

Is Electoral Spending a Sideshow?

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The recent media furore over whether the Leave.EU campaign and Arron Banks broke electoral law follows a decision by the National Crime Agency to investigate whether any criminal offences were committed. The present discussion centres on some £8m worth of donations and whether they came from “impermissible sources”, particularly including a company incorporated in the Isle of Man (which is technically a crown dependency rather than part of the United Kingdom).

Further questions have been asked about the ultimate source of some of these donations with suggestions of Russian involvement in financing elements of the Leave campaign. Indeed, the BBC has come under fire from lawyers for allowing Banks to appear on the Andrew Marr show on Sunday, given that a criminal investigation is currently in progress.

Distinct from this, the official Leave campaign was found to have exceeded official spending limits after the Electoral Commission “interpreted the definition in a way that is inconsistent with both the language and the purpose of the legislation”[\[1\]](#). Indeed, this was particularly serious given that equivalent advice was not given to the official Remain campaign. The Remain campaign and Liberal Democrats were also fined for breaching electoral spending rules, although this appears to be due to failure to submit proper documentation rather than concerns regarding potential overspending[\[2\]](#).

Of course, allegations of wrongdoing – by any party – in elections should be fully investigated and those who have committed any illegal actions should be held to account. Allegations of foreign interference in electoral spending for potentially malign purposes are particularly concerning. Nevertheless, when all is said and done it seems highly unlikely – to this author at least – that any spending irregularities affected the end result of the referendum.

A much more serious issue – and one which, in this author’s opinion, did have the power to swing the vote – was the pervasive misinformation given during the campaign. Whilst perhaps the most egregious example was the £350m emblazoned on the side of a bus, equally outrageous were claims that Turkey is joining the EU (talks are currently suspended and in any event as an EU member the UK would have a veto) and some of the claims made around EU law.

That such claims were made in official Vote Leave literature^[3] frankly beggars belief. The conflation (made implicitly by the campaign leaflet when talking about prisoners’ right to vote and counter-terrorism legislation) between the EU and the Council of Europe is one that we have seen again and again during our Brexit roadshows. The case of Abu Qatada was raised more than once as an example of an area where the EU treads upon British sovereignty.

Of course, it is not reasonable to expect voters who have busy lives and other interests to understand the details of the Court of Justice of the EU and the European Court of Human Rights (the latter is not a part of the EU, but ruled on the Abu Qatada case and that of votes for prisoners). Many non-EU countries are members of the latter and the UK was a founding member in the 1950s – long before it decided to join the EU.

However, it *is* reasonable to expect that those who are campaigning and the press more generally have a duty to ensure that their reporting is factually accurate. It is surely outrageous that official campaign literature should be allowed to deliberately mislead voters. The same is true of newspapers where we have seen a string of, quite frankly scandalous, falsehoods^{[4][5]}. Perhaps it is time to strengthen the law in this area. Libel laws exist to prevent the defamation of individuals (whether they succeed is another matter), but should falsehoods that are not directed directly at individuals be any more permissible?

Of course, many of those involved in the Remain campaign were hardly free from outlandish claims – for David Cameron to list the 2016 Referendum alongside 1914 was surely ludicrous and some of the publicity surrounding it even more. Likewise, Osborne’s claim that there would be an emergency budget in the event of a Leave result

was clearly untrue, as was Alan Johnson's belief that two-thirds of UK manufacturing jobs are dependent on demand from the EU.

Nevertheless, the fact that individuals on either side engaged in exaggeration and, in some cases, deceit, should not blind us from the fact that the scale of the offences were not equal. The above claims from the Remain campaign did not (to the best of the author's knowledge) appear in the official campaign literature. Claims that mortgage costs were likely to rise immediately after the vote proved as spurious as some of the short-term Treasury forecasts made (which has, ironically, had the side-effect of tainting the rather more robust conditional long-term forecasts made), but these were errors of prediction rather than of fact. In contrast, an almost flagrant disregard for factual accuracy appears in some of the examples given earlier from Leave campaigners and the press.

Of course, whilst tighter laws might attenuate some of the worst errors of fact they will do nothing to prevent or even ameliorate those all-pervasive errors of omission that permeate throughout the media and political landscape. Indeed, judicious selection (or dare I say "cherry-picking") of facts in order to support one's argument is seen as a mark of good debate or argument. Yet when this involves deliberately ignoring those facts that are less-than-convenient for one's own point of view, the effect can be every bit as misleading as directly stated falsehoods.

It is indeed true that a many of the UK's laws result (at least in part) from decisions made in Brussels. It does not follow, however, that this "stops the British public from being able to vote out the politicians who make our laws"². The British public have a say over those laws: both directly through their ability to vote an MEP in or out of the European Parliament and indirectly due to the fact that the UK Government has a seat on the Council of the European Union. Sovereignty is indeed pooled, but the wider unspoken assertion – that it somehow lies with unelected bureaucrats – is manifestly false.

Likewise, it is often asserted that leaving the EU will enable the UK to strike trade deals with new partners. What is not stated, however, is that many of these trade deals are likely to be of limited worth. In the absence of diagonal cumulation, the automotive industry is unlikely to be able to take advantage of them. Similarly, unless we agree near-

international standards harmonisation, many of the dreamed-for deals around services will never materialise. The financial sector raises particularly thorny issues because *no* country wants to expose its financial sector to excessive risk and few if any are willing to hand regulation over to another country (the UK included!) As such, the swashbuckling dreams of many of an island nation striking free trade deals all over the globe are largely illusory.

The upshot of all of this is that, in an era where misinformation is widely available, we need to critically re-examine what actions should be taken in order to ensure that the democratic process operates effectively. If major constitutional decisions are henceforth no longer to be delegated from the people to our elected officials then it is surely imperative that those with the votes are well-informed. Given that none of us can be experts at everything, it is incumbent upon those who control access to information to ensure that we have all the correct facts and supporting information that we need.

[1] *R (The Good Law Project) v Electoral Commission* [2018] EWHC 2414 (Admin)

[2] Mance, H. (2017) 'Electoral commission fines Remain campaigners £19,000', *Financial Times*, Available at: <https://www.ft.com/content/2f91721d-9512-3c2a-9e0f-4453897183c8>

[3] Vote Leave, 'THE UK AND THE EUROPEAN UNION: THE FACTS' Available at: <https://blogs.spectator.co.uk/files/2016/06/Ref-address1.pdf>

[4] Greenslade, R. (2016), Sunday Express admits '12m Turks coming to UK' story was inaccurate' *The Guardian*, Available at: <https://www.theguardian.com/media/greenslade/2016/jun/20/sunday-express-admits-12m-turks-coming-to-uk-story-was-inaccurate>

[5] Greenslade, R. (2010), 'Daily Star gets it wrong again with front page story about 'Muslim loos'' Available at: <https://www.theguardian.com/media/greenslade/2010/sep/27/daily-star-pcc>