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“Let’s take back control”: Brexit and the Debate on Sovereignty

“Reprenons le pouvoir”: le Brexit et le débat sur la souveraineté

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Juliette Ringeisen-Biardeaud

Introduction

- 1 Within days of the referendum, Mark Rutte, Prime Minister of the Netherlands, noted the instability of established features of the United Kingdom by declaring that “*England (sic) has collapsed politically, monetarily, constitutionally and economically*”.¹
- 2 At this stage, the Constitution may not have collapsed but it has been badly shaken, and some of the damage may be blamed on parliamentary sovereignty. The concept of a defenceless British Parliament stripped of its powers by the European Union (EU) became a pervasive topic during the run-up to the referendum. However, parliamentary sovereignty is an elusive concept which may be understood in many different ways. It has been vividly described by A.V. Dicey in these terms:

Under all the formality, the antiquarianism, the shams of the British Constitution, there lies latent an element of power which has been the true course of its life and growth. This secret source of strength is the absolute omnipotence, the sovereignty of Parliament...Here constitutional theory and constitutional practice are for once at one...It is, like all sovereignty at bottom, nothing less but unlimited power.²
- 3 Explained in plainer words by the UK Parliament’s website, parliamentary sovereignty is said to:

make Parliament the supreme legal authority in the UK, which can create or end any law. Generally, the courts cannot overrule its legislation and no Parliament can pass laws that future Parliaments cannot change. Parliamentary sovereignty is the most important part of the UK constitution.³
- 4 Many have denounced the loss of sovereignty brought about by European integration. Lord Denning, a renowned English Judge, compared EU laws to an incoming tide turning into a tidal wave. These were his words:

Our sovereignty has been taken away by the European Court of Justice... Our courts must no longer enforce our national laws. They must enforce Community law... No longer is European law an incoming tide flowing up the estuaries of England. It is now like a tidal wave bringing down our sea walls and flowing inland over our fields and houses—to the dismay of all.⁴

- 5 It is difficult to delineate how absolute parliamentary sovereignty ought to be. On 29 April 2016, former Prime Minister John Major said in an interview to the BBC: “If you want undiluted sovereignty, go to North Korea”.⁵ However, Daniel Hannan, member of the European Parliament and founder of the “Vote Leave” movement, commented in relation to Major’s quote that: “Not for the first time, Sir John underestimated the electorate”.⁶ Indeed, a survey carried out on voting day in which voters were questioned as to what motivated their choice revealed that the “principle that decisions about the UK should be taken in the UK” was a central motivation for 49% of the 12,369 voters who were polled whereas 33% of them referred to “immigration control”.⁷
- 6 Early on, the “Leave” camp gathered around the idea that Brexit was the only way for Westminster to recover its confiscated sovereignty. The idea seemed to gain momentum during the campaign, eventually resulting, at least to some extent, in a majority of British voters choosing to leave the European Union. This paper will look into the current status and extent of parliamentary sovereignty. It will address the issue of why this concept is, in itself, of crucial importance to the political debate and how it became instrumental to the Leave campaign. The recurrent use of referendums and the popular sovereignty postulate will then be analysed, as will the attempt from the government to undermine parliamentary sovereignty in relation to article 50. Finally, possible options for the UK will be explored, depending on how “hard” Brexit turns out to become.

To what extent was parliamentary sovereignty stolen and by whom?

- 7 Since Britain’s first application to join the then European Community in 1961, and later with the passage of the *European Communities Act 1972*, parliamentary sovereignty has been the object of passionate debate, especially after a landmark decision of the House of Lords in *Factortame (2)*, made it clear that an Act of Parliament could be superseded by European legislation.⁸ Besides, well before *Factortame*, the European Court of Justice (ECJ) had already ruled, in *Costa v Enel* (1964), that a national law had to be set aside if it was found to be incompatible with Community law.⁹
- 8 These precedents do evidence a transfer of sovereignty from the British Parliament and courts towards European Institutions and courts. However, a number of domestic decisions and Acts of Parliament have also contributed to reshaping the principle of sovereignty. In 2002, *Thoburn v Sunderland City Council* was dubbed the “metric martyr” case. Indeed, it contained all the necessary ingredients to turn a market trader, who used pounds instead of kilograms to weigh his vegetables in violation of an EC Directive, into a martyr of supposedly inane European legislation. In this matter, Mr Justice Laws famously ruled that a number of laws and charters, such as the *European Communities Act 1972*, the *Bill of Rights*, the *Magna Carta*, the *Human Rights Act 1998* and the *Scotland Act 1998* were to be given a special status under the English (sic) Constitution. By no means did this extra protection prevent Parliament’s absolute power to repeal any of these pieces of legislation, but such repeal had to be expressly stated and could not be implied.¹⁰ It must

be stressed that in the classical (and still predominant) British view, European law enjoys priority over UK law only insofar as Parliament accepts it. This was affirmed by section 18 of the *European Union Act 2011*. In this regards, Mark Elliott explains that: “*The priority enjoyed by EU law in the UK is the product of an exercise of parliamentary sovereignty, not a threat to it*”.¹¹

- 9 Eventually, in a *HS2* case heard in 2014, the Supreme Court had a say in how much credit and influence was to be given to European Law in case of conflict with major UK constitutional principles.¹² This case involved an attempt to block a proposed high speed rail network. Litigants claimed that the courts ought to review whether parliamentary debates had adequately taken into account the level of scrutiny imposed for such projects by the EU Environmental Impact Directive. The question of whether the courts could be required by EU law to examine the adequacy of parliamentary process is in direct violation of Section 9 of the *Bill of Rights 1689*.¹³ The UK Supreme Court ruled that although in this specific case the Directive did not require anything that would breach the *Bill of Rights*, should such an event occur, British constitutional principles may well prevail.
- 10 In light of this recent case, it appears that the power of Westminster is not in such a state of decline after all. In fact, the majority of recent limitations on parliamentary sovereignty were self-inflicted. For instance, it can be argued that devolving some of its powers to regional assemblies did not theoretically diminish the sovereignty of Westminster because the British Parliament retained the power to legislate in devolved areas, and to repeal the acts establishing devolved institutions. However, for Scotland, many of the walls erected to protect parliamentary sovereignty have fallen, thanks to conventions and *addenda* to the *Scotland Act 1998*. In particular, a convention has been established to ensure that all British legislation affecting devolved areas or the scope of the *Scotland Act 1998* be subjected to the consent of the Scottish Parliament.¹⁴
- 11 As seen above, parliamentary sovereignty is a crucial yet unstable concept which, far from being a moot point, became instrumental to the Leave campaign with the adoption of the “Let’s take back control” mantra.

Why parliamentary sovereignty matters

- 12 Keenly aware that sovereignty was becoming a central issue for the British public, and under pressure from his own Eurosceptic MPs, David Cameron took early steps to demonstrate his will to protect it from further perceived assaults. In 2011, the *European Union Act 2011* was passed. This Act stated that any EU Treaty planning to transfer significant powers to Brussels would have to be submitted to a referendum. David Cameron and Nick Clegg also ordered an extensive survey of the “Balance of competences” to be conducted among the different ministerial departments.¹⁵ This survey was supposed to evidence the excess of encroaching EU Legislation. However, as stressed by Pauline Schnapper, “*the irony of this exercise is that the balance was found to be broadly positive and the report was quietly shelved*”.¹⁶ Shielding parliamentary sovereignty also consisted in planning to give British courts some leeway to shun EU laws and precedents. The then Justice Secretary, Michael Gove, suggested to the House of Lords Constitution Committee, in evidence given in December 2015, that the UK Supreme Court could be made a “constitutional longstop”, namely a Court with a final say on European related issues which would be able to prioritise domestic constitutional values over European law.

- 13 In 2016, David Cameron supported the idea of a “Sovereignty Act” to ensure that legislation enacted by the UK would take precedence, *inter alia* over European law. This concept ended up in the Queen’s speech at the state opening of Parliament in May 2016. In a rather oblique sentence she declared: “My Ministers will uphold the sovereignty of Parliament and the primacy of the House of Commons”. It is not clear if any connection between the two parts of the statement (sovereignty and primacy of the lower house) was intended. The importance of sovereignty for the government was evidenced in the briefing notes for the Queen’s speech. The notes explained that: “Parliamentary sovereignty is one of the most fundamental principles of the constitution and the Government is committed to ensuring that it is upheld”.¹⁷ The mere idea of a Sovereignty Act as proposed by David Cameron was described as a “gigantic red herring” by Philip Johnston in an article published in *The Telegraph* on 8th February 2016. According to him, “The question is whether it (i.e. Parliament) will exercise it to restore Britain’s control over its own laws. And it will only do that if there is a vote in the referendum to leave the EU. There is no half-way house”.¹⁸ This “no half-way house” image strongly impacted the campaign. Many British voters were left with the idea that there was no other option to restore parliamentary sovereignty’s original shine but to sever all ties with the European Union.

Sovereignty as a Leave campaign motto

- 14 The desire to rekindle the power of the British Parliament was central to the campaign in favour of Brexit and strongly rooted in the will of many voters. Ambrose Evans Pritchard said unequivocally in his article published on 13th June 2016 in *The Telegraph*: “At heart, the Brexit vote is about the supremacy of Parliament. All else is noise”. According to him:
- It comes down to an elemental choice: whether to restore the full self-government of this nation, or to continue living under a higher supranational regime, ruled by European Council that we do not elect in any meaningful sense, and that the British people can never remove, even when it persists in error.¹⁹
- 15 Michael Gove described his reasons for backing the Leave campaign as the following: “I believe that the decisions which govern all our lives, the laws we must all obey and the taxes we must all pay should be decided by people we choose and who we can throw out if we want change”.²⁰ Boris Johnson added that voting to stay in the EU would mean “the steady and miserable erosion of parliamentary democracy in this country”.²¹
- 16 The impact of immigration and the contribution to the European budget cannot be downplayed. However, the staunch desire to have “laws which concern the UK voted in the UK” was evidenced in many polls as the first reason given by “Leave” voters for their ballot.²² According to Robin Niblett, director of the Think Tank Chatham House:
- The idea of restoring sovereignty appeals to British sensibilities. It speaks to the independent spirit of a small island on the edge of Europe. It speaks to British voters’ pride in their history, their democracy, their ability to govern themselves (and in days gone by, much of the world) without interference from foreign powers.²³
- 17 The “Leave” campaign abundantly resorted to propaganda on the supposedly overwhelming and ludicrous use of EU legislation for the pettiest things.²⁴ This was exemplified by the number of EU regulations allegedly applied to a pillow in a crowd-funded film, “Brexit, the Movie” which was seen over 681,000 times on Youtube.²⁵ One segment, called “Regulated People with Regulated Lives”, compares EU legislation to “

invisible barbwire surrounding us". However absurd and ill-sourced, this EU-regulation bashing has been around for years.²⁶

- 18 Some consider sovereignty to be something that States may want to pool in order to join a large, collectively regulated market which offers more advantages than standing alone.
²⁷ For Brexiteers, sovereignty is something that a State has wholly or not at all, and which may thus not be shared or divided. Whether a popular vote will be able to restore Westminster's powers is however doubtful.

The People restoring parliamentary sovereignty: a fools' game

- 19 On 23rd June, 52% of the population of the UK used a referendum to express their opinion that they wanted Westminster to take power back from Brussels (and incidentally from the European Court of Justice in Luxembourg and the European Court of Human Rights in Strasbourg despite the fact that the latter is unrelated to EU institutions). Vernon Bodgdanor, a prominent constitutional law professor said that: "*Parliamentary sovereignty in the UK is like the proverbial Cheshire cat, all gone but for the grin*".²⁸ In fact, even the grin may be gone.
- 20 Although the outcome of the referendum was not what he had expected, Prime Minister David Cameron endorsed this demonstration of popular sovereignty in a speech to the House of Commons where he declared:
- Last week saw one of the biggest democratic exercises in our history with over 33 million people from England, Scotland, Wales, Northern Ireland and Gibraltar all having their say.(.../...). Although leaving the EU was not the path I recommended, I am the first to praise our incredible strength as a country.²⁹
- 21 Put simply, popular sovereignty implies that the people retain the ultimate power to change their constitution and that there are mechanisms of review which allow the judicial branch to strike down a law. In such a system, voters are freed from the restraints of representative democracy whereby one elects a Member of Parliament in order to be represented in the law-making process³⁰. According to the philosopher A.C. Grayling: "*Representative democracy is structured to ensure that decisions on complex and consequential matters are not arrived at in uninformed, hasty, emotional and populist ways (...)*".³¹
- 22 The shift of powers from an almighty parliamentary sovereignty towards a popular sovereignty started with the recurrent use of referendums as a tool to allow British citizens to express their views on several capital constitutional issues, be it the membership of the then EEC in 1975, or devolution in 1979 and 1997 and finally in 2014 with the referendum on Scottish independence. The *2011 Alternative vote referendum* did provide for a binding outcome, which was not the case with the referendum on Brexit. The practice of resorting to referendums moved towards establishing a new source of authority, namely the electorate voting in a referendum, instead of the Crown in Parliament. In doing so, it created a form of popular political legitimacy which outranks that of Westminster. As noted by Ronan McCrea, it was particularly the case with the *European Union Act 2011* which provided that a referendum would have to be held in the event of any further transfer of powers from the UK to the European Union. It set the precedent that it would be illegitimate for Parliament to transfer powers to the European Union without having first sought the consent of the people of the UK via a referendum.³²

- 23 David Cameron’s view that the referendum had been a “democratic exercise” is far from being shared by constitutional scholars. Many, like Roger Masterman and Colin Murray, feel that in appealing to the sovereignty of the people on the basis of promises which may not, in practice, be deliverable, the Brexit referendum holds the potential to expose a rift between direct and representative democracy. In their opinion: “*Brexit could end up being a lot more damaging to parliamentary sovereignty and the domestic constitutional order than the external influences of EU law may ever have been*”.³³
- 24 The non-binding nature of the Brexit referendum has been widely disputed. In 1975, during the first EU (then EEC) membership referendum, the Labour government of Harold Wilson had made it clear that the results of the referendum would be advisory only. The *European Union Referendum Act 2015* was considered by many to be badly drafted and unclear.³⁴ It was blamed for offering a mere yes/no choice but, unlike the Scottish independence referendum (which also offered a binary choice), was not accompanied by a white paper or an equivalent to a precise agenda.³⁵ In addition, some said that 51.9% of voters within a 72% turn out represented only 37% of the UK population and that a referendum considered as having a mandating status should have required a super-majority. And indeed, the narrow majority of the 2016 referendum sharply contrasts with the results of the 1975 EEC membership referendum where a significant 67% of voters voted to remain. Many have also denounced the choice of a limited franchise, excluding young people between 16 and 18, and British foreign residents other than Commonwealth citizens.
- 25 Although a major point of the referendum was to restore parliamentary sovereignty, the UK Parliament has curiously appeared as a bystander to the whole process. As Former Cabinet Secretary Lord Butler suggested: “*any push for a re-run or attempt to stop withdrawal would trigger a ‘major political crisis’, but it was ‘paradoxical’ to prevent Parliament acting as it sees fit*”.³⁶ Some scholars have argued that Westminster could in fact make a demonstration of what parliamentary sovereignty really is: namely that Parliament is accountable to the people, but by way of elections and not referendums. Members of Parliament are representative and not delegates in the sense that they exercise their judgment as to what is good for their country and constituency, not simply abide by popular whim. In the words of the lawyer Geoffrey Robertson: “*Our democracy does not allow, much less require, decision-making by referendum*”.³⁷ Labour MP David Lammy has called on Parliament to “*stop this madness*” and to vote against the referendum’s decision to leave the EU.³⁸ Indeed, both Houses of Parliament appeared to be in favour of remaining in the EU whereas they are now pushed towards Brexit by popular vote. The financial Think Tank Omfif has computed that 70% of MPs were against Brexit, with only 20% in favour and 10% unknown.³⁹ The irony of popular sovereignty forcing Westminster to ignore its own will, all in the name of parliamentary sovereignty, has not escaped Anthony Hilton who wrote:
- It is one of the ironies of the campaign that the Brexiters bang on constantly about Parliament’s loss of sovereignty and claim all our laws are made in Brussels. It is a lie because, as they may yet find out, the British Parliament had retained more than enough power to thwart their plans and ignore the referendum result.⁴⁰
- 26 Whatever the original flaws in organising the referendum, the fact that Britain must now abide by its result seems to be widely accepted among British politicians and Constitutional law professors. According to Stephen Tierney, Legal Adviser to the House

of Lords Select Committee on the Constitution: *"It would be a democratic travesty for the result not to be accepted simply because many of us don't like it"*.⁴¹

- 27 Westminster now faces a Catch 22 situation where it cannot politically ignore the results of a referendum supposedly held to restore its sovereignty, despite the fact that the majority of its members disapprove of the outcome. To add to Parliament's misery, the UK government is now trying to rob it of its role in commencing the actual Brexit process.

Article 50: who is to pull the trigger?

- 28 The controversy over which institution is to trigger article 50 to commence British withdrawal from the EU has revealed how parliamentary sovereignty really was a hollow word in the mouth of most Brexit proponents.

- 29 Before 2009, European institutions were mostly concerned with an "ever closer union" and did not consider the possibility of a member state walking out.⁴² Article 50 was injected into the Treaties by the Lisbon Treaty in 2009 but has never been used and is thus an unclear device to initiate departure from the European Union. In particular, there is nothing in Article 50 to suggest a preferred course of action for commencing withdrawal. Its first paragraph merely advises that *"Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements"*.⁴³ Most scholars seem to agree with the fact that Article 50 should be triggered in order to commence a withdrawal procedure, although some rash commentators have suggested that merely repealing the European Communities Act would be sufficient. This line is usually chosen by hard-line Brexiteers who are of the opinion that the best way for Parliament to affirm its sovereignty would be to ignore EU Treaties altogether and act unilaterally.⁴⁴ Sionaidh Douglas-Scott believes that such an attitude would demonstrate a **"strong parliamentary sovereignty, governing all things, including our relations with other states, and the ability to unilaterally ignore our treaty obligations"**.⁴⁵ However, it would, according to former Attorney General Dominic Grieve:

- 30 *be proposing something revolutionary and lawless. It would send the clearest message to the world that our long stated policy of observing the terms of international treaties is finished. No reliance could henceforth be placed on our honouring any international obligation.*⁴⁶

- 31 Government lawyers argue that the operation of Article 50 falls within the royal prerogative which implies that no parliamentary scrutiny is required.⁴⁷ It is clear that royal prerogative cannot be used to change UK statutes but it is uncertain if it may be used to notify the European Council of the UK's wish to withdraw from the EU.

- 32 Many consider that activating Article 50 by way of royal prerogative instead of obtaining statutory authorisation by Parliament is not a valid option. In this respect, the House of Lords Constitution Committee has asserted that:

It would be constitutionally unacceptable, not to mention setting a disturbing precedent, for the government to act on an advisory referendum without explicit parliamentary approval-particularly one with such significant long-term consequences.⁴⁸

- 33 The royal prerogative option has already been successfully challenged before the courts in England and Wales by those who purport that Parliament only has jurisdiction to trigger article 50. Indeed, the High Court rendered a controversial decision on 3rd

November 2016 in which it recognised that royal prerogative could be used with respect to rights and obligations created as a matter of international law.⁴⁹ However, according to the judges, as soon as individual rights, protected by domestic law, were to be affected, Parliament had to intervene, especially in the event where some individual rights, which are not replicated in the UK, might be lost upon withdrawal. In particular, with regards to the scope of royal prerogative, Chief Justice Lord Thomas ruled that: "*An important aspect of the fundamental principle of Parliamentary sovereignty is that primary legislation is not subject to displacement by the Crown through the exercise of its prerogative powers*".⁵⁰ He then concluded that: "*Parliament intended EU rights to have effect in domestic law and that this effect should not be capable of being undone or overridden by action taken by the Crown in exercise of its prerogative powers*".⁵¹

- 34 Although Lord Chief Justice Thomas stressed that this decision was based on a "pure question of law" with "no bearing" on the merits of the UK withdrawing from the EU, it infuriated Brexit campaigners, with, in particular, a heinous cover page from the *Daily Mail* on 4th November 2016, depicting the three judges involved in the ruling as "*Enemies of the People*".⁵²
- 35 The case was heard by the Supreme Court from 5 to 8 December with a ruling delivered on 24 January 2017. Given the importance of the matter, the Supreme Court had decided to sit in an unusual configuration, with an odd number of eleven justices.⁵³ In addition, the Supreme Court granted permission for the Lord Advocate of Scotland and the Counsel General for Wales (the General Attorney for Ireland was already included in the proceedings), to intervene, by way of applications and oral submissions, in the course of the hearing.⁵⁴ On 24 January 2017, the judgement from the High Court was upheld by the UK Supreme Court in an unprecedented 8-3 ruling⁵⁵. Although devolved Parliaments were denied the right to block Brexit, the Court considered that article 50 could not be triggered by way of royal prerogative and that a vote from the British Parliament had to allow the process.
- 36 The first vote in this matter took place on 1st February 2017 with a second reading on the next day. A majority of 498 out of 650 MPs approved the bill granting the government power to trigger article 50. 47 Labour MPs (who decided to defy a three line whip), 1 Tory, all 7 Liberal Democrats and 58 of Scotland's MPs, were to be found among those who walked towards the "No" lobby. The fact only one MP out of Scotland's 59 representatives approved the bill rekindles the old concern of Westminster having "no mandate" to take legislative action in Scotland. In the meantime, Nigel Farage listed the MPs who voted against Brexit, whom he described as "*enemies of democracy*" and demanded that they be made to "*pay the price at the ballot box*".⁵⁶
- 37 Despite the wording of the ruling regarding devolved assemblies and parliaments, the Scottish Parliament has already advised that it will do its best to block Scotland's forced withdrawal from the EU. This includes refusing to grant its consent to any attempt from Westminster to "fiddle" with the *Scotland Act 1998*. Indeed, as seen in the first part of this paper, a constitutional convention allows the Scottish Parliament to deny its consent to a piece of British legislation which encroaches upon its devolved areas or which changes the boundaries of its Constitution. Scotland's Constitution consists mainly of the *Scotland Act 1998*. In the case of Brexit, insofar as European law is woven into the constitutional fabric of the *Scotland Act 1998*, withdrawing from the EU would alter the structure of Scotland's Constitution, hereby triggering a "Legislative consent motion".⁵⁷

- 38 This unprecedented turmoil creates an extraordinary situation where the boundaries between all key constitutional players in the UK are blurred: courts, Parliaments, be they Westminster or Holyrood, government, and even the voters who were given popular sovereignty, a concept wholly alien to British constitutional tradition.
- 39 No matter how, exactly, it is done, there seems to be a consensus, at least in England, on one thing: the UK is going to leave the European Union. Once it has left the Union, it is likely that it will try to negotiate new commercial agreements in order to keep a certain access to the European single market. In doing so, it is unclear how much of its sovereignty it will have once again to forsake.

Post-Brexit sovereignty: all gone but the grin? Available options for the UK

- 40 Many of the possible post-Brexit options would, on the surface, restore Vernon Bogdanor Cheshire cat’s parliamentary sovereignty. In a recent report on the “Alternatives to European Union Membership for the United Kingdom”, the European and External Affairs Committee of the Scottish Parliament listed four main options: what they call “Going it alone” and operating solely within the frame of the World Trade Organisation (WTO), negotiating a Free Trade agreement with the EU (like Turkey), opting for the Swiss arrangement (where agreements include free trade in goods but not services which would not be desirable for London), or joining the European Economic Area (EEA), to which the UK is already a member as part of the EU.⁵⁸
- 41 Operating within the frame of the WTO would give considerable leeway for the UK to negotiate commercial deals but would not secure an access to the Single Market, keeping in mind that according to estimates of the Institute of Fiscal Studies, maintaining membership of the Single Market as part of the EEA could be worth potentially 4% on GDP relative to WTO membership alone.⁵⁹ In terms of sovereignty, the UK would be bound by arrangements negotiated and approved by its institutions, but not necessarily by its Parliament. Indeed, the government may again be tempted to resort to royal prerogative to bypass Westminster. If the UK were to discuss bilateral Free Trade agreements, the outcome is difficult to foresee. Indeed, for both Switzerland and Turkey, the EU had been negotiating with a mind to having these countries eventually join the Union. The goodwill might be somewhat altered in a post-Brexit discussion.
- 42 In an EEA context, countries are bound by the original four freedoms of the Treaty of Rome: goods, services, workers (but not citizens) and capital, and by its competition law and state aid rules. However, they are not subject to oversight by the Commission, the Council of Ministers or the European Parliament, and are not under the jurisdiction of the Court of Justice of the European Union. EU legislation does not have direct effect upon EEA countries unless it is incorporated into the EEA agreement, a task performed by a body called the EEA Joint Committee. EEA states have not transferred legislative powers to the Joint Committee. This lack of transfer provides the domestic parliaments of EEA members with a unique opportunity, that of invoking a “right of reservation” to refrain from implementing EU legislation. This outstanding privilege is more of a theoretical device than an actual one. For instance, as explained by Henrik Nordling, Norway has used this “nuclear option” once only, in relation to the third postal directive in 2011.⁶⁰ It resulted in the EU threatening to exclude Norway from parts of the single market. Finally

the Directive was incorporated as part of the change of government in Norway in 2013. Norway also participates in many programmes such as Erasmus and Horizon 2020: the structural funds programme with a total contribution for the 2014-2021 period estimated to amount to 391 million euros per year.⁶¹ These constraints imposed on EEA member states prompted Former Europe spokesman for the Norwegian Conservative Party, Nikolai Astrup to declare rather bluntly: *"If you want to run Europe, you must be in Europe. If you want to be run by Europe, feel free to join Norway in the European Economic Area"*.⁶²

- 43 Whichever the option finally achieved by the UK, the fact remains that in any trade deal, no matter how loose, a certain amount of legislative freedom must be forsaken in order to secure a steady commercial relationship. In a global economy, true sovereignty is gone but the grin remains.

Conclusion

- 44 Theresa May, in her speech of 17 January 2017, referred to the fact that even membership to the EEA had to be discarded: *"Because we will not have truly left the European Union if we are not in control of our own laws"*.⁶³ However, membership of the EEA may have become the latest legal tool to prevent a so-called "hard" Brexit by which the UK would leave both the EU and the EEA. In this respect, the pro-single market Think Tank "British Influence" has written to Brexit Secretary David Davis to inform him that it intends to seek judicial review on the issue of article 127 of the EEA agreement. Article 127 permits to withdraw from the EEA and despite the claim from the British government that withdrawing from the EU entails automatic withdrawal from the EEA, the issue does raise legal questions. If it turns out that article 127 must be triggered separately from article 50, Parliament could decide not to leave the EEA, thus retaining an access to the single market, but losing the ability to block free-movement of workers. Parliament's excuse to ease Brexiteers' ire would be that British citizens voted to leave the EU but not the EEA.⁶⁴ The issue raised by article 50 of the EU Treaty and 127 of the EEA agreement may give the impression that Parliament is in the process of prying out powers confiscated by the British government. However, judicial review procedures are in fact also at odd with the traditional notion of parliamentary sovereignty.
- 45 At any rate, the debate about whether a pristine and somehow mythical parliamentary sovereignty ought to be restored is too binary and specious. In its White Paper published on 2nd February 2017, the government made the most astonishing admission in this regard. In a Chapter 2 entitled *"Taking control of our own laws"*, it admitted that: *"The sovereignty of Parliament is a fundamental principle of the UK constitution. **Whilst Parliament has remained sovereign throughout our membership of the EU, it has not always felt like that**"*.⁶⁵ The blatant lie of restoring a sovereignty which was in fact never forgone is now exposed for all to see in the White Paper.
- 46 Actually, the question lies more with issue of subsidiarity and proportionality. The sovereignty of Parliament has already been shared between various actors over the years and there is a popular longing for a relocation of power akin to subsidiarity (namely closer to those who are liable to be affected). This longing started with devolution and was recently evidenced, albeit modestly, by the *Cities and Local Government Devolution Act 2016*. This act allowed a certain degree of devolution to be granted, upon negotiation, to

local government and cities, enabling them to set bespoke policies in the fields of, for instance, housing, transports and police.⁶⁶

47 As the director of Think Tank Chatham House wrote in an article published on 12 June 2016:

In the end, sovereignty is about securing outcomes. "Let's take back control" is an empty slogan unless doing so improves prospects for British citizens. In an increasingly interdependent world, Britain will be better off pooling discrete areas of its sovereign power with 500 million fellow Europeans than leaving its population of 65 million beholden to the rules and whims of others.⁶⁷

48 In Neil MacCormick's words: "Not all legal problems can be solved legally, and resolving them, or wisely still, avoiding their occurrence in the first place, is a matter for circumspection and for political as much as legal judgement".⁶⁸ It is now for the Government, which may have lacked political judgment in organising the Brexit referendum in the first place, to make the best out of their constitutional options and for EU institutions to adapt so as to avoid further disintegration.

49 Sociologist Karl Mannheim once said that the British had a "peculiar genius for working out in practice the correlation of principles which seem to be logically opposed to each other".⁶⁹ Now is the time to prove him right.

50 Juliette Ringeisen-Biardeaud est juriste et angliciste. Elle a été avocate au barreau de Paris pendant dix ans avant de devenir PRCE à l'université Paris II Panthéon-Assas. Elle est en dernière année de thèse sous la direction de Pauline Schnapper. Sa thèse est intitulée : « *D'une Union à l'autre: Intégration européenne et désintégration des Etats? Le cas de l'Ecosse [1973-2016]* ». Ses recherches portent sur l'Écosse, l'Europe, la dévolution, et le droit constitutionnel britannique. Elle est membre associée du CERSA, dans l'équipe *Law & Humanities*.

BIBLIOGRAPHY

Bogdanor, Vernon, Parliament UK chaired by Graham Allen, 'Proceedings of the Committee's Conference A New Magna Carta? A Constitution for the 21st Century' (Cm 201415, 2014), p. 7.

Denning (Lord), Introduction to the European Court of Justice: Judges or Policy Makers? (London: Bruges Group, 1990), p. 48.

Dicey, A.V., England's Case Against Home Rule, Richmond Publishing Company, (1886, 1973 edition).

Grayling, A.C., Parliament, the Nation and Brexit, published on <http://acgrayling.com/parliament-the-nation-and-brexit>, undated but presumably summer 2016, [accessed 22 September 2016]

Grieve, Dominic, The Time Legal Brief, 17 June 2015, <http://nuk-tnl-deck-prod-static.s3-eu-west-1.amazonaws.com/projects/64a08e5f1e6c39faeb90108c430eb120.html>

House of Lords Constitution Committee, 14 September 2016, <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldconst/44/4402.htm> [accessed 20 September 2016]

Nordling, Henrik, The EEA Agreement and the "Norway option": Integration without co-determination, *eutopialaw* 5 July 2016, <https://eutopialaw.com/2016/07/05/the-eea-agreement-and-the-norway-option-integration-without-co-determination/>, [accessed 20 August 2016]

Tierney, Stephen: 'Was the Brexit Referendum Democratic?' UK Constitutional Law Association, 25th July 2016, <https://ukconstitutionallaw.org/2016/07/25/stephen-tierney-was-the-brexit-referendum-democratic/>

NOTES

1. Mark Rutte quoted in <http://publicoccurenc.blogspot.fr/2016/06/uk-has-collapsed-politically-monetarily.html>, [accessed 7 July 2016]
2. A. V. Dicey *England's Case Against Home Rule*, Richmond Publishing Company, (1886, 1973 edition). Dicey still holds considerable authority in the UK and the book referred to above was cited as an authority by the Supreme Court in 2010 (*Ahmed v HM Treasury* (Nos 1 and 2) [2010] UKSC 2, 5.
3. UK Parliament website, <http://www.parliament.uk/about/how/sovereignty/>, [accessed on 16 September 2016]
4. Lord Denning, *Introduction to the European Court of Justice: Judges or Policy Makers?* (London: Bruges Group, 1990), p.48.
5. John Major, Interview to the BBC, 29 April 2016, <http://www.bbc.co.uk/news/uk-politics-36168487>, [accessed 19 November 2016]
6. Daniel Hannan, *Brexit means that Britain will be boss again*, *The Spectator*, 6 August 2016, <http://spectator.co.uk/2016/08/brexit-means-that-britain-will-be-boss-again/>, [accessed 21 September 2016]
7. Lord Ashcroft, *How the United Kingdom voted on Thursday... and why*, 24 June 2016, <http://lordashcrofthpolls.com/2016/06/how-the-united-kingdom-voted-and-why/> [accessed 28 September 2016].
8. *Factortame* (2), 1991, [1991] 1 AC 603, <https://webstroke.co.uk/law/cases/factortame-no-2-1991>, [accessed 17 September 2016]
9. *Costa v. Enel*, 1964, Case 6/64, [1964] ECR 588.
10. *Thoburn v Sunderland City Council*, 2002, [2002] 3 WLR 247, [2002] EWHC 195 (Admin), [2003] QB 151.
11. Mark Elliott: "Vote leave, take control"? *Sovereignty and the Brexit debate*, 23 June 2016, <https://publiclawforeveryone.com/2016/06/23/vote-leave-take-control-sovereignty-and-the-brexit-debate/>, [accessed 19 September 2016]
12. *R (HS2 Action Alliance Ltd) v Secretary of State for Transport* [2014] UKSC 3 (22 January 2014) <http://www.bailii.org/uk/cases/UKSC/2014/3.html>, [accessed 18 September 2016]
13. Namely that "parliamentary proceedings ought not to be impeached or questioned in any court".
14. This convention is called Legislative Consent Motion or Sewel convention. Although devolution was supposed to be a rescindable grant of power from Westminster to various entities, section 63 A of the Scotland Act, as amended in 2015, provides that the Scottish Parliament and Scottish Government are a "permanent part of the United Kingdom's constitutional

arrangements". This permanent arrangement means that Westminster has given away power that it is theoretically unable to take back. However, since no Parliament may bind its successor, this permanence is not as solid as it was advertised to be.

15. British Government, Final report in review of EU balance of competences, 18 December 2014, <https://www.gov.uk/government/news/final-reports-in-review-of-eu-balance-of-competences-published>, [accessed 19 September 2016]

16. Pauline Schnapper, "The Elephant in the Room: Europe in the 2015 British General Election", *Revue Française de Civilisation Britannique* [Online], XX-3, 2015, <http://rccb.revues.org/613>, [accessed 6 June 2016]

17. British government, Briefing notes, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/524040/Queen_s_Speech_2016_background_notes_.pdf [accessed 19 September 2016]

18. Philip Johnston, *Do you want your sovereignty back? Then vote Leave the EU*, 8 February 2016, *The Telegraph*, <http://www.telegraph.co.uk/news/news/newsttopics/eureferendum/12146990/Do-you-want-sovereignty-back-Then-vote-to-leave-the-EU.html>, [accessed 19 September 2016]

19. Ambrose Evans Pritchard,, *Brexit vote is about the supremacy of Parliament and nothing else*, 13 June 2016, *The Telegraph*, <http://www.telegraph.co.uk/business/2016/06/12/brexit-vote-is-about-the-supremacy-of-parliament-and-nothing-els/>, [accessed 28 September 2016]

20. Peter Apps, *EU Referendum: Michael Gove's full statement on why he is backing Brexit*, Saturday 20 February 2016, *The Independent*, <http://www.independent.co.uk/news/uk/politics/eu-referendum-michael-goves-full-statement-on-why-he-is-backing-brexit-a6886221.html>, [accessed 19 September 2016]

21. Macer Hall, *Boris Johnson urges Brits to vote Brexit to "take back control"*, 20 June 2016, *The Daily Express*, <http://express.co.uk/news/politics/681706/Boris-Johnson-vote-brexit-take-back-control>, [accessed 22 September 2016]

22. See Lord Ashford's polls Ibid. See also a ComRes poll quoted in Brendan O'Neill, *Brexit voters are not thick, not racist, just poor*, 2 July 2016, *The Spectator*, which reveals that 34 per cent of Leave voters cited concern about immigration as their main reason for voting out, as 53 per cent said they rejected the EU because they think Britain should make its own laws. <http://www.spectator.co.uk/2016/07/brexit-voters-are-not-thick-not-racist-just-poor/>, [accessed 28 September 2016]

23. Robin Niblett, *The sovereignty argument for Brexit is a myth*, 5 October 2016, *Newsweek*, <http://europe.newsweek.com/brexit-eu-sovereignty-argument-myth-457816?rm=eu>, [accessed 16 September 2016] or for a longer and more comprehensive version by the same author, *Britain, the EU and the sovereignty myth*, Chatham House Research paper Europe Programme, May 2016, <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-05-09-britain-eu-sovereignty-myth-niblett-final.pdf>, [accessed 28 September 2016]

24. John Springford, Centre for European Reform, *Brexit and EU Regulation: A bonfire of vanities?* February 2016, https://www.cer.org.uk/sites/default/files/pb_js_regulation_3feb16.pdf, [accessed 19 September 2016]

25. *Brexit: The Movie*, <https://www.youtube.com/watch?v=eYqzcdtL3k>, the EU Regulation part is around minute 33.

26. Ben Winsor, *The wackiest EU laws and myths and the truth behind them*, 23 June 2016, SBS.com, <http://www.sbs.com.au/news/thefeed/article/2016/06/23/wackiest-eu-laws-and-myths-and-truth-behind-them>, [accessed 13 September 2016]

27. Robin Niblett, *Rethinking sovereignty: why taking back control is an empty slogan*, 12 June 2016, *The New Statesman*, <http://www.newstatesman.com/politics/uk/2016/06/rethinking-sovereignty-why-taking-back-control-empty-slogan>, [accessed 22 September]
28. Vernon Bogdanor, *Parliament UK chaired by Graham Allen, 'Proceedings of the Committee's Conference A New Magna Carta? A Constitution for the 21st Century'* (Cm 201415, 2014), p. 7.
29. David Cameron, Prime Minister's Commons statement on the result of the EU referendum: 27 June 2016. <https://www.gov.uk/government/speeches/pm-commons-statement-on-the-result-of-the-eu-referendum-27-june-2016>, [accessed 13 September 2016]
30. The concept of popular sovereignty goes most directly back to what is called the social contract school. Popular sovereignty is the notion that no law or rule is legitimate unless it rests directly or indirectly on the consent of the individuals concerned. Thomas Hobbes (1588-1679), John Locke (1632-1704) and Jean-Jacques Rousseau (1712-1778) were the most important members of the social contract school.
31. A.C. Grayling, *Parliament, the Nation and Brexit*, published on <http://acgrayling.com/parliament-the-nation-and-brexit>, undated but presumably summer 2016, [accessed 22 September 2016]. This view mirrors that of Edmund Burke in his famous speech to the "Electors of Bristol in 1774", in Volume 1, Chapter 13, Document 7, *The Works of the Right Honourable Edmund Burke*. 6 vols. London: Henry G. Bohn, 1854--56. <http://press-pubs.uchicago.edu/founders/documents/v1ch13s7.html> [accessed 3rd December 2016]
32. Ronan McCrea, 'Is the United Kingdom a Mini-EU?', UK Constitutional Law Association, 18 July 2016, <https://ukconstitutionallaw.org/2016/07/19/ronan-mccrea-is-the-united-kingdom-a-mini-eu/>, [accessed 19 September 2016]
33. Roger Masterman and Colin Murray, 'A House of Cards? UK Constitutional Law Association. 4 July 2016, <https://ukconstitutionallaw.org/2016/07/04/roger-masterman-and-colin-murray-a-house-of-cards/>, [accessed 19 September 2016]
34. *EU Referendum Bill 'badly drafted' says Lord Foulkes*, 24 January 2014, BBC News, <http://www.bbc.com/news/uk-politics-25880303>, [accessed 19 September 2016]
35. R. Ekins, 'The Legitimacy of the Brexit Referendum', UK Constitutional Law Association, 29 June 2016 <https://ukconstitutionallaw.org/2016/06/29/richard-ekins-the-legitimacy-of-the-brexit-referendum/> [accessed 19 September 2016]
36. Josh May *Lord Butler: Parliament has power to push for second EU referendum after Brexit vote*, Politics Home, 13 June 2016, <https://www.politicshome.com/news/europe/eu-policy-agenda/brexit/news/76093/lord-butler-parliament-has-power-push-second-eu>
37. Geoffrey Robertson, *How to stop Brexit: get your MP to vote it down*, 27 June 2016, *The Guardian*, <https://www.theguardian.com/commentisfree/2016/jun/27/stop-brexit-mp-vote-referendum-members-parliament-act-europe>, [accessed 21 September 2016]
38. Anthony Hilton, *Why we may remain even if we vote Leave*, 15 June 2016, *The Evening Standard*, <http://www.standard.co.uk/business/Anthony-hilton-why-we-may-remain-even-if-we-vote-leave-a3272621.html>
39. Will Worley, *David Lammy MP urges Parliament to reject EU referendum result: 'We can stop this madness'*, 25 June 2016, *The Independent*, <http://www.independent.co.uk/news/uk/home-news/brexit-result-latest-david-lammy-mp-eu-referendum-result-parliament-twitter-statement-stop-this-a7102931.html>. An interactive platform allowing voters to check their MP's stance on Brexit constituency per constituency was launched in the wake of Witney and Richmond by-elections: <https://www.politicshome.com/news/>

europa/eu-policy-agenda/brexit/news/dods-people/76451/interactive-map-every-mps-eu-stance [accessed 2nd December 2016]

40. Figures cited by Anthony Hilton, *Ibid.*

41. S. Tierney, 'Was the Brexit Referendum Democratic?', UK Constitutional Law Association, 25 July 2016, <https://ukconstitutionallaw.org/2016/07/25/stephen-tierney-was-the-brexit-referendum-democratic/> [accessed 7th November 2016]

42. This is also the case in the US where a famous precedent from the USSC in *Texas v. White* 1869 stated that the Constitution does not provide for a state to leave the Union.

43. Article 50 of the Treaty of the European Union (TEU) as added by the Lisbon Treaty in 2007, <http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/treaty-on-European-union-and-comments/title-6-final-provisions/137-article-50.html> [accessed 1st December 2016]

44. John Redwood was reported in the *Financial Times* saying "A lot of us don't think there is any need to trigger Article 50 any time at all", quoted in S. Douglas-Scott, 'Brexit, the Referendum and the UK Parliament: Some Questions about Sovereignty', UK Constitutional Law Association, 28 June 2016, <https://ukconstitutionallaw.org/2016/06/28/sionaidh-douglas-scott-brexit-the-referendum-and-the-uk-parliament-some-questions-about-sovereignty/>, [accessed 17 September 2016]

45. Strong in italics in the original quote, S. Douglas-Scott, *Ibid.*

46. Dominic Grieve, *The Time Legal Brief*, 17 June 2015, <http://nuk-tnl-deck-prod-static.s3-eu-west-1.amazonaws.com/projects/64a08e5f1e6c39faeb90108c430eb120.html>, [accessed 17 September 2016]

47. Martin Banks, *Could Theresa May invoke article 50 without parliamentary approval?*, 29 August 2016, *The Parliament Magazine*.

<https://www.theparliamentmagazine.eu/articles/news/brexit-could-theresa-may-invoke-article-50-without-parliamentary-approval> [accessed 17 September 2016]

48. House of Lords Constitution Committee, 14 September 2016, <http://www.publications.parliament.uk/pa/ld201617/ldselect/ldconst/44/4402.htm> [accessed 5 September 2016]

49. R (Miller) -v- Secretary of State for Exiting the European Union, [2016] EWHC 2768 (Admin), 3 November 2016

50. *Ibid.* para. 25 p. 7

51. *Ibid.* para. 94 p. 28

52. *The Daily Mail*, 4 November 2016 edition front page, *Enemies of the People, Fury over "out of touch" judges who defied 17.4 m Brexit voters and could trigger a constitutional crisis*. <https://www.ft.com/content/010325da-a28a-11e6-82c3-4351ce86813f>, [accessed 16 November 2016]

53. Whereas the usual panel is of 8 justices. The pending case before the UK Supreme Court has raised such public interest that in an unprecedented step, the press office of the Supreme Court has created an Article 50 case hub page at the following link: <https://www.supremecourt.uk/news/article-50-brexit-appeal.html>. This page includes the written cases for each of the parties that the court has received, and was continually updated to include daily transcripts. [accessed 1st December 2016]

54. UKSC, 8 November 2016, permission to appeal, <https://www.supremecourt.uk/news/permission-to-appeal-decision-08-november-2016.htm>, [accessed 29 November 2016]

55. Judgement 2017 UKSC 5, R v Secretary of state for exiting the European Union, 24 January 2017, <https://www.supremecourt.uk/cases/docs/uksc-2016-0196-judgment.pdf>, [accessed 24 January 2017]

56. Tweeter account @nigel_farage, 1st February 2017, 10.03 pm

57. Jo Murkens, 'Brexit: The Devolution Dimension', UK Constitutional Law Association, 28 June 2016, <https://ukconstitutionallaw.org/2016/06/28/jo-murkens-brexit-the->

devolution-dimension/, also see : BBC: 26 June 2016: "Nicola Sturgeon says MSPs at Holyrood could refuse Brexit consent", <http://www.bbc.com/news/uk-scotland-scotland-politics-36633244>, and Mac Amhlaigh, Cormac: Scotland Can Veto Brexit (sort of) Verfblog, 2016/6/28, <http://verfassungsblog.de/scotland-can-veto-brexite-sort-of/>

58. Michael Keating, Scottish Parliament, European and External Affairs Committee, Interim report, 12 September, http://www.parliament.scot/S4_EuropeanandExternalRelationsCommittee/Inquiries/Adviser_MichaelKeating_briefing.pdf, [accessed 20 September 2016]

59. Carl Emmerson, Paul Johnson, Ian Mitchell, *The EU single market, value of membership versus access to the UK*, Institute for Fiscal Studies, 19 August 2016, <https://www.ifs.org.uk/publications/8411>, [accessed 5 October 2016]

60. For a detailed account of Norway and the EEA, read Henrik Nordling *The EEA Agreement and the "Norway option": Integration without co-determination*, EUTOPIA Law 5 July 2016, <https://eutopialaw.com/2016/07/05/the-eea-agreement-and-the-norway-option-integration-without-co-determination/>, [accessed 20 August 2016]

61. Henrik Nordling, *Ibid.*

62. Oral statement to Parliament. PM Commons statement on EU reform and referendum: 22 February 2016

<https://www.gov.uk/government/speeches/pm-commons-statement-on-eu-reform-and-referendum-22-february-2016> [accessed 22 September 2016]

63. Jennifer Amur, Full transcript: Theresa May's speech on Brexit, The Washington Post, 17 January 2017, https://www.washingtonpost.com/news/worldviews/wp/2017/01/17/full-transcript-theresa-mays-speech-on-brexite/?utm_term=.4e183c639298 [accessed 2nd February 2017]

64. James Landale, Brexit: Legal battle over UK's single market membership, BBC, 28 November 2016, <http://www.bbc.com/news/uk-politics-38126899>, [accessed 1st December 2016]

65. "The United Kingdom's exit from and new partnership with the European Union", British government, White Paper cm 9417, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/589191/

The_United_Kingdoms_exit_from_and_partnership_with_the_EU_Web.pdf, [accessed 3rd February 2017], bold typeface is mine.

66. Mark Elliott, Brexit: "Vote leave, take control? Sovereignty and the Brexit debate. Public Law for everyone, 23 June 2016, <https://publiclawforeveryone.com/2016/06/23/vote-leave-take-control-sovereignty-and-the-brexite-debate/>, [accessed 19 September 2016]. The Cities and Local Government Devolution Act 2016 was designed to introduce directly-elected mayors to combined local authorities in England and Wales and to devolve housing, transport, planning and policing powers to them. The Act takes the form of enabling legislation and requires negotiations between the UK government and local authorities (or groups of local authorities).

67. Robin Niblett, *Rethinking sovereignty, why taking back control is an empty slogan*, 12 June 2016, *The New Statesman*, <http://www.newstatesman.com/politics/uk/2016/06/rethinking-sovereignty-why-taking-back-control-empty-slogan>, [accessed 22 September]

68. Peter Lindseth, *The Quest for EU Reform after Brexit: Changes to the Role and Doctrines of the European Court of Justice*, June 24, 2016 EUTOPIA Law, <https://eutopialaw.com/2016/06/24/the-quest-for-eu-reform-after-brexite-changes-to-the-role-and-doctrines-of-the-european-court-of-justice/>, [accessed 20 September 2016]

69. Quoted in Vernon Bogdanor, *The New British Constitution*, part II, chapter IV on Devolution, London: Hart Publishing, 2009.

ABSTRACTS

During the Brexit referendum campaign, much emphasis was placed by “Leave” supporters on the lost parliamentary sovereignty which none could restore unless the United Kingdom exited the European Union. Parliamentary sovereignty is an elusive concept which must be carefully addressed in order to debunk a number of false allegations. Ultimately, the unexpected results of the referendum raise more constitutional issues than they solve, and most of them revolve yet again around the concept of sovereignty. Who is empowered to take major decisions in the UK? Who has the capacities, if not the legitimacy, to trigger Article 50 to commence the withdrawal negotiations? In the end, amongst all available options for the UK to maintain links with the EU, how much, if any, of its sovereignty will really be restored?

Durant la campagne du référendum sur le Brexit, les tenants d’une sortie du Royaume-Uni insistent sur la souveraineté parlementaire perdue du parlement de Westminster, que seule une sortie de l’Union européenne pourrait restaurer. La souveraineté parlementaire est un concept vague et incertain qui doit être étudié avec soin afin de mettre à mal certaines fausses allégations. Au bout du compte, le résultat inattendu du référendum génère davantage de questions qu’il n’en résout, et la plupart d’entre elles sont liées au concept de souveraineté. Qui a le pouvoir de prendre des décisions majeures au Royaume-Uni ? Qui a le droit, sinon la légitimité, de déclencher l’article 50 afin de démarrer le processus de sortie de l’Union européenne ? Et finalement, parmi les options disponibles pour que le Royaume-Uni maintienne certains liens avec l’Europe, quelle part de sa souveraineté lui sera vraiment restituée ?

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