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The Erosion of Parliamentary Sovereignty in the United Kingdom arising from its Membership to the European Union

By Jonathan Christophe Bruneau

jb1582@live.mdx.ac.uk

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Abstract

This dissertation examines the erosion of parliamentary sovereignty in the United Kingdom arising from its membership to the European Union. Important issues with regard to the sovereignty of parliament in Britain will be considered, including how its membership of the EU has affected it in a negative way or benefited the country whether it is economically or socially. Part one will consider the history of Parliament in the UK both before and after Britain's integration to the EU and both before and after the enactment of the European Communities Act 1972.

Part two will focus on the benefits and drawbacks of UK's membership to the EU. Relevant case law will be used to illustrate the ongoing debate on the primacy of EU law over national law. The trade off between economic efficiency and democracy will also be discussed and finally the present and future state of UK's parliamentary sovereignty with regard to its membership of the EU and the possibility that the UK moves out of the Union will also be discussed.

Introduction

Since the United Kingdom joined the European Union the question of whether EU law would conflict with the sovereignty of parliament in England has been the subject of much debate.

On the one hand, Eurosceptics (Eurosceptics are those who contest the increasing authority that the EU has on their country¹) argue that the UK's integration to the EU represents a great threat to the independence and sovereignty of Westminster.² On the other hand those who are in favour of the EU argue that the UK benefits from its membership to the EU both economically and socially.³

The history of parliamentary sovereignty is also a very important part and the way the EU influenced it is of equal importance.⁴ The relationship with the EU has always been a question of power and case law explicitly demonstrate this fact with the debate on whether EU law override national law.⁵ The trade off between the economic benefits of EU membership versus democracy, especially with regard to the democratic deficit that exist in the EU has been a controversial aspect of the UK's relationship with the EU. Should money have a greater value than democracy?⁶ For many years, there has been a debate in the UK regarding the merits of leaving the EU?⁷ Will it help the UK regain its full and unconditional sovereignty?

This dissertation will consider these different aspects of the debate surrounding the impact of the UK's membership of the EU upon its parliamentary sovereignty.

¹ Eurosceptic dictionary definition < <http://www.macmillandictionary.com/dictionary/british/eurosceptic> > accessed 29 January 2015

² Gavin Drewry, 'The jurisprudence of British Euroscepticism: A strange banquet of fish and vegetables' (December 2007) Vol 3 Issue 2 ULR < www.utrechtlawreview.org/index.php/ulr/article/viewFile/49/49 > accessed 29 January 2015

³ The Regents Report, 'The UK & Europe: Costs, Benefits, Options' (Regents University London 2013) < www.regents.ac.uk/files/regentsreport2013.pdf > accessed 29 January 2015

⁴ H Barnett, *Constitutional & Administrative Law* (9th, Routledge, Oxon 2011) 115-140

⁵ Paul Craig, The ECJ, 'National courts and the Supremacy of Community law' < <http://www.ecln.net/elements/conferences/bookrome/craig.pdf> > accessed 29 January 2015

⁶ Mette E Jolly, 'Debating Democracy in the European Union- The Four Concurrent Paradigms (March 2003) < <http://aei.pitt.edu/2881/1/120.pdf> > accessed 29 January 2015

⁷ Center for Economic Reform Commission, 'The economic consequences of leaving the EU' (2014) < www.cer.org.uk/sites/default/files/smc_final_report_june2014.pdf > accessed 29 January 2015

UK Parliamentary Supremacy before the Enactment of the European Communities Act 1972

In order to understand the importance and significance of parliament in Britain and the reason why its concept of sovereignty appears to conflict with the law of the EU, it is essential to understand the history of parliamentary sovereignty before UK's integration to the European Union i.e. prior to the enactment of the European Communities Act 1972.⁸

The most famous description of parliamentary sovereignty is that of A.V Dicey. Dicey believed that it was of high importance to separate the legal from the political and that the legal sovereignty was exclusively for the use of United Kingdom Parliament.⁹ He stated that:

‘The principle of parliamentary sovereignty means neither more nor less than this: namely that parliament...has the right to make or unmake any law whatever’.¹⁰

‘A law may...be defined as ‘any rule which will be enforced by the courts’...any Act of Parliament, or any part of an Act of Parliament, which makes a new law, or repeals or modifies an existing law’.¹¹

Dicey's definition of parliamentary sovereignty has both positive and negative dimensions. On the one hand he argues that parliament has the power to introduce valid law with the ability to enact any law regardless of its content, in other words Parliament is the supreme law-making institution in the UK, added to that, in absolutely no case a parliament has the power to bind its successor or be bound by a predecessor. On the other hand Dicey states that in no case any person or institution including any court of law has the power to question the legitimacy of Parliamentary decisions.¹²

John Austin approached the concept of Sovereignty in the pure positivist tradition¹³ by stating that:

‘If a determinate human superior, not in a habit of obedience to a like superior, habitual obedience from the bulk of a given society, that determinate superior is

⁸ European Communities Act 1972

⁹ H Barnett, *Constitutional & Administrative Law* (9th, Routledge, Oxon 2011) 118

¹⁰ A.V. Dicey, *An Introduction to the Study of the Law of the Constitution* (3rd, Macmillan and co limited, London 1889) 3-4

¹¹ Ibid 3-4

¹² H Barnett, *Constitutional & Administrative Law* (9th edn, Routledge, Oxon 2011) 118-119

¹³ H Barnett, *Constitutional & Administrative Law* (8th edn, Routledge, 2010) 145

sovereign in that society, and the society (including the superior) is a society political and independent'.¹⁴

Austin's definition of parliamentary sovereignty envisaged law merely as orders of the powerful sovereign body. According to Austin the obedient populace swears full allegiance to the sovereign body and obediently executes its commands by fear of sanctions which follows each and every law without exception. Austin argued that there are two distinct concepts of sovereignty, the legal and political. According to Austin the legal concept in the UK is embodied by the Queen in Parliament and the political concept is vested in the people.¹⁵

Austin's conclusion on sovereignty and law is very particular. His arguments are exceptionally difficult to adapt to a federal state where like for example, the allocation of power may grant co-equal legislative powers on both the individual provincial legislatures and the federal government and provide for judicial review of the constitutionality of primary legislation. A good example to illustrate the above explanation is the situation of UK's membership of the EU, such a theory is very difficult not to say impossible to apply in this case.¹⁶

In *The Concept of Law*¹⁷ H.L.A Hart offers a critique of Austin's argument concerning sovereignty. Hart described the legal system as a set of rules rather than commands as described by Austin. According to Hart, Austin's explanations are negatively influenced by his pessimistic view of the legal system which the latter described as a set of commands which are followed by sanctions if they are not executed.¹⁸

Hart argues that there are two concepts of sovereignty, continuing sovereignty and self-embracing sovereignty. Hart states that the Diceyan concept of sovereignty is an interpretation which has been accepted as the norm of legal validity, but that interpretation is 'only one arrangement among others, equally conceivable'.¹⁹

Hart argues that the Diceyan view affirms that Parliament follows the principle of continuing sovereignty, in other words each and every Parliament whether past, present or future is supreme that is, like stated and explained at an earlier stage of the dissertation.

'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 having a right to override or set aside the legislation of parliament'.²⁰

¹⁴ J Austin and R Campbell, *Lectures on Jurisprudence: Or, The Philosophy of Positive Law Volume I* (John Murray, London 1869) 226

¹⁵ H Barnett, *Constitutional & Administrative Law* (8th edn, Routledge, 2010) 145

¹⁶ *ibid* 145

¹⁷ H.L.A Hart, *The Concept of Law* (1st edn, Oxford University Press, 1961)

¹⁸ H Barnett, *Constitutional & Administrative Law* (8th edn, Routledge, 2010) 146

¹⁹ H.L.A Hart, *The Concept of Law* (1st edn, Oxford University Press, 1961) 145

²⁰ A.V. Dicey, *An Introduction to the Study of the Law of the Constitution* (3rd, Macmillan and co limited, London 1889) 3-4

Hart counters Dicey's point of view by arguing that parliament is a type self-embracing sovereignty, that is, a sovereignty allowing the exercise of power to restrict Parliament's legislative powers in the future.²¹ However Hart also states that this power is not eternal even though it is the ultimate power, actually the power to restrict Parliament could only be used once. Hart made it clear that his point of view on sovereignty is no case the absolute truth.²² He stated that neither his or another's interpretation 'can be ruled out as wrong or accepted with confidence as right; for we are in the area of open texture of the system's most fundamental rule. Here at any moment a question may arise to which there is no answer, only answers.'²³

It is clear that before the enactment of the European Communities Act²⁴ there was absolutely no institution that was above Parliament. The UK parliament had an absolute and unconditional power to enact or repeal any law whatsoever in the most express and explicit manner.

²¹ H Barnett, *Constitutional & Administrative Law* (8th edn, Routledge, 2010) 146

²² *ibid* 146

²³ H.L.A Hart, *The Concept of Law* (1st edn, Oxford University Press, 1961) 145

²⁴ European Communities Act 1972

UK Parliamentary Supremacy after the Enactment of the European Communities Act 1972

Since 1973, the year in which the UK joined the EU, the issue of sovereignty and legislative power has been the subject of much debate. The supremacy of EU law was already affirmed since the 1960's through the ruling of cases like *Costa*²⁵, *Van Gend*²⁶, *Simmenthal*²⁷ and *Internationale*.²⁸ The European Court of Justice (ECJ) (now Court of Justice of the European Union (CJEU)) had made it clear that EU law override national law.²⁹

The ECA 1972³⁰ is an act brought by the UK parliament which gives directive with regard to the integration of EU law into domestic law. The role of ECA 1972 is to represent EU law in the UK. Section 2 (1)³¹ of the Act stipulates that:

‘All such rights, powers, liabilities, obligations and restrictions ... and procedures in accordance with the Treaties are without further enactment to be given legal effect or used in the United Kingdom shall be recognised and available in law, and be enforced’.

In other words s.2 (1)³² states that the treaties are the supreme legal authority, which makes the CJEU the final decision-making body on how the treaties are interpreted. However the government did not give this provision much importance.³³ Section 2(4)³⁴ deals with the supremacy of EU law, but the provision does not explicitly state it:

‘Any such provision (of any such extent) as might be made by Act of Parliament, and any enactment passed or to be passed, other than one contained in this part of this Act, shall be construed and have effect subject to the foregoing provisions of this section’.

It is clear that in theory EU law has primacy over national law including domestic constitutional law. However it is very important to note that the ECA 1972³⁵ like any

²⁵ Case 6/64, *Flaminio Costa v E.N.E.L.* [1964] ECR 585

²⁶Case 26/62, *NV Algemene Transport- en Expeditie Onderneming Van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECR 1

²⁷ Case 106/77, *Italian Minister of Finance v Simmenthal* [1978] ECR 629

²⁸ Case 11/70, *Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970]

²⁹ H Barnett, *Constitutional & Administrative Law* (9th edn, Routledge, Oxon 2011) 134

³⁰ European Communities Act 1972

³¹ European Communities Act 1972 s.2(1)

³² *ibid*

³³ D Chalmers, G Davies & G Monti, *European Union Law* (2nd, Cambridge University Press, New York 2010) 184

³⁴ European Communities Act 1972 s.2(4)

³⁵ European Communities Act 1972

other Act of parliament does not benefit from any kind of exceptional legal status within the British constitution, therefore it can be repealed at any moment.³⁶

In the case of *Costa v ENEL*³⁷ the CJEU confirmed that EU law had primacy over national law. The CJEU made it clear in its preliminary ruling that by creating a community of indefinite duration, with powers emanating due to a diminished degree of national sovereignty, or a shift of powers from the member states to the community, the former have restrained their sovereignty, even though within limited fields. In other words the member states have created a body of law which binds both the Government and the citizens.³⁸

The supremacy of the EU was strengthened by the CJEU's ruling in *Simmenthal*.³⁹ The CJEU stated that EU law overrides domestic legislations which came into force after the relevant EU norms. The rules of the EU made any opposing legislation brought by domestic law which was not in line with the EU rules expressly void. The EU did not permit the adoption of any new national law which clashed with the provisions of EU law. The CJEU also stated that it is imperative that every national court apply EU law in its entirety and when necessary set aside any provision of domestic law which conflicts with EU law. The CJEU went as far as to state that not even a deep-seated rule of national constitutional law could be used to challenge the authority of EU law.⁴⁰ It must be pointed out that in nearly all instances no national constitutional court overtly gave precedence to a domestic law over EU law.⁴¹

Every member state in the EU has dealt with the fact that the CJEU claimed that EU law overrides domestic law. On the one hand, some member states had absolutely no problem with this principle such as Belgium and France. On the other hand, countries like the UK have had great difficulty in implementing and accepting the fact that EU law has precedence over national law.⁴²

The fact that the EU claimed supremacy over UK's domestic law is problematic because parliamentary sovereignty in the UK is a keystone of constitutional law. Furthermore the UK has always opted for a dualist approach with regard to the relationship between international treaties and national law. For an international treaty to be enforceable in the UK, it must be introduced in Parliament and then incorporated by means of an Act of Parliament. The supremacy of EU law over national law is never guaranteed due to the

³⁶ H Barnett, *Constitutional & Administrative Law* (9th edn, Routledge, Oxon 2011) 134

³⁷ Case 6/64, *Flaminio Costa v E.N.E.L.* [1964] ECR 585

³⁸ Paul Craig, The ECJ, 'National courts and the Supremacy of Community law'
<<http://www.ecln.net/elements/conferences/bookrome/craig.pdf>> accessed 29 January 2015

³⁹ Case 106/77, *Italian Minister of Finance v Simmenthal* [1978] ECR 629

⁴⁰ Paul Craig, The ECJ, 'National courts and the Supremacy of Community law'
<<http://www.ecln.net/elements/conferences/bookrome/craig.pdf>> accessed 29 January 2015

⁴¹ D Chalmers, G Davies & G Monti, *European Union Law* (2nd, Cambridge University Press, New York 2010) 184

⁴² Paul Craig, The ECJ, 'National courts and the Supremacy of Community law'
<<http://www.ecln.net/elements/conferences/bookrome/craig.pdf>> accessed 29 January 2015

fact that the statute which incorporates EU law in the UK would seem vulnerable to any later Act of Parliament which contradicts it.⁴³

The decision in *R v Secretary of State for Transport, ex p. Factortame*⁴⁴ is one of the most important rulings with regard to the supremacy of EU law. The case involved the requirements for registration of ships regulated by the Merchant Shipping Act 1988⁴⁵ which were in contradiction with EU law. The fact that the Merchant Shipping Act was in contradiction with EU law was controversial. The issue which had to be decided in *Factortame (No. 1)*⁴⁶ concerned the standing of the Merchant Shipping Act in anticipation of the decision on the substance of the case by the CJEU.⁴⁷

It was decided by the House of Lords that the grant of an interim injunction against the Crown had no authority under UK law. The applicant argued that the ruling breached EU law. The CJEU was in favour of the applicants in its ruling.⁴⁸ The CJEU held that, the efficacy of EU law would be prejudiced if a rule of domestic law could prevent the enforceability of EU law. The House of Lords had to reconsider its decision due to the preliminary ruling of the CJEU in *R v Secretary of State for Transport, ex p. Factortame Ltd (No. 2)*⁴⁹

In *Factortame (No. 2)* Lord Bridge stated that EU law has indeed precedence over domestic law. The fact that the UK voluntarily joined the EU and enacted the ECA 1972⁵⁰ is in itself self explanatory. By agreeing to form part of the EU, even if Parliament in the UK is limited with regard to EU affairs, the UK must abide by EU law.

*R v Secretary of State for Employment, ex p. Equal Opportunities Commission*⁵¹ is another interesting case which shows how easily and swiftly the highest national courts have adopted the provisions of EU law and the decisions of the CJEU. In this case the main issue concerned the validity of the UK legislation on unfair dismissal and redundancy pay with regard to the provisions of EU law. The House of Lords was in favour of the applicant. It was held that the domestic legislation violated Article 119 EEC Treaty (now Article 141 EC Treaty) and the relevant directives.

It is clear that after the enactment of the ECA 1972 the UK had no choice but to give precedence to EU law over its national law when these contradicted with EU law. The rulings of the CJEU have explicitly demonstrated that EU law is supreme in regard to affairs concerning the EU and that the member states must comply with EU law.

⁴³ ibid

⁴⁴ *R v Secretary of State for Transport, ex p. Factortame* [1990] UKHL 7

⁴⁵ Merchant Shipping Act 1988

⁴⁶ *R v Secretary of State for Transport, ex p. Factortame* [1990] UKHL 7

⁴⁷ Paul Craig, 7 KH (& - μ 1 D W L R Q D O F R X U W V D Q G W K H 6 X S U H P D F \ R I & R P P X Q <<http://www.ecln.net/elements/conferences/bookrome/craig.pdf> accessed 29 January 2015

⁴⁸ Case 213/89 *R v Secretary of State for Transport, ex p. Factortame* [1990] 3 CMLR 867

⁴⁹ *R v Secretary of State for Transport, ex p. Factortame* [1991] 1 A.C. 603.

⁵⁰ European Communities Act 1972

⁵¹ *R v Secretary of State for Employment, ex p. Equal Opportunities Commission* [1994] 1 All E.R. 910

⁵² European Communities Act 1972

The Benefits of UK Membership to the EU

Even though the UK membership of the EU has caused some issues with regard to parliamentary sovereignty, the integration of the UK to the EU has brought some major benefits to British citizens and businesses. Whether economically or with regard to international affairs, major changes had taken place. Areas such as the judiciary and issues relating to the environment or even benefits to individuals like education and the free movement of persons have been significantly improved.

The single market is an essential part of the benefit that the UK enjoyed upon joining the EU. The single market operates in a revolutionary way by removing barriers in order to enable individuals and businesses to have access to a whole new level of opportunities in the EU, with its 28 member states and an estimated 500 million citizens.⁵³

The foundations of the single market framework are comprised of four main factors, referred to as the “four freedoms” i.e. free movement of capital, people, services and goods. These freedoms are the cornerstones of the EU and are protected by the EC Treaty. The “four freedoms” offer a wide range of opportunity both to individuals and corporations. The single market has enabled EU citizens to study, live, work and retire in any other EU country. Individuals benefit from low prices due to increased competition within the EU and a wider choice of products to purchase, while at the same time they are protected as consumers. The single market has facilitated the procedures for businesses to trade with other EU countries.⁵⁴

In order for the single market to be effective and functional, every member state must implement the law relating to the single market simultaneously. If the member states do not adopt the law correctly the system will have major flaws and this will of course be detrimental to citizens and businesses within the EU. It must be noted that the single market’s scope of action is not only restricted to the EU. Nearly all single market policies have an impact beyond the confines of the EU.⁵⁵

Articles 34–36 of the TFEU⁵⁶ dealing with the free movement of goods and services are very useful provisions which allow employers from any member state to recruit an individual from any other member state. Employers from Britain have extensively used this capability to acquire a more extensive variety of manpower which has helped to compensate for the UK’s shortage of skilled labour.⁵⁷

⁵³ The EU Single Market-General policy framework (October 2014) <http://ec.europa.eu/internal_market/top_layer/index_en.htm> accessed 30 March 2015

⁵⁴ *ibid*

⁵⁵ *ibid*

⁵⁶ Treaty on the Functioning of the European Union 1958, art 34-36

⁵⁷ The Economic Benefits to the UK of EU Membership (December 2011) <<http://www.euromove.org.uk/index.php?id=15296>> accessed 30 March 2015

Articles 101, 102 and 107 of the TFEU⁵⁸ have played a major role with regard to EU competition law by offering new markets which were previously inaccessible; this has enabled UK based businesses to expand throughout the EU. EU competition law was enforced and corporations, especially multi-nationals which were not in line with the provisions of the TFEU were tackled⁵⁹ the most significant action being the Microsoft case.⁶⁰ The major benefit from the single market with regard to business and trade is that businesses only have to deal with one set of rules and regulations rather than 28 different sets of rules and regulations when doing business in more than one EU member state.⁶¹

The main benefit that UK citizens enjoy is the freedom to live, work, study, retire and travel in any EU country. The Schengen area (The Schengen Area Agreement was made by the 28 member states of the EU to abolish passport and immigration controls at their joint borders⁶²) it enables British citizens to travel to any Member States without a visa for a period of three months. There are about 1.6 million UK citizens living in the EU outside the UK. When a British citizen has lived in another EU country for a period of five years he/she enjoys the same rights as the country's own citizens. During local and European Parliament elections UK citizens have a right to vote regardless of where they are living in the EU. British citizens do not have to sit further examinations when they are trying to get a job in another member state.⁶³

Concerning crime prevention and justice, the EU has set up the European Arrest Warrant (EAW). The EAW replaced complicated extradition procedures within the EU's jurisdiction. The EAW improved and simplified judicial procedures intended to surrender people for the purpose of conducting a criminal prosecution, executing a custodial sentence or spell in detention.⁶⁴ While the EAW is in force in the EU, a suspect who objects to extradition may be extradited within 48 days, whereas before the EWA was implemented it took nearly a year to extradite a suspect.⁶⁵

Environmental issues are one of the main concerns of the EU. Since the 1970s the EU has regulated every aspect which concerned the environment. Article 174 of the TEEC 1958 (now TEC) was used as a framework to establish the European environment policy which

⁵⁸ Treaty on the Functioning of the European Union 1958, art 101,102,107

⁵⁹ The Economic Benefits to the UK of EU Membership (December 2011) <<http://www.euromove.org.uk/index.php?id=15296>> accessed 30 March 2015

⁶⁰ Case T-201/0 *Microsoft Corp v Commission* [2007]

⁶¹ The Economic Benefits to the UK of EU Membership (December 2011) <<http://www.euromove.org.uk/index.php?id=15296>> accessed 30 March 2015

⁶² Migration and Home Affairs, Schengen Area <http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm> accessed 29 January 2015

⁶³ The Economic Benefits to the UK of EU Membership (December 2011) <<http://www.euromove.org.uk/index.php?id=15296>> accessed 30 March 2015

⁶⁴ Justice, European Arrest Warrant <http://ec.europa.eu/justice/criminal/recognition-decision/european-arrest-warrant/index_en.htm> accessed 29 January 2015

⁶⁵ The Economic Benefits to the UK of EU Membership (December 2011) <<http://www.euromove.org.uk/index.php?id=15296>> accessed 30 March 2015

aims to ensure the sustainable development of the European model of society.⁶⁶ As a result of these policies, the quality of beaches was considerably improved. River pollution and bathing water pollution are constantly monitored throughout the EU and natural habitats of different species are protected. The EU is considered to be a pioneer regarding measures against climate change. Every member state has agreed to take necessary action to reduce greenhouse-gas emissions by 20 percent and to increase the use of renewable energy by 20 percent.⁶⁷

Even though each member state is responsible for education in their country the EU has always supported cross-border projects aiming to raise the standard of education and training in the EU. ERASMUS is a very popular university programme, which allows EU students to study in another university in the EU. In 2009 more than 7000 British students went to universities in different EU countries and 16,000 students from other EU countries came to the UK.⁶⁸

There is no doubt that the UK has benefited from its membership of the EU. The EU has offered the UK a wide range of opportunities in terms of business prospects which were very good for the economy of the UK. British citizens are free to travel and work in any other EU country and may even stay in another member state if they wish.

⁶⁶ Environment <http://europa.eu/legislation_summaries/environment/index_en.htm> accessed 30 March 2015

⁶⁷ The Economic Benefits to the UK of EU Membership (December 2011) <<http://www.euromove.org.uk/index.php?id=15296>> accessed 30 March 2015

⁶⁸ *ibid*

The Loss of UK Parliamentary Sovereignty due to EU Membership

The UK parliament has known extensive constitutional changes as a result of its membership to the EU. However it would be hyperbolic to say that the UK has completely lost its parliamentary sovereignty. Absolutely no case an English court or any other court, whether the Supreme Court or CJEU can overrule an Act of the UK parliament. The UK Supreme Court does not have the authority to revoke legislation passed by the UK parliament. Courts do not have the power to frame public policy, their role is to interpret and develop law as long as it is through well established processes and methods of reasoning.⁶⁹

However the exact meaning of interpreting it is a subject to much debate. A good example to illustrate this is the Human Rights Act 1998.⁷⁰ The HRA encourages courts to read legislation in a way which gives effect to the European Convention on Human Rights.⁷¹ Such practices are very confusing and can in some cases lead to provisions being rewritten by courts.⁷²

Conversely, the Supreme Court might give effect to EU law which are directly applicable, and at the same time interpret domestic law so that it is in line with EU law. Added to that, the Supreme Court has a duty to give effect to the provisions of the ECHR.⁷³

Even though the UK has not lost all its parliamentary sovereignty it is undeniable that it has lost part of its sovereignty. The loss of parliamentary sovereignty in the UK due to its membership to the EU has three main elements as follows: the authority of EU decisions, the decision-making process in the EU and the range of EU policies.⁷⁴

As previously stated various EU decisions like the rulings of the CJEU have legal authority. In cases where there is a conflict between domestic law and EU law, EU law overrides national law. In situations involving EU law, like for example a disagreement between the British government and the French government or the British government and an EU institution such as the European Commission, the CJEU has the authority to make the final decision and the UK must comply with the verdict.⁷⁵

The EU decision-making process functions in such a way that law can be implemented without prior agreement of the British government and without consent of the UK parliament. Laws can be implemented without the consent of the British government where a qualified majority voting rule applies in the Council of Ministers.

⁶⁹ A Wagner, 'Does parliamentary sovereignty still reign supreme?' The Guardian (London, 2011)

⁷⁰ Human Rights Act 1998

⁷¹ European Convention on Human Rights 1953

⁷² A Wagner, 'Does parliamentary sovereignty still reign supreme?' The Guardian (London, 2011)

⁷³ ibid

⁷⁴ B Jones (Editor) Political Issues in Britain Today (5th edn, Manchester University Press, 1999) 392

⁷⁵ ibid 392

As late as 1984, nearly all the decisions of the EU were taken on a consensus⁷⁶. A qualified majority is the number of votes required in the Council for a decision to be adopted when issues are being debated on the basis of Article 16 of the TEU and Article 238 of the TFEU.

Predictably this way of functioning resulted in a very slow decision-making process which was time consuming, costly and ineffective. During the 1980s, in an attempt to change this inadequate situation, qualified majority voting was used more often. The Single European Act 1987⁷⁷ extended the policy areas in which qualified majority voting was permitted especially to the majority of legislation regarding the single market. The TEU 1993 and the Treaty of Amsterdam 1999 did the same thing with regard to qualified majority voting and extended its use to the areas of environmental, regional and competition policy.⁷⁸

With regard to the ability of the UK parliament to exercise more control over EU legislation, two changes took place, it must be noted that these did not fully satisfy the British parliament as it did not give full control to the UK regarding parliamentary sovereignty. Firstly the UK parliament gained the ability to try to influence the negotiating position adopted by the government in the Council of Ministers. To do this, Parliament had to use the House of Commons Select Committee on European Legislation.⁷⁹ The House of Commons Select Committee examines the Governmental policies and actions of the UK with regard to the EU. Its main role is to try to influence the development of policies and draft law proposed by the EU institutions. Secondly EU legislation, known as directives, are not directly applicable but must be implemented in domestic law by the relevant national authorities. In the UK there are various ways which directives can be implemented, but the result is always the same, they all limit Parliament when it wishes to express a view on the matter. Parliament does not have the authority to delay the implementation of the directives nor does it have the power to reject the principles of a directive.⁸¹

The range of EU policies has considerably increased since the UK joined the EU in 1973. The UK was referred to merely as the Common Market. Since then the UK has drastically changed, remaining itself the EU and increasing its influence on the member states. Economic and Monetary Union was established in 1999, creating a single currency adopted by the majority of the EU member states; which has undeniably strengthened the status of the EU. The EU has been able to maintain a solid position by successfully integrating its policies into the domestic law of the member states and imposing its policies and directives on national law, while at the same time an increasing number of policy decisions are taken at Union level. In other words, member states, like the UK are

⁷⁶ B Jones (Editor) Political Issues in Britain Today (5th edn, Manchester University Press, 1999) 392

⁷⁷ The Single European Act 1987

⁷⁸ B Jones (Editor) Political Issues in Britain Today (5th edn, Manchester University Press, 1999) 392

⁷⁹ Ibid 392

⁸⁰ Lord Select Committee <http://www.parliament.uk/business/committees/committees/lords-select/eu-selectcommittee/role/> accessed 30 March 2015

⁸¹ Art 288 TFEU 1958

increasingly limited with regard to their decision-making powers in instigating new policies and law for their countries.⁸²

⁸² B Jones (Editor), *Political Issues in Britain Today*, (5th edn, Manchester University Press, 1999) 393

The Case Law of the European Court of Justice on the Supremacy of EU Law

As mentioned previously, there have been a number of conflicts between EU law and domestic law with regard to supremacy. The ECJ has ruled that EU law overrides national law in the event of any conflict in cases like *Costa v ENEL*⁸⁴, *Internationale Handelsgesellschaft*⁸⁵, *Simmenthal*⁸⁶, *Van Gend en Loos*⁸⁷ and *Factortame*⁸⁸. It is very important to analyse the case law that has caused controversy with regard to the supremacy of EU law and direct effect of EU law. The authority it imposes on member states.

Supremacy has always been a central issue in the EU. One of the foundations of the EU is that EU law has the authority to override any rule, including constitutional law of the member states. In *Costa v ENEL*⁸⁹ the ECJ has established that EU law overrides domestic law. This principle can be interpreted in two ways. Firstly it may imply the supremacy of EU law, in other words that EU law has a higher rank than even the national constitutions. The second interpretation is more of a practical nature. In practice the aim of EU policies or directives would not be able to work if national law were to prevail over EU law.⁹⁰

These two interpretations have something in common; both portray primacy of EU law as a milestone in the development of the EU system of law. The primacy of the EU law is a symbol of the autonomy of the CJEU which must remain unconditional. In general, national courts and political institutions like for example Parliament have partially accepted the doctrine of primacy of the EU.

In *Internationale Handelsgesellschaft*⁹¹ the issue which arose was with regard to whether EU law had primacy over the constitutional law. More importantly, the issue of whether EU law takes primacy over the fundamental rights in domestic constitutions was raised. This case is regarded as a fundamental element of the doctrine of supremacy of EU law. The Court held that EU law overrides all provisions in domestic law regardless of

⁸³ Paul Craig, 7 KH (& - μ 1 DWLRQDO FRXUWV DQG WKH 6XSUHPDF\ RI & RPPXQ
<<http://www.ecln.net/elements/conferences/bookrome/craig.pdf> accessed 31 March 2015

⁸⁴ Case 6/64, *Flaminio Costa v E.N.E.L.* [1964] ECR 585

⁸⁵ Case 11/70, *Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125

⁸⁶ Case 106/78, *Simmenthal I* [1978] ECR 629

⁸⁷ Case 26/62, *NV Algemeen Transport en Expeditie Onderneming van Gend & Loos v Nederlandse Inland Revenue Administration* [1963] ECR 1

⁸⁸ *R v Secretary of State for Transport, ex p. Factortame* [1990] UKHL 7

⁸⁹ Case 6/64, *Flaminio Costa v E.N.E.L.* [1964] ECR 585

⁹⁰ Jan Herman Reestma, 'Primacy of Union Law' (2005) *EuConst* 104, 107

⁹¹ *ibid* 104, 107

⁹² Case 11/70, *Internationale Handelsgesellschaft v Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125

legal status.⁹³

In order to illustrate this principle a brief introduction to the facts of the case is helpful. The EU introduced a system in order to control the market with regard to certain agricultural products. This system required a license and an economic deposit obtained by firms which wanted to export agricultural products. If the firm was not able to export the products then the deposit would be lost. The case concerned a company that had lost its deposit. The company claimed that the whole system was invalid due to the fact that it constituted a breach of fundamental Human rights. As per German constitutional law, public authorities have the right to impose obligations on citizens only when those obligations are necessary for achieving a public purpose. The German administrative court claimed that this EU measure was invalid as it breached the German Constitution.⁹⁴

It was held by the ECJ that the law which comes from the Treaties is unconditional and cannot be overruled by national law. If not, the EU would be deprived of its nature which would lead to the EU itself be called into question. Therefore, the authority of EU measures within a member state cannot be affected by claims that it breaches the member state's constitutional law.⁹⁵ It follows that, regardless of the nature of the legal provision of the member state, EU law is directly applicable and prevails over domestic law. Moreover, in its judgment the ECJ clearly stated that EU law has primacy even over domestic legislation implemented after the relevant EU provision. The ECJ stated that the effectiveness of EU legislation would be jeopardised if a domestic court would be allowed to review its legitimacy.⁹⁶

With regard to the practical implications of the supremacy doctrine very important issues were clarified in the ruling of *Simmenthal I*.⁹⁷

In the case of *Simmenthal I*⁹⁸ the ECJ ruled that national courts had the obligation to give effect to EU provisions and not to apply any contradictory provisions of domestic legislation. National courts should not wait for domestic law to be set aside either by a constitutional court or by the Parliament. This judgment gave rise to three directly applicable measures of the institutions. Secondly, the ECJ did not claim that conflicting domestic provisions are void, but merely that they are not applicable. Thirdly, national legislation which conflicts directly with EU provisions are not the only ones

⁹³ Martin Stier *Q V W U R P* μ 7 K H 5 H O D W L R Q V K L S % H W Z H H Q & R P P X Q L W \ / D Z D Q G Robert Schuman Paper Series Vol.5 No.33 October 2005 <<http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf>> accessed 31 March 2015

⁹⁴ *ibid*

⁹⁵ Case 11/70 *Internationale Handelsgesellschaft* Einfuhr- und Vorratsstelle für Getreide und Futtermittel [1970] ECR 1125

⁹⁶ *Q D U W L Q 6 W L H U Q V W U R P* μ 7 K H 5 H O D W L R Q V K L S % H W Z H H Q & R P P X Q L W \ Robert Schuman Paper Series Vol.5 No.33 October 2005 <<http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf>> accessed 31 March 2015

⁹⁷ Case 106/77 *Simmenthal I* [1978] ECR 629

⁹⁸ *ibid*

be incompatible with EU law but domestic law, which indirectly conflict with EU law are also invalid. In other words the authority and powers of a member state be restricted when it conflict with EU law indirectly or when it has a mere potential to conflict with EU law.⁹⁹

Concerning direct effect the case *Van Gend en Loos*¹⁰⁰ is considered to be a landmark case. The ruling of the ECJ clarifies the process by which sovereignty transfers from the member states to the EU and the consequences of this pooling of sovereignty.¹⁰¹

In *Van Gend en Loos*¹⁰² the main issue was with regard to the fact that Dutch customs charged very customs duties. Article 25 of the EC Treaty bans the implementation of new custom duties and also the rise of existing duties. As the national court was about the matter with regard to the fact that Article 25 had direct effect, the case was referred to the ECJ.¹⁰³ The ECJ affirmed that Article 25 had direct effect on member states, meaning that EU law could, under specific conditions, create rights for individuals that had to be protected by domestic courts. The ECJ justified its statement by affirming that direct effect was necessary to ensure the efficacy of EU law.¹⁰⁴

The ruling in *Factortame*¹⁰⁵ is considered to be the most influential one which was made by the ECJ, concerning the relationship between EU law and domestic law. The ECJ created remedies to set aside national legislation. The case originated from a decision of the EU to implement measures concerning fish conservation. In order for the measure to be effective, restrictions were imposed on the number of fish of different species that could be caught. Each member states were given a quota of fish that could be caught. In an attempt to catch more fish some Spanish fishermen, registered companies in the UK and transferred the ownership of their boats to those companies. The fishermen claimed that they had the right to take fish from the British quota instead of taking it from the Spanish quota, due to the fact that ships were owned by companies in the UK. In a response to this practice the UK passed legislation to prevent it. The legislation aiming to stop the Spanish fishermen was challenged in the British courts. The Spanish fishermen

⁹⁹ Martin Stiernstrom, *μ 7 KH 5 HODWLRQVKLS %HWZHHQ &RPPXQLW\ /DZ DQG 1DW* Robert Schuman Paper Series Vol.5 No.33 October 2005, <http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf> > accessed 13 March 2015

¹⁰⁰ Case 26/62, *NV Algemeen Transport en Expeditie Onderneming Van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECR 1

¹⁰¹ *0 DUWLQ 6 WLHUQVWURP μ 7 KH 5 HODWLRQVKLS %HWZHHQ &RPPXQLW* Robert Schuman Paper Series Vol.5 No.33 October 2005, <http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf> > accessed 31 March 2015

¹⁰² Case 26/62, *NV Algemeen Transport en Expeditie Onderneming Van Gend & Loos v Netherlands Inland Revenue Administration* [1963] ECR 1

¹⁰³ *0 DUWLQ 6 WLHUQVWURP μ 7 KH 5 HODWLRQVKLS %HWZHHQ &RPPXQLW* Robert Schuman Paper Series Vol.5 No.33 October 2005, <http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf> > accessed 31 March 2015

¹⁰⁴ *ibid*

¹⁰⁵ *R v Secretary of State for Transport, ex p. Factortame* [1999] UKHL 7

claimed that the registration procedure in the UK was discriminatory, and the case was referred to the ECJ to verify whether it breached EU law.¹⁰⁶

Due to the fact that the ECJ on average takes about a year or two to give a judgment in such cases, the Spanish ships would have been unable during that period and would suffer a lot of damage. In an attempt to prevent this, the Spanish fishermen applied for an interim injunction against the British Government until the ruling was given. The House of Lords ruled that British courts do not have the authority to grant an injunction against the Crown. The House of Lords referred a question to the ECJ regarding on whether a national court should suspend a domestic rule that prohibits a national court from granting interim relief.¹⁰⁷

The ECJ ruled in favour of the Spanish fishermen by stating that the efficacy of EU law would be jeopardised if a rule of national law could prevent a national court from granting interim relief in a case concerning EU law. Thus national courts have the duty to set aside its domestic law when dealing with cases regarding the EU. This case reaffirmed the position of the ECJ in *Simmenthal I*¹⁰⁸ with regard to the fact that directly applicable provisions of EU law override any conflicting provision of domestic law inapplicable.¹⁰⁹

When analysing the rulings of the ECJ in the different cases above, EU law would be ineffective if it could not be effectively enforced. The purpose of the EU would be obsolete if EU law did not have the necessary level of authority.¹¹⁰

¹⁰⁶ Martin Stierm *V W U R P* μ7KH 5HODWLRQVKLS %HWZHHQ &RPPXQLW\ /DZ DQG Robert Schuman Paper Series Vol.5 No.33 October 2005; <http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf>
> accessed 31 March 2015

¹⁰⁷ *ibid*

¹⁰⁸ Case 106/77 *Simmenthal I* [1978] ECR 629

¹⁰⁹ *ODUWLQ 6WLHUQVWURP* μ7KH 5HODWLRQVKLS %HWZHHQ &RPPXQLW Robert Schuman Paper Series Vol.5 No.33 October 2005; <http://aei.pitt.edu/8162/1/Stiermstromfinal.pdf>
> accessed 31 March 2015

¹¹⁰ *ibid*

The Bigger Picture: Democratic deficit and Economic Efficiency

The EU has always been criticised for its lack of democracy, known as the democratic deficit even though the authority of the EU keeps on expanding. The democratic deficit refers to the lack of democracy in various EU's institutions, which are viewed as inaccessible to the lay person due to its complex method of operating.¹¹¹ The EU considers that democracy is a cornerstone of its structure as a matter of fact the EU was partly created to counter any form dictatorship.¹¹² However the EU has suffered from a lack of democracy, whilst most member states respect and apply democratic principles. EU citizens and specially Eurosceptics argue that the economic efficacy of the EU outweighs democracy in the Union.¹¹³

The main reason why the EU lacks democracy is that the EU's institutional structure is not democratic. The European Commission is a good example to illustrate the previous explanation. The European Commission is a non-elected institution which benefited from a large amount of political power. Though the Commission is not elected by the citizens of the EU, it has a major role in the decision-making process.¹¹⁴

When compared to the EU Commission, the EU Parliament which is the only elected institution of the EU has less power with regard to law making. The problem with this is that with its limited powers, the EU Parliament cannot fully protect citizen rights. The structure of the EU's institutions is complex, and it is considered to be disconnected from EU citizen concerns and every day life problems. Compared to domestic politics, which is considered as democratic, the politics of the EU is viewed as an entity which is run by the elite and technocratic.¹¹⁵

EU citizens argue that the EU is controlled by lobbyists rather than genuine and effective politicians. On the one hand, in a traditional parliamentary system, citizens of a country are represented by elected members of parliament. The citizens exercise their constitutional right by voting for politicians whom they believe will effectively represent them in Parliament. Therefore the elected members of parliament, political parties and the parliament have a responsibility towards the citizens. On the other hand, EU citizens do not have such power. The European Commission is not always accountable for its decisions; this inevitably leads to a feeling of impunity and a serious lack of democracy.¹¹⁶

It is undeniable that economic efficiency has been very important to the EU's integration and implementation of the single market. However, disagreements have emerged as

¹¹¹ Democratic deficit <http://europa.eu/legislation_summaries/glossary/democratic_deficit_en.htm>accessed 4 April 2015

¹¹² Art 2 TEU 1992

¹¹³ Kübra Dilek Azman, 'The Problem of "Democratic Deficit" in the European Union' (2011) 1 IJHSS 242

¹¹⁴ ibid 245

¹¹⁵ ibid 245

¹¹⁶ ibid 245-246

member states believe that their control on internal social programs is increasingly restrained. The national welfare state has slowly but effectively been eroded due to the EU's regulatory process.¹¹⁷ Rulings of the ECJ that override domestic law with regard to the economic integration of the EU are very informative. Such decisions have permitted the economic integration to be fully effective throughout the EU, for example; in relation to the four freedoms. Although the EU has proved that its measures concerning the above were beneficial to every member state and to EU citizens in general, it has also indirectly affected social policies within member states.¹¹⁸

The way in which the EU adversely affects domestic social policies can be observed in quite a few areas. The single market has enabled capital to move to the locations which offers the highest rate of investment and firms have the ability to transfer their production to a place offering the most competitive business conditions, while at the same time access to their home markets are not jeopardised. The result of this is that those freedoms which are fundamental elements of economic integration do not permit national governments to protect their domestic business interests from being threatened by competition from different member states.¹¹⁹

Many member states, like the UK consider that they do not have the necessary means to counter the adverse impact of the economic efficiency. The EU's race to economic efficiency has forced member states to exercise a high degree of restraint with regard to regulation or taxation of their domestic capital and businesses due to the fact that these sectors may also choose to relocate to another location within the EU which would offer a more competitive taxation schemes or more favourable regulations. The result of businesses relocating in other parts of the EU has increased unemployment and the effect of that has caused demands on social programs to rise.¹²⁰

Member states which invest heavily in employees through vocational training also suffer because of the ability of workers to move to another member state. Those highly trained workers compete with less-skilled and cheaper labour from other member states. Added to that, firms that have invested in training their workers obtain a very modest compensation when those fully trained workers relocate to more competitive job markets. The result of the increasing relocation of skilled labour and businesses has been detrimental to the budgets that fund national welfare states.¹²¹

Even though the EU clearly suffers from a democratic deficit, it would be untrue to state that the EU is completely undemocratic. When looking at the structure of the EU, it is clearly more complex than other models. Therefore ensuring that the different institutions of the EU are completely democratic is not always the easiest thing. Democracy is a fundamental element of the EU; as a matter of fact for a country to be part of the EU,

¹¹⁷ Shirley Hixson, 'European Integration and the Welfare State' <http://www.pitt.edu/~heinisch/eu_integ7.html> accessed 7 April 2015

¹¹⁸ *ibid*

¹¹⁹ *ibid*

¹²⁰ *ibid*

¹²¹ *ibid*

amongst other requirements, it must be a democratic state. Even though the economic efficacy of the EU has caused some conflicts with regard to national social policies, it has also been very beneficial to all member states especially with regard to the single market which has enabled business to proliferate within the EU.¹²²

¹²²Kübra Dilek Azman, 'The Problem of "Democratic Deficit" in the European Union' (2011) 1 IJHSS 242

The Future of the UK within the EU: Implications for Parliamentary Supremacy

Since the enactment of the European Communities Act 1972, the UK has formulated a number of complaints and entered into numerous conflicts with the EU. Most of these disagreements were directly or indirectly linked to supremacy. The future of the UK within the EU is uncertain, the UK has the possibility to either remain in or to leave the EU, and these choices will entail different consequences.

It is impossible to foresee the full effect of what would happen if the UK withdrew from the EU, because no member state has ever done such a thing before. However it is possible to identify a few issues and estimate some of the impacts of withdrawing from the EU by assessing the current role of the EU in different policy areas. A withdrawal would significantly impact important areas like military influence, agriculture and trade.¹²³

With regard to trade, if the UK decides to withdraw from the EU, the result of this might be detrimental to the British economy. Trade is definitely the most significant advantage that the EU has offered; by making business between member states relatively cheap especially when exporting within the EU. The money that the UK saved from low cost trade in the EU easily outweighs the billions of pounds in membership fees that the UK would save if it withdrew from the EU. On the one hand the UK would be running the risk of losing some of its negotiating power internationally by leaving the EU trading bloc, but on the other hand it would be free to establish trade agreements with non-EU countries.¹²⁴

An interesting alternative from the UK's standpoint is the case of Norway. EU policies on areas like home affairs, agriculture and justice do not have authority in Norway, but the country has access to the single market, therefore it can trade with EU member states. However with such a relationship with the EU, the UK would still be significantly impacted by the economics and politics of the EU, but it would be a passive bystander with no right or power to influence anything in the Union.¹²⁵ If the UK moves out of the EU it is highly probable that it will lose some of its military influence as well. It is believed that the United States of America would regard the UK as a less effective and strategic supporter if it was no longer in the EU. This could be detrimental to the UK as the US has a large army and efficient intelligence services, which has been very useful in fighting terrorism and in backing Britain in armed conflicts.¹²⁶

¹²³ John Mc Cormick , 'The Meaning of a British Exit from the European Union' (2014) < <http://www.e-ir.info/2014/07/25/the-meaning-of-a-british-exit-from-the-european-union/>> accessed 9 April 2015

¹²⁴ The Week, 'EU referendum: the pros and cons of Britain leaving the EU' The Week (London 24 March 2015) < <http://www.theweek.co.uk/uk-news/58700/would-britain-be-better-off-outside-the-eu#ixzz3WvUKrzCJ>> accessed 9 April 2015

¹²⁵ ibid

¹²⁶ ibid

Regarding the benefits that British citizens would obtain, this would depend on how the British Government would fill the policy gaps left by withdrawal from the EU. In areas like the environment for instance, a lot of the content of EU law policies would most likely continue to apply as the UK is bound by other international agreements.¹²⁷

A significant number of UK citizens are now Eurosceptic. Around 62 per cent of Britons want the UK to leave the EU or that the powers of Brussels bureaucrats are considerably reduced. A recent annual survey reveals that anti-EU feelings in the UK are much higher than when the Coalition (Conservative party and Liberal Democrats) won the elections in 2010, which reflects the rise in popularity of the UK Independence Party (UKIP). The survey also reveals that another coalition government is not welcomed, as a matter of fact; support for another coalition is at its lowest in 30 years. As a comparison, only 29 per cent of British people would be in favour of a coalition, as opposed to 45 per cent before the current Conservative-Liberal Democrat coalition was formed in 2010. It is clear that British people want a radical redesign of Britain's relationship with the EU.¹²⁸

Concerning the process allowing the UK to withdraw from the EU, Article 50 of the TEU 1992 permits a member state to leave the EU in accordance with its own constitutional requirements.¹²⁹ The Article states that:

‘A Member State which decides to withdraw shall notify the European Council ... In the light of the guidelines provided... the Union shall negotiate and conclude an agreement... That agreement shall be negotiated in accordance with Article 218(3) of the TFEU 1958’.

‘Article 218(3) stipulates that: The Commission or the High Representative of the Union for Foreign Affairs and Security Policy... shall submit recommendations to the Council, which shall adopt a decision authorising the opening of negotiations’.

In theory a member state, for instance the UK, can leave the EU without the agreement or endorsement of any other member state. The UK will be required to notify the European Council that it wishes to withdraw; it takes two years for the withdrawal to be completely effective. Even though the UK is free to withdraw from the EU, Article 50 of the TEU seems to require an orderly and negotiated withdrawal. Article 50 of the TEU 1992 does not mention any ratification of the withdrawal agreement by member states, even though it is required under international legal norms. Even without a withdrawal agreement, there would be the need for amendments to the EU Treaties in order to take account of the withdrawal of at the UK, at least two years after notification.¹³⁰

¹²⁷ Vaughne Miller, House of Commons Library ‘Leaving the EU’ (Research paper 13/42 2013) <<http://www.parliament.uk/briefing-papers/rp13-42.pdf>> accessed 9 April 2015

¹²⁸ T Batchelor, ‘EU popularity fades: Majority of Britons are now Eurosceptic and do want to limit EU power’ *Sunday Express* (London, 26 March 2015) <<http://www.express.co.uk/news/uk/566543/British-public-Eurosceptic-limit-EU-powers-study-shows>> accessed 20 April 2015

¹²⁹ Vaughne Miller, House of Commons Library ‘Leaving the EU’ (Research paper 13/42 2013) <<http://www.parliament.uk/briefing-papers/rp13-42.pdf>> accessed 9 April 2015

¹³⁰ *ibid*

With regard to the parliamentary sovereignty of the UK Article 50(3) of the TEU 1992, provides that the UK will no longer be bound by EU law after the termination of the Treaty due to withdrawal from the EU.¹³¹ The Article states that:

The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously G H F L G H V W R H [W H Q G W K L V

In other words Article 50(3) of the TEU 1992 means that the UK will regain its full and unconditional sovereignty; no other institution or person will have precedence on its decisions. As a result EU law would have no authority on any UK citizen and or British institutions.¹³²

In 2013, the British Prime Minister made a very interesting promise that a referendum on the continued UK membership in the EU will be held by 2017 if the conservatives win the elections.¹³³ This announcement has caused much debate and speculation about the impact of such a move from the UK.¹³⁴

It should be noted that at this stage the British Prime Minister has only made a promise of a referendum. It is not the case the UK is officially getting out of the UK or is in the process of withdrawing. The aim of this referendum is to question the validity of the presence of Britain in the EU. As a matter of fact it is not absolutely certain that it will actually be a referendum. Firstly, for the referendum to happen the Conservatives will need to win the 2015 general election. During recent years the Conservatives have known a significant drop of popularity and the rise of the UK Independence Party has definitely not helped them and may have been the cause of their unpopularity.¹³⁵

¹³¹ ibid

¹³² ibid

¹³³ μ (8 U H I H U H Q G X P W K H S U R V D Q 6 T F W e e k (L n d o n , 2 4 M a r c h 2 0 1 5) < <http://www.theweek.co.uk/uknews/58700/would-britain-be-better-off-outside-the-eu#ixzz3WvUKrzCJ>

¹³⁴ - R K Q 0 F & R T b e M e a n i n g o f a B r i t i s h E x i t f r o m t h e E u r o p e a n U n i o n 1 4 < <http://www.eir.info/2014/07/25/the-meaning-of-a-british-exit-from-the-europeanunion/>> accessed 9 April 2015

¹³⁵ ibid

Conclusion

When comparing the UK before and after the enactment of the European Communities Act¹³⁶ it is clear that the UK and especially the role of its parliament have known significant changes. However those major changes are unsurprising due to the nature of the membership of the UK in the EU. The UK shifted from a sovereign state, where absolutely no institution was above Parliament, which has absolute and unconditional power to enact or repeal any law whatsoever in the most express and explicit manner being part of a Union consisting of several other states with different law and policies. It would have been technically impossible for every member state to keep their domestic law; the EU would not be effective. European integration is a vital part of the good functioning of the EU and its institutions. EU law into domestic law had to be done to make a homogenous and uniform set of rules that would be applied by every member state.

If we follow the logic of the EU which claims that the EU law must have precedence over national law when conflicts arise between EU law and domestic law, it is logical that the EU must have a level of supremacy over member states in order to ensure that the efficacy of the EU is not compromised. Even though the UK was opposed to the idea of supremacy of EU law on matters concerning the Union, the UK had to accept the fact that EU law should have precedence to ensure that the homogenous set of rules which governs each and every member state is applied everywhere within the EU. The rulings of the CJEU have explicitly demonstrated that EU law is supreme with regard to affairs concerning the EU and that the member states must comply with EU law in order not to disrupt the proceedings of the EU.

It is clear that membership of the EU has been beneficial to the UK in numerous ways. Euro-sceptics seem to forget that without the EU, Britain would not have been able to benefit from opportunities in terms of trade at a very competitive cost which not only increased employment but also injected billions of pounds in the British economy. UK citizens have the ability to travel and work in any other EU member state, while at the same time their rights as workers and customers are protected. The EU is a strong symbol of economic efficiency and military power. At an international level the UK has benefited from this powerful symbol.

The increasing influence of the EU on the decision making process and on the sovereignty of member states is undeniable. The EU has successfully integrated its policies into the domestic law of member states by imposing its policies even if some member states were clearly opposed to them. The UK is increasingly restricted with regard to its decision-making powers. This particular issue has caused much debate, and ultimately the sovereignty of the UK parliament was questioned. The UK government argue that the EU has too much influence in British politics.

¹³⁶ European Communities Act 1972

Through the ruling of the ECJ the EU has in numerous instances asserted the fact that EU law overrides national law. Cases like *Costav ENEL*¹³⁷ and *Internationale Handelsgesellschaft*¹³⁸ have confirmed the supremacy of EU law over national law. In *Simmenthal I*¹³⁹ and *Factortame*¹⁴⁰ the ECJ made it clear that national courts had to give precedence to EU law. The rulings of the ECJ with regard to the supremacy of EU law are very interesting in the sense that the ECJ gave precedence to EU law in order to solidify the status of the EU as being a powerful entity which imposes rule and expects its members to apply them. Realistically and following the logic of the EU, law would be ineffective if it could not be applied.

Although the EU suffers from a democratic deficit, it is stated that the whole structure and institutions of the EU are democratic would be false. Democracy holds a very important position in the politics and institutions of the EU. One of the main reasons behind the creation of the EU was to ensure that European countries would not fall into the hands of tyrants as happened during the Second World War. The economic efficacy of the EU has caused some conflicts with regard to national social policies, however, it has been very beneficial to all member states especially with regard to the single market which has enabled business to proliferate within the EU.

At this stage is it uncertain whether the UK wants to withdraw from the EU. The upcoming general election in May 2015 will be a determinant aspect of this debate. On the one hand if the Conservatives win it is very probable that the 2017 referendum will take place. On the other hand falling popularity of the Conservatives has massively benefited the Labour Party, Liberal Democrat and the UKIP, the result of that risk to compromise the referendum.

To conclude, it is arguable that the UK has more to gain while being a member of the EU than it does from withdrawing from it. Parliamentary sovereignty in Britain has been undoubtedly shaken, but it was for the better good of the UK. The UK is more than ever present in the international sphere, both as a powerful economy and a significant military power. In the long term the billions of pound that was injected in the British economy thanks to the single market largely compensates for the loss of parliamentary sovereignty. The authority of the EU cannot be jeopardised by the fact that member states prefer to give authority to their domestic law and policies instead of EU law.

¹³⁷ Case 6/64, *Flaminio Costav E.N.E.L.* [1964] ECR 585

¹³⁸ Case 11/70, *Internationale Handelsgesellschaft Einfuhr- und Vorratsstelle für Getreide und Futtermittel* [1970] ECR 1125

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