The EU Referendum: Who should vote?

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The question of who votes in what elections is usually thought to be a rather nerdy and obscure question, and it doesn’t often capture the public imagination. So it was quite something to see an announcement from Number 10 in advance of the publication of the EU Referendum Bill telling us what the franchise is going to be in the referendum trending as ‘most popular’ and as a ‘top story’ on the BBC News website early in the morning of the late May Bank Holiday 2015. The announcement seems to have been made to forestall further debate on the franchise, which had been gaining quite a lot of traction on the airwaves, in the newspapers and in social media.
According to the announcement, the Referendum Bill will use a modified Westminster franchise. So it will use the franchise for UK national elections – i.e. resident UK, Irish and Commonwealth citizens, plus those who have not been resident outside the UK for more than 15 years, but it will import two additional elements from the franchise for European Parliament elections: members of the House of Lords will be able to vote, as will those who are resident in Gibraltar. It would not include three groups of possible voters:

- UK citizens resident abroad (or perhaps in the EU only), no matter how long they have been resident in the UK;

- EU citizens who are able to vote in the UK in European Parliament and local elections (and in the elections for devolved assemblies and Parliaments) on the basis of residence; and

- 16-17 year olds (presumably in the above categories as well as those who are resident UK citizens)

The issue has become politicised in the UK, in part because the first group felt they had been the real victims of the Conservative’s promise to allow anyone resident in the UK for more than 15 years to vote in the referendum. (The Conservative policy is outlined on p.49 of the 2015 Conservative Party manifesto), and the latter two groups both voted in September 2015 referendum on Scottish independence, with the third group also set to vote in future referendums (including the one to be held in 2016), pursuant to an anticipated Westminster devolution of power to the Scottish Parliament to set its own franchise.

All debates and decisions about the franchise are a mixture of principle and pragmatism – especially where the starting point is a rather mixed bag of voting rights. So unlike the vast majority of states who limit its voting rights in national elections to citizens alone. On the contrary, ever since boundaries of the UK as we know it were carved out as a result of the end of empire and the dissolution of the British Empire, those who had been ‘subjects’ of the Crown found themselves continuing to have a say in how the UK is governed.
franchise in the modern state, even if this sits uncomfortably with a notion of sharp boundaries between those inside and outside the circle of inclusion.

That said, the inclusion of at least some external voters in the UK franchise should not itself be seen as an isolated case, but rather as part of a more general international trend towards allowing non-resident citizens to vote in elections going as far as most states now do. So in 2014 the European Commission suggested that the UK, along with other EU Member States, should reconsider its current policies and enact a more generous enfranchisement of external voters, especially those resident elsewhere in the EU. This was to avoid the situation whereby voters might find themselves unable to vote in any national elections (e.g. if they have been abroad for fifteen years, but yet did not qualify for citizenship in their host state, or for various reasons did not acquire that citizenship, e.g. if that meant giving up UK citizenship).

The UK also has an unusual approach to the enfranchisement of non-UK EU citizens on the basis of residence, which is only required under EU law for local and European Parliament elections, but which is exte matter of UK law – also to elections to the devolved assemblies. Not only did EU citizens vote in the independence referendum, but they have also voted in all of the referendums that preceded the devolution arrangements, with the exception of the referendum in Northern Ireland which was conducted on the basis of the Westminster franchise. No other EU Member State has enfranchised non-national EU citizens, and other states continue to insist that longterm resident EU citizens who want to vote in most national elections must themselves become citizens by naturalisation, with all the difficulties that this entails (including in some cases the loss of their original citizenship). A wider enfranchisement of EU citizens of residence has long been debated, but a European Citizens’ Initiative did not achieve much political support across the EU.

And while the initial proposal to enfranchise 16-17 year olds to vote in the Scottish independence referendum was viewed with a degree of scepticism in some quarters, perceptions have changed substantially on Scotland. The enfranchisement is generally thought not to have changed the result in any substantial way, and in practice, the principle of enfranchising young adults in the vote in ensuring that they receive opportunities, within the framework of educational processes in understanding the significance of the choices they are being asked to make has been part of the process in Scotland which receives wide approval, whatever position people take on the of an independent Scotland.

The predictable result of all of this is confusion, as there is no coherent ‘membership model’ to which adheres in the matter of elections or referendums. The Scottish referendum franchise, which includes a range of persons resident in Scotland but excluded persons born in Scotland but now resident elsewhere in the UK or outside the UK is a case in point. The latter group would have become Scottish citizens in the event of vote (as well as remaining, we can assume, UK citizens). The choice was widely defended as a
compromise on which to conduct the vote. Despite rumblings from ‘expats’ threatened with being disenfranchised, no significant development has occurred to date. The effect of a referendum on the franchise is a matter for the legislation enacted to allow the referendum, and the international human rights law that would preclude the legislature having the power to exclude it. A free choice across the existing electoral rolls, including those for local, devolved, Westminster and European Parliament elections, means that the franchise can be the subject of political horse-trading.

Those proposing any particular franchise for any given electoral or referendum event will be aware of the roll chosen might be very likely to affect the outcome. In excluding EU citizens, Prime Minister David Cameron is said to be bowing to eurosceptics in his own party. Equally, those who are campaigning for the inclusion of EU citizens may be doing so not just because of the principle that they have been resident and paying tax for years, and that they will be profoundly affected as regards issues of personal status by the effects of the referendum. But also because they may have an inkling that this group would vote in favour of the UK staying in the EU after a referendum. That said, it is worth pointing out that registration and participation levels amongst non-citizens resident in the UK in the elections they can vote in is lower than amongst UK citizens, even though there are clearly some groups to whom these rights to vote – and the possibility of participating in the EU referendum – matter intensely, for obvious reasons. Even if they participated at the same rate as UK citizens, the likely to account for less than 5% of the overall voting roll. External voters also continue to prove a hard to reach group, with much lower levels of participation during the years when they are enfranchised. It seems likely that they too, if resident in the EU at least, might be inclined to vote in favour of membership, in order to protect their own status, although no one can be sure about that point. In a Scotland experiment on which to draw. Moreover, the Scotland experience seemed to indicate that the voting choice might not differ so greatly from that of the ‘mainstream’ voting population.

There are no right or wrong answers on the question of the scope of the franchise. The uncertainties are, however, accentuated by the uncertainties about exactly what we might be voting on, at the time when the Scottish referendum franchise was set, the terms of the vote were pretty plain. Obviously there were certain clarifications (e.g. on currency matters most particularly) during the campaign. The EU vote is quite different, because of the uncertainties (and secrecy) of the diplomatic immunity that the government claims it has an electoral mandate to negotiate, given the terms of the government victory in May 2015. The possible ‘adjustments’ are profoundly unclear, especially as regard to the terms of membership that the government claims it has an electoral mandate to negotiate, given the terms of the negotiations matter at all. Plenty will vote “in”, regardless of the Cameron ‘deal’. Plenty will vote
‘deal’, for many observers, is simply a process of political choreography to allow David Cameron and Osborne to avoid the Conservative Party falling apart over its divisions on the European Union. It could be about something which many EU citizens, right across the EU might want to talk about, namely a thorough transnational reconsideration of whether the legal and political framework for integration across Europe is now fit for purpose as we approach the middle decades of the twenty first century.

That extent, non-UK EU citizens resident in the UK might end up feeling doubly excluded if they do not vote: namely not only can they not participate in whatever referendum there is, but also they may wonder if the referendum that is taking place does not itself really get to the nub of the issues as far as they are concerned.

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