

# Have Eurosceptic Fears About British Sovereignty Been Realised?

Written by David Sykes

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## Have Eurosceptic Fears About British Sovereignty Been Realised?

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DAVID SYKES, JUN 20 2010

This essay will critically evaluate the claims made by those who are concerned that the sovereignty of the United Kingdom of Great Britain and Northern Ireland has been unnecessarily sacrificed since the UK joined the European Community in 1973 and has been steadily eroded as the union has grown and developed, and as integration has increased. 'The provisions under the Maastricht Treaty, the Amsterdam Treaty, the Nice Treaty and now the Lisbon Treaty [they say] have amounted to a colossal relinquishing of sovereignty from the United Kingdom Parliament over to the institutions of the European Union.'<sup>[1]</sup> This essay will explain how these views are flawed and based on a concept of sovereignty that has become impossible to sustain in the modern globalised world and the arguments made against the British membership and integration in the EU on the grounds of sovereignty are inaccurate (and often contain typing errors<sup>[2]</sup>). The essay will begin with a quick description of the arguments made by the eurosceptics against the European Union and the concerns that they have about British sovereignty. The essay will then move on to the necessary step of trying to find a precise definition of sovereignty so as to understand the arguments and to understand what is or is not being lost by observing the accuracy of these understandings of the concept. The nature of the union will then be analysed and the degree to which the UK has sovereignty in this organisation will be assessed. The essay will then evaluate the arguments offered by modern euro-sceptics who have moved on from the traditional arguments, and the essay will then conclude that the UK would be able to have greater influence over itself and others within the European framework.

The traditional eurosceptical argument regarding sovereignty is certainly not lacking evidence; one of the most obvious examples of this is, as pointed out by MacCormick, that the European Union is a system of law that has precedence over the law of the member states and consequently has power and authority over those states, thereby restricting their autonomy by removing the power of self-governance free from outside interference.<sup>[3]</sup> The Factortame case of the late 1980s showed the degree to which European level law is able to impact British politics and British law. This case was so interesting because it saw the UK having to amend its legislation against its will at the command of the European Union and was shown to be unable to create legislation to protect its own economy and industries when to do so would be against European law. Eurosceptics point to this landmark case as a prime example of how the European Union limits the power and right of the UK to govern itself.<sup>[4]</sup> Another major concern is that the EU, considering the ratification of the Treaty of Lisbon and the apparent intrusions of the union into areas traditionally seen as the remit of the nation state such as social policies for example, can be seen to becoming a federal union of states similar to the United States of America, which the sceptics argue, would mean that the UK and the other members will eventually cease to exist as sovereign states.

But what is sovereignty? Politicians, journalists, self-proclaimed patriots and euro-sceptics throw the term around with ease and it is often used to define the nation state, viewing it as some inherent quality nations have to govern over their citizens and territories as they see fit, a sovereign state therefore has a right to self-determination internally over an ethnically or historically cohesive nation, free from outside intervention and interference.<sup>[5]</sup> This is an understanding closely linked to the Westphalian concept of sovereignty which was established at the end of the Thirty Years' and Eighty Years' Wars in 1648 and has historically been more of a convention for mutual gain to

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create a degree of stability in international relations than a binding international law, as states have frequently violated the terms of the agreement and sought expansionist and interventionist policies despite the treaty and until the League of Nations and the United Nations there has been no authority to enforce the concept.[6]

Geoffrey Howe identified four possible interpretations of sovereignty; parliamentary sovereignty, sovereign authority, state sovereignty, and external sovereignty.[7] He described parliamentary sovereignty as when the parliament of a nation is the sole body that has unlimited authority and is therefore able to make or amend any law. Sovereign authority is a more general term that describes a condition where supreme authority lies in the hands of a single body, institution or group. An example of this would be an absolute monarchy. State sovereignty is the power of a country to do as it wishes and control its destiny in the world and, like Westphalian sovereignty, it recognises that sovereignty can be infringed by outside forces including the actions of other states and economic forces. For example, by this understanding France was shown to have lost a considerable degree of state sovereignty when it failed in its attempt at internal economic control in 1981. External sovereignty is the ability of a state to influence the actions of outside actors through economic power or physical strength as the British Empire was able to do before its downfall. On this understanding then, sovereignty can be increased through cooperative ventures which maximise the ability of a state to influence others.[8]

Hedley Bull described the sovereign state as 'assert(ing) sovereignty over its population' and exerting 'supremacy over all other authorities within the territory and population' as well as independence from outside powers.[9] Other theorists narrow sovereignty down to very basic qualities such as the definition offered by Max Weber, who described it as the monopoly of the legitimate use of violence in a nation.

However, the majority of these definitions seem to be almost impossible for a state to realise in the modern world for reasons that include democracy and constitutions, international law, international treaties, globalisation, and interdependence. The traditional forms of sovereignty see a single body within the state, such as parliament or a monarch, holding absolute authority in a nation which is something that no state has been able to honestly claim for much of the 20<sup>th</sup> century as even constitutions limit the authority of a nation's executive and the treaties between states that have existed for centuries and the international laws established by bodies such as the UN prevent a nation from genuine freedom and authority. Even bodies with a military element such as NATO strike at the heart of what has traditionally defined the sovereign state as they constitute an additional user of legitimate force both on the world stage and can also act legitimately within a nation, thus ending the state's monopoly.[10]

Because of the unavoidable outside interferences, sovereignty is not an absolute that a state either has or does not have; if there is any salience in the term at all, it must be as a sliding scale that means a state can retain some elements of its control over its territory or populace and lose other parts of it. One of the primary forces that prevents contemporary states from obtaining complete control over their destinies is globalisation which encourages the growth of complex interconnections between states that both necessitate change and means that a change in policy of one state, often forces another state to respond either intentionally as with policies surrounding economic management and border controls, or unintentionally on levels below the executive's control such as cultural or commercial changes: 'Borders are becoming porous, almost irrelevant, in more and more areas of sovereign importance: money, ideas, information, missiles. So, the concept of absolute sovereignty is long gone.'[11] Globalisation also has countless other implications which change and influence how people live their lives and can be seen to break citizens out from the shell that the nation state has kept them within to help them become 'global citizens', able to communicate and do business with, and travel to, and learn from, people all over the world. Many of the problems that the modern state faces are matters that demand an international response; problems such as climate change for example. The economy has become increasingly international, and not simply as a consequence of the European Union; as the 1970s oil crisis and the current economic recession show very clearly the economies of nations are a part of a global economy that renders states interdependent and interconnected. Catherine Dauvergne argues that sovereignty has dissipated to such a degree in the modern era as a consequence of globalisation that the only thing that remains under state control is immigration policy, which explains the crackdown that governments have periodically attempted on this and how many eurosceptical arguments (typically those more concerned with cultural rather than political arguments) are targeted toward immigration, in a bid to cling on to what remains of the concept.[12]

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Further evidence against the traditional interpretation of sovereignty can be seen when one considers the fact that sovereignty has been a relatively recently realised concept. It was rare for Britain to be truly independent between 1648 and the 20<sup>th</sup> century, as Britain, which had the benefit of being an island nation, generally only achieved the traditional form of sovereignty while the British Empire was at its zenith. Since the 1945 Declaration of the Rights of Man, the Human Rights Act of 1948 and the treaties of 1966, as well as the establishment of the United Nations however, traditional sovereignty has been impossible due to these internal and external limitations on the power of the nation state.[13]

There is also a problem with how sovereignty is distributed in many of these conceptual understandings, as in many states, authority is not localised in the hands of a single body or person. That is; states, particularly those of Europe, do not have unitary authorities, but power is dispersed in the social body (civil society).[14] 'Popular sovereignty' is an alternative concept that resolves this problem as it considers the citizens of a democratic nation to be the true sovereign powers and the core of what a sovereign state is. The people, for their own gain, have effectively delegated their right to sovereign authority to the government of a nation to act on their behalf. This theory adopts elements of the traditional view of parliamentary sovereignty and the understanding of sovereignty as a tradable quality rather than an absolute and alters and adapts the principle to fit the democratic mould by looking at the sources of a nation's legitimacy.[15] [16] Basing one's understanding on this philosophy, it could very easily be seen that in similar fashion to how the sovereign citizen has surrendered their personal sovereignty to the nation state, thus 'pooling' it with the sovereignty of others for their mutual gain, so too has the nation state in pooling its sovereignty together with that of others. This would then enable states to achieve far a greater ability to pursue the national interest because with cooperation and harmony of interests, the EU is able to maximise the influence that the member states, and the influence that the member citizens can have on the regional and global stage, enabling the accomplishment of goals beyond what is achievable alone.[17]

The nature of the European Union's structure is important to the argument because if it were a supranational federation, the sovereignty of the member nations would have been sacrificed to the European level government, whereas if it were an intergovernmental cooperative or a system of multi-level governance greater sovereignty would be preserved because as the above arguments show, 'sovereignty is not some pre-defined absolute, but a flexible, adaptable, organic notion that evolves and adjusts to circumstances'[18] and because in the latter two structures, the state and the people in it would have some control over their governance.

A supranational Europe would be one in which there is an overarching structure governing the continent. The nation states are still present, but they are governed by a higher authority, and therefore carry little sovereignty. There is a good deal of evidence to suggest that this is what has occurred and is occurring in the European Union. Supporters of the federalist theory point to the breaking down of national borders and how territorial boundaries of states have become increasingly porous with legislation having been passed by the EU to enable freedom of movement, capital, and labour. This can be seen in the Single European Act and the 1995 Schengen Agreement for example, and the Lisbon Treaty which was ratified recently can be seen as a minimally changed copy of the rejected constitution. Though undeniably the EU is not a federal state, it could be argued that this is the way the organisation has been developing but the other theories offer better descriptions of the Union.[19]

Intergovernmentalists argue that the member states of the EU are, rather than losing their control to a supranational organisation, intentionally entering into agreements for their own benefit so as to serve their national interests. They argue that nation states set the speed and degree of integration themselves and remain the key actors in the continent. Hoffman identified and acknowledged the existence of external limitations on the actions of states and argued that through the intergovernmental cooperation in the EU, member states were attempting to maximise their power and fulfil their interests more effectively.[20] In this manner then, the idea that states pool their sovereignty in the EU in order to increase their global influence and autonomy appears to be the case.[21]

However, this theory seems to ignore the influence of the non-state actors within the state that have had a great impact on the development of the EU. Neo-functionalists argue that there has been a phenomenon of spillover that has drawn more and more elements that were once actors within the nation state into becoming international; forming linkages and integrating with their European counterparts. While this may give the EU the appearance of a large

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federal state, this may not be the case. Neo-functionalists argue that these changes are done on a level outside the remit of the state, and even beyond the grasp of Europe. Neo-functionalists, quite sensibly, view the increasingly pan-European scale of industries, peoples, services, organisations and all other groups as having had little to do with the grand plans of the federalists as it is actually these pluralistic forces which encourage states to integrate under the EU banner, though this would not have occurred without the initial integration initiated by the states. The states opened up the barriers that existed between them because of the actors within them pushing to break free from the confines of the state. The process of spillover 'took on a life of its own, and swept governments along further than they anticipated going'[22].

It has typically been argued that because of the (apparent) absence of referendums and the democratic deficit in the EU, with decisions being made in the European Council and the European Commission by undemocratically elected individuals and the poor electoral turnouts of the election of members of the European Parliament, that the EU has become an illegitimate authority over the United Kingdom and its citizens. However, if one considers the forces of globalisation, popular sovereignty, neo-functionalist spillover and intergovernmental cooperation as well as the laws and regulations that have been created by the EU an entirely new perspective on sovereignty becomes apparent. Because the EU and the controversial social policies and regulations have mostly been created so as to ease and aid the movement of capital and labour, the freedom of movement and the integration of societies and countries, the argument can be made that the EU has been acting in the interest of the European citizen, thus it has been paving the way for the individual (who had pooled his/her sovereignty in the nation state for the protection and advancement of their autonomy) to be further protected and empowered in an even larger popular sovereign; the European Union.

Initially this may seem to be a crisis for state sovereignty, and could arguably be the road to the creation of a supranational or even federal European state. But when one considers the theory of popular sovereignty, this seems to be a much more direct form of autonomy for citizens as it could be seen as the people of the state directly acting and creating the EU for their own benefit. It could be argued that it is just the societal elites who are benefitting from this most and bypassing the democratic process that makes the state a legitimate actor, taking on the sovereignty of people through the popular support of the people. But if one were to look at the policies of the European Union, including the social chapter (which has been criticised by the eurosceptics as imposing regulations on states from above), as well as policies such as the Common Fisheries Policy which caused the Factortame controversy, this could be seen as effectively taking the pooled sovereignty of the citizen from the nation state and placing it in the European Union; a bigger pool, enabling greater protection from outside forces and enabling the citizen greater autonomy allowing them to act in the world with more influence. There could well be therefore a new 'post-modern sovereignty' in a Europe of 'transnationally integrated, globalised economies by multi-level governance and by identities that are no longer exclusively tied to the nation state.'[23] This is further aided by the transparency and ease of access of organisations such as the European Commission and the democratically elected European Parliament- and the citizen even has another root to having their say in the Union through their democratically elected governments in the Council (though the system of democracy in these areas is either indirect, or the turnout is worryingly low[24]). But the EU is more than simply a pool; it is a multi-level system that allows states and regions control over their remit with regional, national and European levels interacting with no single point of control.

Therefore, even if the eurosceptics greatest fears became reality; the absorption of Britain into a federalist United States of Europe and the complete loss of British state sovereignty (no matter how unlikely this may be), there would be nothing to fear because sovereignty would remain; it would simply have been transferred to a body that is capable of surviving and protecting the freedom and autonomy of its citizens in the increasingly globalised world.

However, many modern eurosceptics follow a revised form of the traditional view of sovereignty, embracing an understanding similar to the external definition offered by Geoffrey Howe. They largely agree that the traditional interpretation of sovereignty is unfeasible and argue that Britain should seek to retain as much sovereignty it can in a globalised world. They conclude that the best way for Britain to do this would be if the UK were to break free of the European Union and respond to the external influences directly under its own governance, responding in whatever way it deems fit for its own benefit as well as trading with other blocs and nations rather than accepting European governance[25].

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But could Britain be any stronger, more autonomous and influential if it were to stand apart from Europe and act trade freely with the rest of the world?

The EU was created with economic stability in mind. It was designed to protect the European states from the turbulence of the global economy and to enable the European nations to compete on the global market alongside the likes of China and the US. Britain was slowest and least successful of the European powers to rebuild their economies in the aftermath of the Second World War, whereas even the occupied France which saw its government defeated, and Germany, which was bombed, invaded, overthrown, divided and destroyed by its own hands under the 'scorched earth' policy, managed to rebuild and revitalise faster thanks to integration in what has become the European Union, and this occurred before globalisation had reached the intensity that it has now grown to.[26] And because of the pooled sovereignty of the state and the maximisation of freedom and autonomy of the individual that the EU grants, the EU actually protects sovereignty. But if Britain were to break free of Europe and float adrift in the tide of global forces, it would flounder as the rest of the world passes by, carrying Britain in its current, with Britain having no control over its heading. This would mean that the citizens of Britain, rather than being active entities whose actions and ideas are amplified by the EU, would be reactive to forces outside of their control in a small and powerless, but foolishly proud, nation state.

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*Written By: **David Sykes***  
*Written at: **Lancaster University***  
*Date Written: **May 2010***