept the result of any democratic process. In the first referendum, this was poorly achieved in different ways<sup>7</sup>. For a start, many claimed that 16 and 17 year olds should have been included in the franchise, given the result would heavily impact their future, and not a few claimed that EU residents in the UK should have likewise been

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<sup>4</sup> Rose, Richard (2013), *Representing Europeans: A Pragmatic Approach*. Oxford (Oxford University Press).

<sup>5</sup> But see here: <https://www.ucl.ac.uk/constitution-unit/research/elections-and-referendums/mechanics-further-referendum-brexit>

<sup>6</sup> Kröger, Sandra (2018), *Assessing the Democratic Legitimacy of the 2016 Brexit Referendum* (December 28, 2018). DCU Brexit Institute - Working Paper N.12 - 2018. Available at SSRN: <https://ssrn.com/abstract=>

<sup>7</sup> Bellamy, Richard (2018), *Was the Brexit referendum legitimate, and would a second one be so?* *European Political Science*, <https://doi.org/10.1057/s41304-018-0155-x>; Weale, Albert (2018), *The Will of the People. A Modern Myth*. Cambridge (Polity Press).

given a vote<sup>8</sup>. Second, for referendums to work properly, it is crucial that the options are clear and feasible. This means that the question asked in the referendum needs to be clear, and that the options on the ballot paper need to be available. Clarity exists when ‘the various sides of an argument are well known and well established in the public discourse’<sup>9</sup>. As the British Electoral Commission puts it: ‘Informed voters are fundamental to a well-run referendum, and this means that those eligible to vote (...) should be able to understand the referendum question, the possible outcomes and the campaign arguments’<sup>10</sup>. Yet, given that two and a half years after the referendum politicians are still debating what leaving the EU actually means, it is safe to conclude that clarity as to the possible outcomes did not exist at the time of the referendum. Third, this lack of clarity was exacerbated by the often poor quality of information. In order for the process to be fair and impartial with regard to the different views, information needs not only to be available, but also relevant and accurate. As is widely known, the campaign was not short of half-truths and deceit, spread by foreign as well as domestic actors<sup>11</sup>.

As a result, and fourth, public debate about the different options was poor. Public debate serves different purposes. It allows arguments and counter arguments on different issues to be expressed and tested, and can convey information. These arguments and information feed into policy making, thereby establishing an important link between society and government. Public debate also helps to hold office holders and administrations to account. It is through these different functions that public debate contributes to democratic legitimacy<sup>12</sup>. However, public debate can only support the quality of a democratic process if it is based on facts, and as suggested above, this often was not the case.

Overall, then, the implication is that the democratic quality of the first referendum was poor. Some may suggest that the criteria we have put forward as well as their assessment are too stringent. After all, we do not suggest that general elections are illegitimate if the foregoing campaigns (sender) included different bits of misinformation or when some voters (receiver) may have made their choice based on wrong information. Whilst these are fair objections, we need to recognize there are important differences between general elections and one-off referendums which change the game to some degree. If elected politicians hand over very important decisions to voters, then this comes with an even stronger responsibility on their part to stay truthful and not seek to manipulate the electorate. However, elected politicians have less of an incentive to remain truthful in referendum campaigns compared to general elections, given that referendums are one-off events and the politicians cannot be thrown out of office by voters if their recommendations prove flawed or false. In the present case, this argument weighs particularly heavily since leaving the EU will shut the door to renewed British EU membership for the foreseeable future whilst having a considerable, and probably negative, impact on the economy in the short to medium term. In other words, the fact that elected politicians cannot be held to account by voters after the vote increases the need for them to act in ways consistent with quite stringent criteria, such as those proposed here. To allow them to do otherwise can only diminish popular trust in representative institutions.

<sup>8</sup> Kröger, Sandra (2018), Assessing the Democratic Legitimacy of the 2016 Brexit Referendum (December 28, 2018). DCU Brexit Institute - Working Paper N.12 - 2018. Available at SSRN: <https://ssrn.com/abstract=>

<sup>9</sup> LeDuc, Lawrence (2015), Referendums and deliberative democracy, *Electoral Studies*, 38, S. 139-148.

<sup>10</sup> The Electoral Commission (2016), The 2016 EU Referendum, Report on the 23 June 2016 referendum on the UK’s membership of the European Union, September 2016, S. 37, [http://www.electoralcommission.org.uk/\\_\\_data/assets/pdf\\_file/0008/215279/2016-EU-referendum-report.pdf](http://www.electoralcommission.org.uk/__data/assets/pdf_file/0008/215279/2016-EU-referendum-report.pdf)

<sup>11</sup> Rose, Jonathan (2017), Brexit, Trump, and Post-Truth Politics, *Public Integrity*, 19(6), S. 555-558. Also see the House of Commons Report (2018) on Disinformation and Fake News and here:

<https://uk.reuters.com/article/uk-facebook-cambridge-analytica-britain/lawmakers-publish-evidence-that-cambridge-analytica-work-helped-brexiteer-group-idUKKBN1HN2GV>

<sup>12</sup> Habermas, Jürgen (1992), *Strukturwandel der Öffentlichkeit: Untersuchungen zu einer Kategorie der bürgerlichen Gesellschaft*. Frankfurt am Main (Suhrkamp).

At the same time, handing over very important decisions to voters places greater responsibilities and obligations on the electorate as well, not least the obligation to inform themselves more and better than they would do in the context of general elections. In representative democracy, voters are normally quite happy to delegate the responsibility to govern and steer to those very few elected politicians who, in turn, are happy to make it their full-time job and as a result have more information on specific policies than the average voter. In forms of direct democracy such as referendums, this duty to be informed and act responsibly lies both with elected politicians who have decided to hand over a decision to voters, and with the voters themselves. It is difficult to see how democratic legitimacy would pass a serious test if both sides did not accept this responsibility.

## 2.2 Inconclusive parliamentary answers

A second reason for another referendum is that political leaders and party politics have (so far) not been able to find a way of implementing the result of the first referendum that finds sufficient support in Parliament. The two main parties are split over the issue – both whether to leave or to remain, and if to leave, then how to do so. The degree to which Parliament is divided at this stage shows impressively in the result of the ‘meaningful’ vote in which the deal negotiated with the EU was rejected by 432 (against) to 202 (for). The partisan divisions in part reflect that the referendum question as well as the consequences of ‘leave’ were left unclear during the campaign. Had it given a precise mandate with little room for interpretation, then MPs as well as the government would not have struggled as much with its implementation. They also reflect that the overwhelming majority of MPs voted to remain in the EU, with obvious subsequent difficulties of aligning with majorities of their respective constituencies, in those cases where there was a majority for leave. Finally, they reflect the divergent positions in the Conservative Party and the lack of engagement with the representatives of those who voted to remain in the EU.

## 2.3 Rising public support for a referendum

A third reason for another referendum is that there is now a public desire for a second referendum. Support for such a vote has risen from 47% in favour in January 2018<sup>13</sup> to 56% in mid-November 2018<sup>14</sup>. Whilst this is still not an overwhelming majority, a clear majority of the British population now wants another vote. These numbers, along with increasing mobilisation of MPs as well as grassroots movements, tell us that there has been a shift in public opinion which now favours another vote. Again, this reflects the lack of clarity on both options, which since June 2016 have become much clearer. Certainly, given the strong support for another people’s vote, and the endless claims to be implementing the ‘will of the people’ by the politicians of both the government and the opposition, the growing majority in favour of another vote constitutes an argument to have such vote.

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<sup>13</sup> As per a representative ICM survey, conducted for the Guardian in January 2018

<sup>14</sup> As per a yougov poll in mid-November 2018: <https://yougov.co.uk/topics/politics/articles-reports/2018/11/16/7-more-things-weve-learned-about-public-opinion-br>

## 3 Three good reasons not to have a second referendum

Of course, there are also good reasons against another referendum. Again, let us briefly explore three of them.

### 3.1 Poor democratic quality replicated

First, the poor democratic quality of the first campaign might be replicated and as a result sharpen mistrust in representative actors and processes. This concern arises not only from the issues noted above, which relate to the behaviour of office holders and the media during the campaign, but also from the capacity of voters. Handing over very important decisions to voters places greater responsibilities and obligations on the electorate, not least the obligation to inform itself more and better than it would do in the context of general elections. In a representative democracy, voters are normally quite happy to delegate the responsibility to govern to those few elected politicians who, in turn, are happy to make it their full-time job and as a result have more information on specific policies than the average voter. In forms of direct democracy such as referendums, the duty to be informed and act responsibly lies not only with elected politicians who have decided to hand over a decision to voters, but also with the voters themselves.

Looking at poll data, it appears that there have not been huge shifts between ‘Leave’ and ‘Remain’ voters, though in mid-December 2018, there seemed to exist a majority in favour of staying in the EU, according to polls<sup>15</sup>. This suggests that all the information that has come to light since the referendum has not had too much of an effect on them. If that is so, then organising another referendum is a waste of money and time, keeping uncertainty high when what businesses as well as citizens need at last is security.

### 3.2 Sharpening rather than bridging the divide

Second, another referendum might sharpen the divide among the electorate brought to light by the first referendum<sup>16</sup>. The campaign could unleash anti-immigrants feelings again and reinforce ‘us vs. them’ thinking. Though one should think about a possible next referendum campaign carefully, these claims should mostly be seen as discursive strategies of a new ‘Project Fear’ offered by that fraction of the Tory party which by any means possible wants to leave the EU. If it would be a majority vote for ‘Leave’ again, those who voted ‘Remain’ would continue to question different aspects of the referendum’s legitimacy – be it regulation relating to the process or the campaign. If it would be a majority vote for ‘Remain’, ‘Leave’ voters would feel betrayed and their mistrust in representative actors would deepen. Also, and understandably, they would ask why the second referendum should count rather than the first. Either way, a second vote would certainly not settle the issue once and for all.

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<sup>15</sup> <https://infacts.org/polling-shows-growing-support-for-staying-in-eu/>  
<https://www.delorsinstitut.de/en/-/chart-of-the-week/>

<sup>16</sup> Hobolt, Sara (2016), The Brexit vote: a divided nation, a divided continent, *Journal of European Public Policy*, 23(9), S.1259-1277.

### 3.3 Broader European implications

Third, there are serious European issues surrounding another referendum. One is related to the upcoming elections of the European Parliament (EP), where the issue of seat distribution comes into play (73 at present), as well as the potentially destabilising effects of distorted results, in the EP, were these elections used as a proxy for/against the EU, in the UK and perhaps beyond, by populist demagogues. The EP elections will be held from 23-26 May, a time before which another referendum in all likelihood could not be organised, if it should be done well. At present, it is unclear how these complicated issues would be addressed. A second issue relates to the ongoing budget negotiations for the post-2020 period, which uncertainty about the UK's membership status would delay and complicate<sup>17</sup>. A third is that the transition period, in which the EU and the UK were going to agree on a future trade deal. This period currently lasts until December 2020, and has already been criticised for being too short but would be further shortened. Again, if it had to be extended, this would also have implications for the EU budget. In short, the longer the Article 50 period is drawn out, the more difficult and complicated the implications for these European issues. However, that these issues can be overcome if only the political will is present was forcefully demonstrated, on 13 January 2014, in a letter by more than 100 MEPs begging the British people to reconsider their decision in light of the available options<sup>18</sup>.

To sum up. We have zoomed into the pros of another referendum on the one hand, i.e. the poor quality of the first referendum, the inconclusive parliamentary answers and the rising public support for another referendum, and into the cons on the other hand, i.e. that the poor quality of the first referendum might be replicated, a sharpening of existing divisions and European challenges. How to weigh these different arguments against each other could fill an entire book, and there is no easy answer. Bearing in mind the current political situation and weighing the different arguments, this paper cautiously argues for a second referendum, and does so for the following two reasons. . The country is already divided, and trust in representative actors has already been lost in one way or another. Another referendum would provide an opportunity to improve the quality of the democratic process and thereby restore some trust in representative actors. Its aim is not, should not be (though it is for many), to overthrow the result of the first referendum, but to make for a better process, therefore more legitimacy, and as a result greater acceptance of the result, particularly for the losing side.

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<sup>17</sup> <http://www.institutdelors.eu/wp-content/uploads/2018/01/brexitbudget-haasrubio-jdi-jan17.pdf?pdf=ok>

<sup>18</sup> <https://www.independent.co.uk/news/uk/politics/brexit-meps-european-parliament-final-say-peoples-vote-second-referendum-a8723066.html>

## 4 Some crucial issues for a second referendum

All of the approaches sketched below confront the problem that time is running extremely short<sup>19</sup>. Indeed, there are rules and recommendations as to the timeline of organising a referendum which imply that it could not be held before 29 March 2019, but would require an extension of Article 50 of at least 6 weeks, depending on when related legislation would begin<sup>20</sup>. However, it is perfectly possible to ask the EU27 for an extension of the two year period that Article 50 grants before leaving the EU. Leading EU figures, as well as MEPs and different heads of State and government have made it clear that they would grant such an extension if it was to organise another referendum.

### 4.1 Various legal issues

Fresh legislation for a new referendum would need to resolve a number of questions<sup>21</sup>. One of the controversial issues will be the franchise. The 2016 referendum franchise included all those eligible to vote in UK parliamentary elections, plus members of the House of Lords and EU citizens resident in Gibraltar. Some have claimed that the franchise should be extended to 16 and 17 year olds as well as EU citizens resident in the UK<sup>22</sup>, an important legal and political precedent for such a franchise being the Scottish independence referendum in 2014. Others object that consistency in the franchise matters. If it appeared that the result of the 2016 referendum had been overturned because the franchise had been changed, many Leave supporters would view this outcome as illegitimate. Furthermore, successive reports from different electoral and referendum commissions have found that the fairness and transparency of referendum campaigns should be enhanced through new regulations. Amongst other issues, these would involve a more complete ban on government campaigning, financial regulations around spending limits, and stricter control of digital campaigning to prevent inappropriate or illegal use of personal data as well as foreign interference. Given another referendum would have to be held over a brief timescale, there would be little time for perfecting legislation. However, some of these changes might be easier than others to pass through parliament even at short notice. We cannot engage with all the issues here, so let us focus on one question that will be widely and controversially discussed, namely the referendum question.

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<sup>19</sup> Bellamy, Richard (2018), Was the Brexit referendum legitimate, and would a second one be so? European Political Science, <https://doi.org/10.1057/s41304-018-0155-x>

<sup>20</sup> The Constitution Unit of UCL concludes that the minimum time needed to organise a referendum is 22 weeks: <https://www.ucl.ac.uk/constitution-unit/research/elections-and-referendums/mechanics-further-referendum-brexit>

<sup>21</sup> This section draws upon a recent report by Sargent, Renwick and Russell (2018) at UCL's Constitution Unit: [https://www.ucl.ac.uk/constitution-unit/research/electionsandreferendums/The\\_Mechanics\\_of\\_a\\_Further\\_Referendum\\_on\\_Brexit](https://www.ucl.ac.uk/constitution-unit/research/electionsandreferendums/The_Mechanics_of_a_Further_Referendum_on_Brexit)

<sup>22</sup> Kröger, Sandra (2018), Assessing the Democratic Legitimacy of the 2016 Brexit Referendum (December 28, 2018). DCU Brexit Institute - Working Paper N.12 - 2018. Available at SSRN: <https://ssrn.com/abstract=>



## 4.2 The referendum question(s)

As regards the referendum question, it is of utmost importance that it commands trust so as to increase the acceptance of the result. As such, the question must be clear and it must be feasible. At present, three feasible options exist: the deal that the government has negotiated with the EU, leaving without a deal, and remaining in the EU. A referendum with two rather than three options would be clearer, more justifiable and therefore preferable. But let us look at the different options available.

One way of organising a referendum with three options is a single multi-option referendum, which can be organised in two ways.

**Table 1 – by Sargent, Renwick and Russell (2018)**

Options	Preferences				First Past the Post	Alternative Vote		Condorcet		
						1 <sup>st</sup> round	2 <sup>nd</sup> round	A v. B	B v. C	A v. C
<b>A: Remain</b>	1	3	3	2	45%	45%	48%	45%		48%
<b>B: Deal</b>	2	2	1	1	20%	20%		55%	65%	
<b>C: No Deal</b>	3	1	2	3	35%	35%	52%		35%	52%
	45%	35%	17%	3%	<b>Remain wins</b>	<b>No deal wins</b>		<b>Deal wins</b>		

Note: The figures in this table are notional and for illustrative purposes only; they are not based on actual polling data.

In a First Past the Post system, voters express a single preference and the option receiving the highest vote share wins. The problem with this option is that it can lead to inconclusive results where the winner can have well below 50 per cent of the votes. For example, if the ‘Leave’ vote was split between the two ‘Leave’ options, it is possible that ‘Remain’ might emerge as the winner from such a voting system, even if the sum of both ‘Leave’ votes was larger than the ‘Remain’ vote. With Brexit already divisive, one can easily see how such an approach would be unacceptable to many.

The second way of having a single multi-option referendum is the Alternative Vote (AV) system. In this system, voters rank the options in order of preference. First preferences are counted, and if one option receives over 50 per cent of the vote, it wins. If not, the option with fewest votes is eliminated and the second preferences of that option’s supporters are counted. The problem with this approach is that it produces a plurality winner. Voters might end up with an option that for the majority is their least preferred option if their ranking of all the options was taken into account (Weale 1999: 133-34). In the context of Brexit this could mean that the ‘no deal’ option wins even though a large majority seems to agree that it is the worst that could happen to the UK, and without that option commanding a majority of votes. The result of such a referendum might as a result be rather contested.

AV can also be subject to the so-called ‘Condorcet problem’<sup>23</sup>. The most preferred choice, or Condorcet winner, which could beat all other alternatives in a pair-wise competition, would represent the true majority view. Under AV, however, this option could be eliminated in the first

<sup>23</sup> Weale, Albert (1999), *Democracy*. London (Macmillan), S. 133-135.

round if it is a compromise outcome attracting few first preferences. Another problem with this scheme is that voters might not fully understand it. They might think that the option that obtains the most first preference votes should win, even if it secures less than 50 per cent of the popular vote. In other words, they might expect the plurality rather than the Condorcet winner to succeed.

A third way of including three options is to have a staged two questions referendum. According to one model, voters would first be asked whether they approve the negotiated deal or not. If they did not approve the negotiated deal, the second round would be between remaining and leaving without a deal. According to another model, voters would first be asked whether they wanted to remain or to leave. If they voted to leave, the second round would be between leaving with the negotiated deal or leaving without a deal. Whilst such a staged approach would keep all three options alive, it creates difficult strategic voting decisions. Also, the ordering of the questions could well affect the outcome. Evidently, a two stage referendum would also take longer. For these reasons, it is not advisable.

The advantage of a referendum with all three options is that no prominent option is excluded, thereby increasing the representation of legitimate pluralism. However, there are serious problems with any of the above models. The very question of which model should be used would be highly controversial, given different models are likely to produce different outcomes. As a result, any outcome would be contested. Also, to use an unfamiliar voting model in an unusual referendum to decide about the most consequential question in contemporary Britain is perhaps not advisable.

Instead, having two options that voters can choose from seems the clearer as well as the more justifiable solution. Indeed, the importance of a clear question has been recognised by the Venice Commission in its Code of Good Practice which sets out international standards for referendums. It provides that ‘the question submitted to the electorate must be clear (not obscure or ambiguous); it must not be misleading; it must not suggest an answer; electors must be informed of the consequences of the referendum, in particular of the outcome of Yes or No majorities in response to each question; voters must answer the questions asked by Yes, No or a blank vote.’<sup>24</sup> In theory, there are three available options: a) negotiated deal vs. remain, b) no deal vs. remain, and c) negotiated deal vs. no deal. One might argue that the ‘no deal’ option has greater traction amongst the population than the negotiated deal, and that the deal negotiated with the EU was overwhelmingly rejected in Parliament, begging the question of whether it should not be ‘no deal’ rather than the negotiated deal that should be on offer. In practice, however, the ‘no deal’ option could not attract a parliamentary majority. More fundamentally, one can reasonably argue that the British government had a mandate to negotiate a deal to leave the EU, which it has done. The negotiated deal is therefore the government’s position, and that is what should be judged by the population, given the latter did not have an opportunity yet to cast its vote on the negotiated deal. One should also not forget, even though some claim differently, that a ‘no deal’ Brexit is by no means delivering the referendum result of 2016. In the ‘Leave’ campaign of 2016, leaving without a deal did not figure in the debate. Therefore, it cannot be claimed to be what ‘Leave’ voters voted for and cannot legitimately be included as an option. It is also imaginable that the existing deal that was negotiated with the EU could be opposed to a Norway-ish option – it is too early to tell. What is certain is that the question of which options should figure on the ballot would be heatedly debated.

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<sup>24</sup> Venice Commission in its Code of Good Practice CDL-INF(2001)010, para. II, E 2.a.

By contrast, 48 per cent of the electorate voted to remain in the EU, implying that they are not represented by the negotiated deal. Therefore, not having ‘remain’ as an option would not seem an available course to take, also given that polls indicate that ‘Remain’ would, as of December 2018, in all likelihood have a majority. To sum up, offering two options, namely the negotiated deal vs. remain would provide a familiar approach, which would generate a clear winner, and would allow voters to reconsider whether they approve of the deal that the government has negotiated in its name, or whether, all things considered, remaining in the EU might be the better deal. In referenda with more than two alternatives, in contrast, the problems of interpreting ballot results, strategic manipulation possibilities, etc. loom large.

## 5 What another referendum will not achieve and what it might

So far, we have looked at some of the arguments for and against another referendum on British EU membership as well as at two key regulatory issues that a second referendum would have to address, arguing for an extension of the franchise and a binary referendum question, consisting of a negotiated deal vs. remain question. Let us conclude by discussing what another referendum will not achieve, and what it might achieve.

Beginning with the former, it is highly unlikely that another referendum would help heal internal party divisions over the EU. Both main parties have long been divided over the issue, and the Conservative Party in particular now is utterly so, as evidenced not only by the result of the ‘meaningful vote’ on 15 January 2015, but also by the many Brexit-related resignations that her cabinet has seen since summer 2016. Internal party divisions over the EU are fairly common across Europe rather than exceptional<sup>25</sup>. What is special in British politics is that divisions have moved to the centre to such a degree that even mainstream parties seemed to be single issue parties at times, with little room left for policies other than those on Brexit.

Somewhat relatedly, it is unlikely that we will see the hostile British press environment disappear. Most British tabloids have run a campaign against the EU for several decades<sup>26</sup>. Unsurprisingly, the *Sun*, *Daily Express*, *Daily Star*, *Daily Mail*, and *Daily Telegraph* all supported the Leave campaign<sup>27</sup>.

More fundamentally, another referendum could not overcome the broader cultural and economic shifts of which it was an expression rather than their source. As a number of commentators have argued, the main dividing cleavages nowadays are cultural rather than economic<sup>28</sup>. According to this analysis, the divides run between authoritarians, nationalists and traditionalists, on the one hand, and liberals, cosmopolitans and multiculturalists, on the other. The former see themselves as the economic losers of globalisation, oppose immigration and

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<sup>25</sup> Hix, Simon (1999), Dimensions and alignments in European Union politics: Cognitive constraints and partisan responses, *European Journal of Political Research*, 35(1), S. 69–106.

<sup>26</sup> Daddow, Oliver (2012), The UK media and ‘Europe’: from permissive consensus to destructive dissent, *International Affairs*, 88(6), S 1219–1236.

<sup>27</sup> Levi, David et al. (2016), UK press coverage of the EU referendum, Reuters Institute for the Study of Journalism, University of Oxford / Prime Journalism. Available at: <http://reutersinstitute.politics.ox.ac.uk/our-research/uk-press-coverage-eu-referendum>, accessed 15 July 2018.

<sup>28</sup> Hooghe, Liesbet; Marks, Gary (2009), A postfunctionalist theory of European integration: From permissive consensus to constraining dissensus, *British Journal of Political Science*, 39(1), S. 1–23.

increasingly distrust representative actors. In the British context, therefore, the referendum was to some degree an anti-establishment protest vote of ‘those who felt poorly represented within the current United Kingdom settlement’<sup>29</sup>. The latter benefit from the opportunities globalisation offers, are often migrants themselves, if only temporarily, and are better represented in Parliament than the working poor, which favours their interests. As a result, they have less reason to oppose EU membership. These and other divides exist, and another referendum could not overcome them.

However, organising another referendum might achieve some things. For one, it could show a way out of the complete deadlock that Brexit politics has reached in mid-January 2019. The government is utterly divided over Brexit, and one day after the ‘meaningful vote’ it is entirely unclear what its next steps will be, though first signs are not promising. Party politics have been unable to find a way of implementing the Brexit vote that would find a majority in Parliament. Instead, they have made British politics toxic and blocked much needed debate about welfare and innovation policies. In this situation, returning the question to the people might be the only way out of the deadlock that now exists in the House of Commons.

Somewhat relatedly, it is possible that another referendum would address some of the democratic failings of the first, thereby working against feelings of resentment against representative actors and processes as well as generating more acceptance of the result. The reasons that let us think so are that the options are now much more clearly on the table – even if ‘no deal’ would be included in the referendum question – and that the time that has passed since the last referendum helped to unmask certain half-truths and lies. As a result, the political space for both would be smaller in a new campaign, for which there would hopefully also be better regulation as regards social media campaigning.

Finally, whilst another referendum could not heal the economic and cultural divides that exist in contemporary Britain, it could be the start of a fresh debate on how to respond to ‘the divisions that were laid bare in the Brexit vote’<sup>30</sup>. Other options, such as leaving without a deal or the Norway model, would not heal the divisions. Only the people can now calm the toxic atmosphere and mayhem that party politics have created. Given the schisms that need to be healed, the medicine can only be more (direct) democracy, not less.

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<sup>29</sup> Chalmers, Damian (2017), Brexit and the renaissance of parliamentary authority, *The British Journal of Politics and International Relations*, 19(4), S. 663–679.

<sup>30</sup> Ford, Robert; Goodwin, Matthew (2017) Britain After Brexit: A Nation Divided, *Journal of Democracy*, 28 January 2017, S. 28.

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