

THE “MAY DOCTRINE” ON REFERENDUMS IS NOT WHAT CONSERVATIVES ONCE THOUGHT

David Davis, Brexit Secretary, has changed his mind about referendums

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David Davis MP, in charge of UK negotiations with the EU over Brexit, once favoured a much stronger role for MPs than he and his Cabinet colleagues now envisage for Westminster over Article 50 and related matters.

Davis used to argue that referendums should not be held until Parliament had adopted precise legislation for voters to accept or reject - and insisted that they should contain a strict threshold.

This emerges from a critical review of the “May doctrine” written for the Federal Trust by the British constitutional expert Andrew Blick that is published today. The “doctrine” holds that the outcome of the British referendum of 23rd June entitles Theresa May’s government to invoke Article 50 of the Lisbon Treaty without seeking Parliamentary approval.

Blick, of King’s College London, contrasts the “May doctrine” with what he sees as a more traditional and “orthodox” view of the role of referendums in the British Parliamentary system.

He illustrates this latter approach by quoting comments made by Davis in relation to the Regional Assemblies (Preparations) Bill in 2002. Davis then suggested that referendums should not be held until Parliament had adopted precise legislation on the matter which the electorate was asked to endorse or reject; “We should not,” said Davis in 2002, “ask people to vote on a blank sheet of paper and tell them to trust us to fill in the details afterwards.” (Link to the House of Commons Hansard:

<http://www.publications.parliament.uk/pa/cm200203/cmhansrd/vo021126/debtext/21126-17.htm>)

Davis also argued in 2002 against simple majorities for constitutional referendums, seeking rather a voting threshold “appropriate to the level of constitutional change.” Only thus could the “settled will” of the people be discerned.

Blick argues that even if the actual and pending court cases eventually allow the government legally to trigger Article 50 without Parliamentary endorsement, it would be constitutionally inappropriate to do so, since it would be a perversion of a central plank of the “Leave” campaign, namely the slogan “Take back control.” It was difficult to believe that those who voted for this slogan wanted to regain “control” simply for the benefit of the executive branch of government, unconstrained by ultimate Parliamentary sovereignty.

Note to editors:

The full text of Andrew Blick’s report can be found on <http://fedtrust.co.uk/our-work-on-europe/taking-back-control/>. For further information ring Andrew Blick on 07939 042 650, or the Director of the Federal Trust, Brendan Donnelly, on 07956 379129.

More material on Brexit can also be found on the Federal Trust website (<http://fedtrust.co.uk/>)