

The Government's case examined

Several arguments have been advanced by the Government to explain why it is going back on its promise to hold a referendum.

The striking thing about the Government's arguments about why a referendum was justified before - but is not now - is that all of them contradict what the Government said last time round. They rely on some kind of claim that the Government misled the public before, but is telling the truth now.

(1) It no longer changes the relationship between the UK and EU

Tony Blair has argued that a referendum is no longer needed because the new version of the constitutional treaty would no longer change the fundamental relationship between the UK and the EU. On 20 April he said "If it is not a constitutional treaty so that it alters the basic relationship between Europe and the member states, then there isn't the same case for a referendum."

Margaret Beckett has claimed "the Prime Minister... came to the view that there should perhaps be a referendum on the original constitutional treaty, if I can call it that, because he came to the view that perhaps, yes, there were changes in it that could be considered as somewhat fundamental in the relationship between the UK and the EU." (Hansard, 7 June)

But at the time Tony Blair said exactly the opposite about the original version of the EU Constitution - in the very speech in which he announced the referendum.

"The treaty does not and will not alter the fundamental nature of the relationship between member states and the European Union... Parliament should debate it in detail and decide upon it. Then, let the people have the final say" (Tony Blair, Hansard, 20 April 2004)

(2) It no longer has the "characteristics of a constitution"

Margaret Beckett told MPs: "We have made it clear that there should not be anything that has the characteristics of a constitution." (Hansard, 1 May)

Tony Blair has said that "What the Dutch and the British are saying is that it is important we go back to the idea of a conventional treaty... rather than a treaty with the characteristics of a constitution." (Tony Blair, IHT, 16 April 2007)

Other than not having the name "constitution" the Government have been strangely unforthcoming about what exactly the "characteristics of a constitution" are. But what sort of document is it that sets up institutions like a President, a Foreign Minister and defines how decisions are made – other than a constitutional document?

In fact all the “core” institutional features of the Constitution reappear in the new version. As Jack Straw pointed out in Parliament just after the no votes – such proposals would only be included in a *constitutional* treaty:

Kate Hoey: I am sure the Foreign Secretary would agree that among the things that are synonymous with the European Union are back-door and back-room deals. Will he assure me that one matter that he would certainly submit to a referendum is the creation of a Foreign Minister and a European President?

Jack Straw: Those points are central to the European constitutional treaty, and of course I see no prospect of their being brought into force, save through the vehicle of a *constitutional* treaty. (Hansard 6 June 2005)

(3) This time it’s a “conventional amending treaty, rather than a constitution”

As well changing the name to that it is not called a constitution, the Government have tried to argue that there is a philosophical difference between a “conventional amending treaty” and a constitutional treaty. The Government has stressed that the new document is like other recent EU treaties, in that it amends the existing treaties.

In a press conference at the embassy of the Netherlands Tony Blair said that “it is important we go back to the idea of... a conventional amending treaty, rather than a treaty with the characteristics of a constitution... a treaty in the tradition of the treaty that we negotiated in Amsterdam some 10 years ago.” (16 April)

Likewise a “Downing Street spokesman” told the press after a meeting with Nicolas Sarkozy that, “There is broad agreement, in that they both think any treaty must be an amending one rather than a constitutional treaty. The Prime Minister has said before that if we have an amending treaty, as in Nice and Amsterdam, a referendum would be unnecessary.” (Express, 11 June)

Margaret Beckett has said that “what we would look for is a treaty which is very different from that proposed as the constitutional treaty - for something that was, in a perfectly understandable and straightforward historical lineage, an amending treaty.” (Hansard, 7 June)

But that’s exactly what they said last time. As Tony Blair said in 2004:

“This is a treaty, not a constitution absent from a treaty. It is the treaty establishing a constitution for Europe. In other words, it is a treaty agreed in the same way as Maastricht or any other treaty between the European Union members... This is extremely important.” (Hansard, 21 Apr 2004)

(4) We don’t hold referendums in Britain

Sometimes the Government have appeared to distance themselves from their own extensive use of referendums, and to argue that referendums are a foreign invention, alien to the British tradition.

Margaret Beckett told the European Scrutiny Committee, “there are some who have always used the referendum as a political tool and in consequence have very, very different parliamentary and legislative arrangements from those that pertain in this country. I prefer our model.” (Hansard, 7 June)

This is now a hopelessly out of date argument. Clearly no-one wants to have referendums on all kinds of small issues. But the Government has accepted that when there are constitutional changes – changes to the rules of the game – then people should be consulted in referendums.

The Government held referendums on Scottish and Welsh devolution, and the Good Friday Agreement in Northern Ireland. They have held referendums on the London Mayor, the North East Assembly and on thirty-five other city mayors. The Government has promised a referendum if it ever tries to introduce Proportional Representation or the single currency. That's forty referendums (not counting local referendums e.g. on congestion charging in Edinburgh). It is simply too late for the Government to start arguing that referendums are some kind of foreign invention, "alien to the British system", which threaten to undermine representative democracy.

(5) The referendum was because of the symbols of the EU

According to the Downing Street website: "Asked what it was in 2005 that required a referendum, and what were the elements of the constitution, the Prime Minister's Official Spokesman replied they were elements such as flags, national anthems, etc."

Again, asked what exactly it was in the original treaty that made the Government promise a referendum in the first place, Margaret Beckett said it was, "...symbolic gestures – the flag, the anthem." (Foreign Affairs Committee, 19 June)

This is simply ludicrous. The Government cannot expect anyone to believe it is backing out of the promise of a referendum because the (already existing) symbols of the EU no longer feature in the new version of the text.

As a spokesman for the Commission pointed out this week: "It's no great loss! The European flag already exists anyway..." (Le Figaro, 18 June)

(6) The new version contains only some of what was in there before

The Centre for European Reform – a pro-euro think tank – has argued that because the new version only features some of the content of the original constitution, a referendum is no longer justified. A spokesman said on the World at One that the new version would contain "only twenty percent" of the previous constitution. (BBC World at One, 11 June)

Even leaving aside the percentage figure – and one Dutch MP noted recently that, "if the Netherlands manage to change 5% of the old treaty, that will be a good performance" – this is an extraordinary argument.

Voters in France and Holland overwhelmingly voted against these ideas. Nearly two thirds of Dutch voters said "no".

Would it be acceptable, if Gordon Brown lost the next election in a record landslide defeat, for him to demand to stay in office, promising to carry out "only twenty percent" of the Labour manifesto?

(7) We might hold a referendum, but only if we are defeated in the negotiations

Having comprehensively ruled out a referendum last week, over the weekend Government ministers went out of their way to stress that they have an open mind on a referendum.

On GMTV Gordon Brown was asked, "You wouldn't hesitate to hold a referendum, would you?", Mr Brown responded: "Well, if it were necessary to hold a referendum, of course. But the question is 'Can we get the best deal for Britain?' and I suspect that the best deal for Britain will be won, where we will get what we want at this summit." (19 June)

However, the Government are only suggesting they might hold a referendum if they are utterly defeated in the negotiations. But it is unlikely, to say the least, that Gordon Brown will return from Brussels admitting utter defeat. Even people in Downing Street admit that this is "cobblers."

One senior source said talk of having to call a referendum was a "load of old cobblers". A spokesman said, "The question of a referendum will not arise because we will not sign up to anything that breaches our red lines". (Telegraph, 19 June)

In reality the Prime Minister's Official Spokesman made it clear that the Government has already ruled out a referendum, before the negotiations have even happened:

"Asked what the Prime Minister's reaction was to Gordon Brown's comments on television this morning that he would have a referendum if needs be, the PMOS said that that was a slight misquotation of what the Chancellor had said. What he said was that he did not envisage a situation arising where we would be in that kind of territory. Put that the Chancellor actually said the words, the PMOS said that what he had said beforehand, and what the journalist had left out was that he did not envisage us being in that situation. As we had made clear yesterday, we would not agree to a deal that crossed the red lines, therefore, we did not believe a referendum would be necessary." (Downing Street website, 19 June)

Conclusion:

In reality Tony Blair only promised a referendum because he had no alternative - as he admitted in a recent interview:

***Q:** You didn't have to call a referendum, you did it and that put other leaders under pressure to organise a referenda with the results that we know. Do you regret that?*

***Blair:** No, because there wasn't really an alternative. Because you have to deal in politics with what people perceive and if you say we are getting rid of all the previous treaties, we are now having a treaty that is a constitution, people will look at it differently, and they did.*

***Q:** Although it is not that different from other treaties?*

***Blair:** Well you know I could argue that... but in practical politics you have got to pay some attention to where public perception is as well. (European Voice, 20 April 2007)*

In reality the decision to promise a referendum was based on the simple political calculation that the Government could not avoid promising a vote ahead of the 2004 European elections, and the 2005 General Election. The Government clearly gained an advantage in those elections by promising a referendum. But now it plans to go back on its word.