

A Critical Assessment of the Impact of EU Membership on British Sovereignty

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The impact of EU membership on British sovereignty remains a divisive issue in British politics.¹ The debate has revolved around two opposite views between Eurosceptics and pro-Europeans. While Eurosceptics argue that EU membership has undermined British sovereignty, pro-Europeans believe that it has in fact extended the nation's sovereignty.² Employing a pro-European perspective, this paper will argue that the impact of EU membership on British sovereignty has been primarily positive. Although EU membership has required the UK to transfer a part of its formal sovereignty to the EU, membership has significantly enhanced the UK's effective sovereignty and ability to achieve its policy goals. The paper will start by accounting for the concept of sovereignty, and continue by maintaining that Eurosceptics are right to argue that EU membership has eroded British sovereignty. This is evident in the extension of QMV and declined use of national veto in the Council of Ministers, increased powers of supranational European institutions, primacy of EU law, and the limits imposed by the European Union Act 2011 on parliamentary sovereignty. However, it will show that the Eurosceptic argument is undermined by the fact that the loss of sovereignty has not applied to matters of essential national concern. This is illustrated by the continuing requirement of unanimity in key areas, the role of national governments in areas of 'high politics', opt-outs, and the fact that the loss of sovereignty to

¹ C. Gifford, 'The UK and the European Union: Dimensions of Sovereignty and the Problem of Eurosceptic Britishness' *Parliamentary Affairs* 63 (2010), p. 323.

² A. Geddes, *The European Union and British Politics* (Basingstoke: Palgrave Macmillan, 2004), p. 183.

the EU is not irreversible. While EU membership has required a transfer of a part of Britain's formal sovereignty, it has essentially enhanced the nation's effective sovereignty in the context of globalization, which has challenged independent state action.

Sovereignty is a slippery concept that can be used to both oppose and support British membership of the EU. Consequently, the way one defines and limits sovereignty dictates the assessment of the impact of EU membership upon British sovereignty. The debate over the impact of EU membership on British sovereignty has revolved around two opposite understandings of sovereignty between Eurosceptics and pro-Europeans. While Eurosceptics argue that Britain's membership of the EU has eroded British sovereignty, pro-Europeans believe that membership of the EU has extended the nation's sovereignty. According to the Eurosceptic position, sovereignty is indivisible and absolute – a state either has it or does not.³ For Eurosceptics, sovereignty equates with sacrosanct principles such as the legislative supremacy of Parliament, political independence of the state or executive, nationhood and self-governance.⁴ Pro-Europeans, on the other hand, see sovereignty as a resource to be utilized rather than a static concept to be guarded.⁵ As Geoffrey Howe puts it, “Sovereignty is not virginity, which you either have or you don't”⁶; “a nation can add to its own strength ... by distributing a part of its sovereignty to a wider and more authoritative entity.”⁷

As well as this divide between Eurosceptic and pro-European definitions of sovereignty, a distinction can also be made between formal and effective sovereignty. Whereas formal or *de jure* sovereignty has to do with a state's supreme legal authority over its own decision-making, effective or *de facto* sovereignty concerns a state's practical

³ Ibid., p. 183.

⁴ P. Lynch, 'Sovereignty and the European Union: Eroded, Enhanced, Fragmented' in L. Brace and J. Hoffman (eds.), *Reclaiming Sovereignty* (London: Pinter, 1997), p. 42.

⁵ G. Howe, 'Sovereignty and Interdependence: Britain's Place in the World' *International Affairs* 66 (1990), p. 678.

⁶ Ibid., p. 679.

⁷ Ibid., p. 688.

capacity to control its own affairs.⁸ Finally, sovereignty can be subdivided into three dimensions, which are state, constitutional and popular sovereignty. State sovereignty refers to a state's legal capacity to take decisions within its territorial jurisdiction without being subject to external constraints.⁹ The constitutional dimension of sovereignty, in turn, addresses the location of sovereign authority within the state. The doctrine of parliamentary supremacy is a key principle of the British constitution.¹⁰ As defined by Dicey, parliamentary sovereignty establishes that Parliament has "the right to make or unmake any law whatever; and, further, that no person or body is recognized by the law of England as having a right to override or set aside the legislation of Parliament".¹¹ Lastly, the popular dimension of sovereignty indicates that the authority of the state derives from the consent of the citizenry.¹²

It is true, as Eurosceptics argue, that EU membership has undermined British sovereignty. This is evident, firstly, in that British national sovereignty has been fragmented by the extension of qualified majority voting (QMV) and decrease of the exercise of national veto in the Council of Ministers. QMV only requires a majority of votes – from November 2014, 55 per cent of the member states and 65 per cent of the EU population¹³ – which means that Britain will be obliged increasingly to adopt laws to which it is opposed. The latest extension of the use of QMV took place following the Lisbon Treaty of 2007, which extended qualified majority to a number of areas that were formerly governed by unanimous voting, such as external border control, asylum, energy security and the negotiation of international trade agreements.¹⁴

⁸ Lynch (1997), p. 44.

⁹ N. Nugent, 'Sovereignty and British Membership of the European Union' *Public Policy and Administration* 11 (1996), p. 3.

¹⁰ Lynch (1997), p. 43.

¹¹ A. V. Dicey, *Introduction to the Study of the Law of the Constitution* (Indianapolis: Liberty Classics, 1982), p. xviii, quoted in *Ibid.*, p. 43.

¹² Nugent (1996), p. 3.

¹³ 'Qualified Majority', *Europa: Summaries of EU Legislation*, undated, http://europa.eu/legislation_summaries/glossary/qualified_majority_en.htm, accessed 7 January 2014.

¹⁴ *Ibid.*

Besides the replacement of the requirement of unanimity with QMV on various policy areas, the decline of the exercise of national veto at the Council is also explained by the reduced significance of the Luxembourg Compromise. The Luxembourg Compromise of 1966 was a political agreement between the six founding member states and permitted any state to use veto over a proposed decision where it considered it had very important national interests at stake.¹⁵ Two developments in the 1980s significantly diminished the importance of the Compromise as “the guarantor of national sovereignty”.¹⁶ The first of these was in 1982 when the UK sought to use the Compromise and exercise a veto against the annual package of agricultural prices. This was perceived by other member states as Britain’s attempt to use the Compromise for tactical purposes to establish a British rebate. The other states therefore refused to recognize the British veto, and proceeded to vote the package through.¹⁷ The second development was the Single European Act (SEA) of 1986, which introduced a substantial extension of QMV and implied a new spirit among the member states to use majority voting provisions. This reduced the significance of the Luxembourg Compromise, and no member state has formally invoked it since 1988. Britain has not tried to invoke the Compromise to veto social legislation to which it has been opposed. Despite considerations of evoking the Compromise to resist social legislation, the UK Government has not done so due to the concern that the exercise might have undesirable effects. This suggests that the Luxembourg Compromise no longer has the practical power to defend national sovereignty.¹⁸

Secondly, British national sovereignty has been eroded as supranational European institutions have been granted considerable powers in policy areas formerly reserved for member states. Supranational institutions are composed of Community, rather than national,

¹⁵ Nugent (1996), p. 5.

¹⁶ *Ibid.*, p. 7.

¹⁷ *Ibid.*, p. 7.

¹⁸ *Ibid.*, p. 7.

representatives, which means that they do not represent the interests of the member states but of the EU or its citizens as a whole. The powers of the European Commission in particular can be viewed as a major limitation to national sovereignty. It holds a policy leadership role and exercises substantial influence over policy outcomes, notably with regard to the EU Single Market.¹⁹ The Commission's key role in the development of the Single European Market was demonstrated, for instance, by Lord Cockfield's 1985 White Paper *Completing the Internal Market*, which set the programme and timetable for implementing the single market, and detailed measures to remove physical, technical and fiscal barriers, as well as the adoption of the principles of mutual recognition and harmonization only on necessary points, and the development of a social dimension of the single market, notably the adoption of the 1993 Working Time Directive.²⁰ The extension of the EU's regulatory role in the single market among other policy areas has expanded the Commission's powers while eroding the member states' sovereignty as they have delegated sovereignty to the EU level.²¹

Another example of the increased power of supranational European institutions is the extended role of the European Parliament. The EP's power has been strengthened through the ordinary legislative procedure, which gives an equal weight to the EP and the Council of Ministers on regulation of the single market and a wide range of related areas, such as transport, immigration, energy, consumer protection, agriculture and the environment. The ordinary legislative procedure was introduced by the Maastricht Treaty of 1993 and further expanded by the Amsterdam Treaty of 1997. Following the Lisbon Treaty of 2007 it is now the principal legislative procedure of the Union's decision-making system.²²

¹⁹ Lynch (1997), p. 51.

²⁰ UK Parliament (2011), 'European Union Committee – Fifteenth Report: Re-launching the Single Market', 29 March 2011, <http://www.publications.parliament.uk/pa/ld201011/ldselect/ldecom/129/12905.htm>, accessed 7 January 2014.

²¹ Lynch (1997), p. 51.

²² 'Legislative Powers: Ordinary Legislative Procedure', *European Parliament*, undated, <http://www.europarl.europa.eu/aboutparliament/en/0081f4b3c7/Law-making-procedures-in-detail.html>, accessed 7 January 2014.

The transfer of authority from national governments to the EU has also fragmented popular sovereignty. Whereas national governments are accountable to parliaments and voters, EU institutions are insulated from direct control by voters. The delegation of powers to the EU has thus caused an increasing democratic deficit, eroding the link between the citizens and the decision-making authority. National democratic institutions remain the focal point for legitimacy and popular sovereignty in the eyes of many people, and the increased role for the EP has therefore not been sufficient to give the EU considerably greater legitimacy.²³

Thirdly, parliamentary sovereignty has been eroded by the primacy of EU law, a principle that was ordered by the European Communities Act in 1972.²⁴ The supremacy of Community law implies that in cases of conflict, EU law takes precedence over national law and must be applied.²⁵ The challenge presented by the primacy of Community law for parliamentary sovereignty was illustrated in the *Factortame* case, which overturned an Act of the British Parliament. The Merchant Shipping Act 1988 intended to disallow non-British fishermen registering their vessels as British in order to be entitled to fishing rights in British waters. Spanish fishermen subsequently challenged the Act claiming that it was incompatible with Community law in that it discriminated against citizens of the EC on grounds of nationality, and applied for suspension of the provision prior to a final verdict. The House of Lords, aware that the principle of parliamentary sovereignty prevented it from disapplying an Act of Parliament, referred the question to the European Court of Justice for a preliminary ruling. The ECJ ordered that to comply with European Community law, the provision had to be suspended. When the case returned to the Court in England, the House of Lords

²³ Lynch (1997), p. 56.

²⁴ I. Loveland, 'Parliamentary Sovereignty and the European Community' *Parliamentary Affairs* 49 (1996), p. 531.

²⁵ Nugent (1996), p. 5.

announced that the 1988 Act would be disapplied.²⁶ The decision provoked Eurosceptic hostility and was described by Prime Minister Margaret Thatcher as “a novel and dangerous invasion by a community institution of the sovereignty of the UK Parliament”.²⁷

Finally, parliamentary sovereignty has been also restricted by the European Union Act 2011. The purpose of the Act was to confirm the principle of parliamentary sovereignty by affirming that EU law is effective in the UK only because Parliament legislated that it should.²⁸ Despite seeking to restate parliamentary supremacy the Act has, paradoxically, limited the Parliament’s sovereignty by introducing a referendum requirement for certain EU matters, such as treaties transferring significant competences to the EU.²⁹ While such a requirement of a referendum enhances popular sovereignty, it conflicts with the doctrine of parliamentary sovereignty as it prevents Parliament from enacting law in certain areas “without the approval of an external body – namely, the electorate”.³⁰

However, the Eurosceptic argument of the devastating impact of EU membership on British sovereignty is undermined by the fact that in key policy areas member states have retained a dominant role. This means that Britain is not obliged to act against its will on crucial sovereignty matters.³¹ As the former Prime Minister, John Major stated in the House of Commons in 1995, “From the moment we entered the European Community – now Union – there have always been some areas in which we have pooled sovereignty and also to some extent lost sovereignty ... This has not applied to issues of great national concern.”³² This is manifest in the continuing requirement of unanimity in such important policy areas as

²⁶ N. Barber, ‘The Afterlife of Parliamentary Sovereignty’ *International Journal of Constitutional Law* 9 (2011), pp. 149–150.

²⁷ Loveland (1996), p. 531.

²⁸ ‘European Union Act 2011’, *UK Parliament Website*, undated, <http://services.parliament.uk/bills/2010-11/europeanunion.html>, accessed 7 January 2014.

²⁹ V. Bogdanor, ‘Imprisoned by a Doctrine: the Modern Defence of Parliamentary Sovereignty’ *Oxford Journal of Legal Studies* 32 (2012), p. 188.

³⁰ J. Goldsworthy, *Parliamentary Sovereignty: Contemporary Debates* (Cambridge: Cambridge University Press, 2010), p. 138, quoted in *Ibid.*, p. 188.

³¹ Nugent (1996), p. 10.

³² *Ibid.*, p. 10.

taxation, EU budget and treaty change.³³ The British veto in 2011 of changes to the Lisbon Treaty to protect the UK's financial sector, for example, demonstrated Britain's influence on essential issues.³⁴ National governments have also remained key actors in areas of 'high politics' that are the most vital for national interests and sovereignty.³⁵ In such essential policy areas as Common Foreign and Security Policy member states work through intergovernmental bodies rather than delegate powers to supranational institutions.³⁶ Furthermore, the UK's ability to act according to its will despite its EU membership is demonstrated by its exemptions from some EU policies, such as the Schengen Agreement and the Economic and Monetary Union³⁷.

Also, future parliaments are free whenever to withdraw from the EU. Although the European Communities Act 1972 saw Parliament bind its successors by giving legislative force to future Community law, it did not constrain a successive parliament from repealing the Act.³⁸ This is based on the Diceyan theory, which holds that parliamentary supremacy is "a perpetual constitutional phenomenon";³⁹ Parliament is always able to give legal force to any legislation it wishes, and laws enacted by Parliament in the past cannot restrict a future parliament's sovereign legislative authority.⁴⁰ The competence of future parliaments to repeal the 1972 Act was pointed out by Lord Denning, who wrote that, "If ... Parliament deliberately passes an Act with the intention of repudiating the Treaty or any provision of it ... and says so in express terms then I should have thought it would be the duty of our Courts to follow the statute of our Parliament".⁴¹ The right of member states to leave the EU was recognized also in the Lisbon Treaty, which states that, "any Member State may decide to

³³ *Ibid.*, p. 10.

³⁴ 'EU Veto: Cameron Says He Negotiated in 'Good Faith'', *BBC News*, 12 December 2011, <http://www.bbc.co.uk/news/uk-politics-16134496> accessed 11 January 2014.

³⁵ Lynch (1997), p. 44.

³⁶ Nugent (1996), p. 10.

³⁷ *Ibid.*, p. 10.

³⁸ Lynch (1997), p. 47.

³⁹ Loveland (1996), p. 520.

⁴⁰ *Ibid.*, p. 520.

⁴¹ *Ibid.*, p. 527.

withdraw from the Union in accordance with its own constitutional requirements".⁴² In this regard, the loss of formal sovereignty to the EU is not irreversible. Therefore, it is better understood that the UK's formal sovereignty has been pooled rather than lost.

Whereas EU membership has, to some extent, undermined the UK's formal sovereignty, it has enhanced the country's effective sovereignty. As a result of globalization and 'informal integration',⁴³ the UK's independent policy-making capacity has declined. Examples of constraints arising from globalization include the power of global financial markets, international communications, terrorism and immigration, which all limit independent state action.⁴⁴ This point was made by the former British Prime Minister Harold Macmillan in 1962, who argued that,

“Practically every nation, including our own, has already been forced by the pressures of the modern world to abandon large areas of sovereignty and to realize that we are now all interdependent. No country today, not even the giants of America or Russia, can pursue purely independent policies in defence, foreign affairs, or the economic sphere.”⁴⁵

EU states have responded to the loss of independent policy-making capacity resulting from globalization by pooling a part of their national sovereignties in the EU. By transferring a part of its formal sovereignty in “a wider and more authoritative entity”,⁴⁶ Britain has been able to achieve a more influential position in international politics than it could alone. For example, in the economic sphere, the UK has benefited greatly from its EU membership. Not only are EU countries one of Britain's most important overseas markets – continually covering some

⁴² EU, ‘Consolidated Version of the Treaty on European Union’ *Official Journal of the European Union*, 9 May 2008, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:PDF>, accessed 11 January 2014.

⁴³ Lynch (1997), p. 44.

⁴⁴ *Ibid.*, p. 44.

⁴⁵ H. Macmillan, *Britain, the Commonwealth and Europe* (London: Conservative Political Centre, 1962), p. 7, quoted in Howe (1990), p. 694.

⁴⁶ Howe (1990), p. 688.

fifty per cent of UK exports,⁴⁷ the EU is also a considerable force in global trade diplomacy. Consequently, it is an important platform for promoting UK interests in international trade.⁴⁸

The political importance of EU membership is also considerable. Membership of the EU assures that Britain has the maximum purchase on Community decisions, which set patterns that Britain would need to respond to regardless of whether it was a member of the Union or not.⁴⁹ EU membership also enhances the UK's influence in global politics. This was noted by Prime Minister Macmillan in 1962 when he wrote that,

“If we remain outside the European Community, it seems to me inevitable that the realities of power would compel our American friends to attach increasing weight to the views and interests of the Community, and to pay less attention to our own. We would find the United States and the Community concerting policy together on major issues, with much less incentive than now to secure our agreement or even consult our opinion. To lose influence both in Europe and Washington, as this must mean, would seriously undermine our international position.”⁵⁰

Ceding a part of its formal sovereignty to the EU has thus enabled Britain to extend its effective sovereignty and ability to achieve its policy goals. This supports the pro-European argument that sovereignty is best understood as a resource to be utilized rather than a static concept to be guarded.⁵¹ As Kenneth Waltz has put it, “To be sovereign and to be dependent are not contradictory conditions. Sovereign states have seldom led free and easy lives”.⁵²

To conclude, EU membership has had a primarily positive impact on British sovereignty. It is true, as Eurosceptics argue, that EU membership has fragmented British

⁴⁷ ‘UK Trade, July 2012’, *Office for National Statistics*, 11 September 2012, http://www.ons.gov.uk/ons/dcp171778_278439.pdf, accessed 12 January 2014.

⁴⁸ S. Bulmer, ‘Britain and European Integration: Of Sovereignty, Slow Adaptation and Semi-Detachment’ in S. George (ed.), *Britain and the European Community: the Politics of Semi-Detachment* (Oxford: Clarendon Press, 1992), pp. 19–20.

⁴⁹ Howe (1990), pp. 687–688.

⁵⁰ H. Macmillan, *Britain, the Commonwealth and Europe* (London: Conservative Political Centre, 1962), p. 6, quoted in *Ibid.*, pp. 687–688.

⁵¹ Howe (1990), p. 678.

⁵² K. Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979), pp. 95–96, quoted in Geddes (2004), p. 42.

sovereignty as is evident in the extension of QMV and declined use of national veto in the Council of Ministers, increased powers of supranational European institutions, primacy of EU law, and the limits imposed by the European Union Act 2011 on parliamentary sovereignty. Nevertheless, the loss of sovereignty has not applied to matters of essential national concern. Unanimity continues to be required in key areas, national governments have retained a dominant role in areas of high politics, exemptions from EU policies that Britain has been strongly opposed to have been possible, and future parliaments are free whenever to withdraw from the EU. Overall, EU membership has extended Britain's sovereignty in the context of globalization, which has challenged independent state action. The limited surrender of formal sovereignty in the EU has allowed Britain to maximize its ability to achieve its policy goals, which is manifest in the considerable economic and political benefits that the EU membership has brought about.

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