What is meant by 'sovereignty' and how important was it in influencing the outcome of the Brexit trade negotiations?

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Abstract: The author considers what is meant by 'sovereignty' from both an historical and contemporary perspective, taking account of its reference in the context of the Leave campaign in the UK that led to the revised Brexit Withdrawal Agreement with the EU on 17 October 2019, and in the negotiations of the Trade and Cooperation Agreement (TCA) that was signed by both parties on 30 December 2020. The paper explores the classic theory of sovereignty (Herzog, Vettel), with the limitations of its applicability in the contemporary context (Goldsmith, Kreiger, MacCormick, Walker). The paper argues that Brexit was an unprecedented constitutional event where 'sovereignty' was a cloak used by the Leave campaign for pursuing a wider range of nationalistic interests and the outcome of the negotiations was closer to constitutional pluralism (Mac Amhlaigh) between the UK and the EU. Although both the UK Prime Minister Boris Johnson and European Commission President Ursula von der Leyen claimed that the TCA was a major victory in the interests of a future trading relationship and respected that the parties are equally sovereign, it does not follow that they are both sovereign equals.

Keywords: Brexit, Constitutionalism, Federalism, Negotiations, Sovereignty

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1. Introduction:

Definition of 'sovereignty'

The reference to 'sovereignty' was frequently made by the European Commission and the UK Government during the negotiations of the Trade and Cooperation Agreement[1] (TCA). But it would be erroneous to assume that both sides knew what the other meant when referring to 'sovereignty' as a fundamental principle that enjoys shared understanding.

The ordinary dictionary definition of 'sovereignty' is of limited value in bridging such a divide. For example, in the Oxford English Dictionary, *sovereignty* (n)[2] is defined as:

'The quality or condition of being sovereign'.

> 1.Supremacy or pre-eminence in respect of excellence or efficacy.
> 2.Supremacy in respect of power, domination, or rank; supreme dominion, authority, or rule.
> 3.a. *spec*. The position, rank, or power of a supreme ruler or monarch; royal authority or dominion. b. *transferred*. The supreme controlling power in communities not under monarchical government; absolute and independent authority.
> 4.A territory under the rule of a sovereign or existing as an independent state.

This dictionary definition can only scratch the surface of what is both a complex and contentious political concept that has changed over time and where there is a divergence of opinion as to the causes and consequences of this conceptual change (Bartelson[3]). A further complication is that 'sovereignty' is often conflated with the legal concept of 'autonomy' in an interchangeable way and arguably is separate in international relations theory.

There is often a tension between understanding the concept of sovereignty as signifying both the political power constituting the law and the law restraining that very power. It is also arguable that sovereignty is the relational interface between law and politics that both separates these domains and binds them together. As Loughlin and Tierney observe, previous membership of the European Union (EU) demonstrated how the House of Commons, as the repository of sovereign authority, was diminished by the UK's acceptance of an external source of authority. Likewise, Brexit has demonstrated the re-birth of sub-state EU nationalism.[4]

This paper will not explore whether autonomy and sovereignty are separate or indivisible concepts and will leave that discussion for another day. Instead, this paper will focus on reaching a level of clarity as to the use of the word 'sovereignty' in the context of the negotiations of the TCA, accepting that there are flaws and inconsistencies in its use by both parties.

As a starting point, it is useful to examine its historical perspective of sovereignty and then to compare this with the epistemological discussions that took place in the wake of the UK referendum to leave the EU (Brexit) after nearly 47 years of membership.[5]

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[1] The EU-UK Trade and Cooperation Agreement https://ec.europa.eu/info/relations-united-kingdom/eu-uk-trade-and-cooperation-agreement_en [accessed 31.1.21]

[2] "sovereignty, n.". OED Online. December 2020. Oxford University Press. https://www-oed-com.queens.ezp1.qub.ac.uk/view/Entry/185343?redirectedFrom=sovereignty& (accessed December 30, 2020).

[3] Jens Bartelson, 'The Concept of Sovereignty Revisited' [2006] 17(2) The European Journal of International Law <http://dx.doi.org/10.1093/ejil/chl006> [accessed 31.1.21]

[4] Martin Loughlin and Stephen Tierney, 'The Shibboleth of Sovereignty ' [2018] 81(6) The Modern Law Review 989-1016

[5] The UK joined the EEC on 1 January 1973. On the entry into force of the Maastricht Treaty in 1993 it was renamed the European Community and incorporated into the European Union. On 23 June 2016, the UK held a referendum on whether it should remain or exit the European Union ("Brexit"). Given the result in favour of leaving the EU, on 29 March 2017 the UK Government notified the European

The latter discussion in this paper focuses on the UK perspective of sovereignty as the compelling and motivating force behind the 'Leave' campaign's core message of 'take back control'.

The historical roots of 'sovereignty'

To understand this without introducing a further level of complexity in unpacking issues that the different theories of 'sovereignty' raise, the paper will take a chronological approach in understanding the historical roots of the political concept.

One of the best descriptions of the historical roots of sovereignty is provided by Don Herzog, professor of law at the University of Michigan. In his thought-provoking book, *Sovereignty RIP*[6], Herzog argues that the classic theory of sovereignty emerged in the 16th century in response to the post-Reformation wars of religion that blighted the European continent in the early modern age.

The classic theory of sovereignty is that it is unlimited, undivided, and unaccountable to any higher authority. Herzog describes these elements as the constitutive criteria of sovereignty and in their wake come two commitments – the immense dignity of sovereignty and the command theory of law[7].

Prior to this, the rulers of European states owed allegiance to higher authorities such as the Roman Catholic Church or the Holy Roman Empire. When Henry VIII of England (ruled 1509-1547) declared 'this realm of England is an Empire', in 1533, he meant that he owed no allegiance to any higher authority (apart from God).[8]

As a concept, sovereignty was 'an intelligible, intelligent response to the savage strife of wars of religion.[9]' The idea of sovereignty was:

> a weapon of state-building, and a world soaked in blood, awash in cruelty, could well long for an all-powerful central authority to staunch the wounds of rebellion and stand up to international intrigue and war. [10]

However, in the 18th century the ground was starting to shift under the traditional concept of sovereignty and absolutism, indivisibility and unaccountability was starting to give way to constitutionalism, federalism, and the Rule of Law.

In 1758, the international lawyer Emer de Vattel published *The Law of Nations or the Principles of Natural Law Applied to the Conduct and to the Affairs of Nations and of Sovereigns.* This built on the early writings on sovereignty, where the exercise of absolute power was now to be used to protect the nation state against the use of absolute power of other sovereign states.

Council of its intention to leave the EU after 47 years of membership, formally triggering Article 50 of the Treaty on European Union and the Withdrawal Agreement.

[6] Don Herzog, *Sovereignty RIP* (Yale University Press 2020)

[7] English political thinker John Austin articulated the command theory of law that the only legal authorities the courts should recognise are the commands of the sovereign.

[8] Opening of the Act in Restraint of Appeals, 1533

[9] Don Herzog, *Sovereignty RIP* (Yale University Press 2020) 48

[10] Don Herzog, *Sovereignty RIP* (Yale University Press 2020) 41

> Every nation that governs itself, under what form soever, without any dependence on a foreign power, is a sovereign state. Nations and sovereigns, are then, at the same time under an obligation, have a right to maintain their dignity, and to cause it to be respected as of the utmost importance to their safety and tranquillity.[11]

From the 18th century to the beginning of the 20th century, Vattel's influence about international law remained unrivalled. To begin with, he applied a strictly interstate perspective in which the law of nations is specifically the law governing relations between States.

Such a concept is not that alien and has been borrowed by politicians in the 21st century when referring to 'sovereign control' as Boris Johnson did in his speech before the House of Commons debate on the EU (Future Relationship) Bill that brought the Trade and Cooperation Agreement (TCA) into UK law.[12]

Vattel recognised the existence of a duality of norms governing the conduct of sovereign States: the norms imposed by natural law and those imposed by the positive law of nations. He also theorised about a law of nations that is both 'liberal and pluralist' and was aligned with the state of European society at the time of the age of the Enlightenment period.[13]

Such a description never matched reality, according to Goldsmith[14]. Instead, since the 16th century, sovereignty became limited, divided, and accountable rather than some normative ideal and as Herzog recognises, no political organisation, including any European state, ever satisfied the ideal of the classic theory of sovereignty.

Such a classic concept has been dismantled by constitutionalism that limits sovereign authority; federalism that divides sovereign authority and the rule of law that holds sovereignty to account.

Herzog's hypothesis is that sovereignty is a concept that has no place in the 21st century and should not be part of the political discourse. Instead, the concept of sovereignty could be replaced by concepts of state, jurisdiction and authority. However, the nature of sovereignty has changed. Today's politicians are not defending sovereignty in the sense that it is unlimited or undivided or unaccountable state authority.

Kreiger argues that a blunt approach to sovereignty will make it look outdated and create a push for a post-sovereign world:

> […] the reliance on the term "sovereignty" hides that the diverging political actors pursue very different political objectives and employ different practices in their use of sovereignty vocabulary. Some are concerned with the legitimacy of international institutions and global governance and advance democratically motivated contestations which emphasize democratic self-determination over international obligations. […] current contestations of the international

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[11] Emer De Vattel (1714–1767) - Oxford Handbooks. https://www.oxfordhandbooks.com/view/10.1093/law/9780199599752.001.0001/law-9780199599752-e-54

[12] Hansard https://hansard.parliament.uk/Commons/2020-12-30/debates/9E132CEF-83CA-40BA-B8B4-A7127A968B68/EuropeanUnion(FutureRelationship)Bill [accessed 13.1.21]

[13] Enlightenment, French siècle des Lumières (literally "century of the Enlightened"), German Aufklärung, a European intellectual movement of the 17th and 18th centuries in which ideas concerning God, reason, nature, and humanity were synthesized into a worldview that gained wide assent in the West and that instigated revolutionary developments in art, philosophy, and politics. Central to Enlightenment thought were the use and celebration of reason, the power by which humans understand the universe and improve their own condition. The goals of rational humanity were considered to be knowledge, freedom, and happiness. Source: https://www.britannica.com/event/Enlightenment-European-history [accessed 30.12.20].

[14] Jack Goldsmith, 'Does Anyone Buy the Classic Theory of Sovereignty?' (July 6, 2020) <https://www.ejiltalk.org/does-anyone-buy-the-classic-theory-of-sovereignty/> accessed 30 December 2020

legal order often mix multiple even contradictory understandings of sovereignty, in particular where globalization critique directed against democratic deficits of global governance is intertwined with holistic exclusionary identity politics. Others reassert sovereignty in order to reverse the powers of human rights bodies and democratisation efforts supported from abroad.[15]

Whether persuaded by Herzog's argument that the concept of sovereignty is dead and buried and should be consigned to the history books, there is evidence that the concept has morphed into providing politicians with the reasons for pursuing the concept of the nation state (Vattel). Commentators like Goldsmith feel the concept of sovereignty invoked in today's discourse is ill-defined, subject to different uses and senses and almost always a rhetorical mask for other interests.

This interpretation of using sovereignty as a cloak for pursuing nationalistic interests, as those espoused by Boris Johnson and former US President Donald Trump, is supported by Walker.

> […] And some of the most powerful pushbacks against the post-War international legal order, such as Britain's exit from the European Union and the Trump-led campaign against multi-lateral institutional framework, whatever their (doubtful) merits, have been turbocharged by the engine of sovereign nostalgia.[16]

Constitutional theorists like Walker are suspicious of defining sovereignty in some binary or classical way and argue that the concept of sovereignty has more elasticity, durability, and relevance. For example, the classic view of sovereignty involves, *inter alia*, the control of money, making treaties, the promulgation of laws and the maintenance of security. Yet not all nation states possess such functional capacities to do these things or if they do, not to any significant degree. But these features are of statehood rather than of sovereignty *per se*.

Walker seeks to address several objections concerning the irrelevance, vagueness, incoherence, and normative shortcomings of the concept of sovereignty by redefining it in these terms:

> Sovereignty may be defined as the discursive form in which a claim concerning the existence and character of a supreme ordering power for a particular polity is expressed, which supreme ordering power purports to establish and sustain the identity and status of the particular polity *qua* polity and to provide a continuing source and vehicle of ultimate authority for the juridical order of that polity.[17]

However, this does not satisfy Herzog and he rejects this revisionist view of sovereignty as it harks back to the outmoded concepts of 'supreme power' and 'ultimate authority'. There are other weaknesses in seeing sovereignty from a purely classical perspective. For example, if all departments of government claim they are sovereign, then none truly is. Likewise, if the concept of jurisdiction relies on all authority being delineated and limited, then again this is not an expression of sovereignty, particularly in the context of adjacent and overlapping domains.

A good example is the continuing legal claim of Spain to the Gibraltar peninsula, where Spain makes the claim of sovereignty in the face of Gibraltar's right to self-determination as a British Overseas Territory. An 11th hour agreement, on the 31 December 2020, was struck between

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[15] Heike Krieger, 'Sovereignty - an Empty Vessel?' (July 7, 2020) <https://www.ejiltalk.org/sovereignty-an-empty-vessel/> accessed 2 January 2021

[16] Neil Walker, 'Of Babies and Bathwater: A Comment on Herzog' (July 6, 2020) <https://www.ejiltalk.org/of-babies-and-bathwater-a-comment-on-herzog/> accessed 31 December 2020,

[17] Neil Walker, *Sovereignty in Transition* (Oxford: Hart 2003) Late Sovereignty in the European Union, 6

Spain and the UK to avoid a hard border in Gibraltar. Under the terms of the deal, Gibraltar will be part of the Schengen passport-free area with the sponsorship of Spain. British citizens will need to go through a Schengen border post to enter Gibraltar through its airport and seaport. During a four-year transition, the European Border and Coast Guard Agency (Frontex) will patrol both access points. The Spanish Government said all parties had understood the need to cooperate with each other and to leave their "inalienable" sovereignty disputes aside.[18]

Walker believes that sovereignty in the 21st century should be more accurately redefined as 'popular sovereignty'. He explains:

> […] And it seems to me that the idea of sovereignty as an original and constitutive authority – as a generative source of government power rather than – and prior to – its institutional realisation, once again allows us to tap into a richer seam of political thought and a more affirmative way of thinking about the central legal and political concept of modernity. [19]

Jackson reframed this as the emerging concept of 'sovereignty-modern':

> […] the world will have to develop something considerably better than either the historical and discredited Westphalian concept of sovereignty,[20] or the current, but highly criticised, versions of sovereignty still often articulated. That something is not well defined, but it can be called 'sovereignty-modern', which is more an analytic and dynamic process of disaggregation and redefinition from a 'frozen-in-time' concept or technique. [21]

'Popular' or 'modern' interpretations of sovereignty attempt to explain why Catalans challenge Spanish sovereignty, why the Scottish National Party (SNP) seeks Scotland's independence from the rest of the UK and abstained in the recent Parliamentary vote for the Brexit trade deal agreed with the EU.[22]

Based on the approach advocated by Walker and Jackson, such groups are free to argue they have a right to challenge the sovereignty of the larger state as they have representative credentials assertedly superior to the default claim of the larger state.

Herzog rejects efforts to repatriate sovereignty in a modern context:

> What is happening now, as I am sure you are aware, is an enormous rethinking of sovereignty generally, the whole concept of sovereignty. And in some ways the concept, certainly the older concept of several centuries ago just does not make sense in today's world.[23]

Herzog goes further and declares the concept of sovereignty as being outdated and potentially harmful:

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[18] https://www.politico.eu/article/spain-and-uk-reach-eleventh-hour-deal-to-avoid-a-hard-border-in-gibraltar/ [accessed 31.12.20]
[19] Neil Walker, *Sovereignty in Transition* (Oxford: Hart 2003) Late Sovereignty in the European Union
[20] Term used in international relations, supposedly arising from the Treaties of Westphalia in 1648 which ended the Thirty Years War. It is generally held to mean a system of states or international society comprising sovereign state entities possessing the monopoly of force within their mutually recognised territories. Relations between states are conducted by means of formal diplomatic ties between heads of state and governments, and international law consists of treaties made (and broken) by those sovereign entities. The term implies a separation of the domestic and international spheres, such that states may not legitimately intervene in the domestic affairs of another, whether in the pursuit of self-interest or by appeal to a higher notion of sovereignty, be it religion, ideology, or other supranational ideal. In this sense the term differentiates the 'modern' state system from earlier models, such as the Holy Roman Empire or the Ottoman Empire. https://www.oxfordreference.com/view/10.1093/oi/authority.20110803121924198 [accessed 2.1.21]
[21] John H. Jackson, 'Sovereignty-Modern: A New Approach to an Outdated Concept' (2003), 97 *Am. J. Int'l L.* 782
[22] All SNP MPs voted against the UK Government to support the Trade and Cooperation Agreement (TCA) with the EU. https://www.theguardian.com/politics/ng-interactive/2020/dec/30/how-did-your-mp-vote-on-the-brexit-deal-bill [accessed 31.12.20]
[23] Don Herzog, Sovereignty RIP (Yale University Press 2020), 262

[…] sovereignty is a zombie concept, undead, stalking the world, terrifying people. We haven't just domesticated sovereignty, we've destroyed it: we've managed to make political authority limited, divided and more accountable. […] sovereignty is pernicious.[24]

In particular, the reference to 'restoring sovereignty' by the UK Government exposes in Herzog's view that a belief in indivisible sovereignty gets in the way of seeing the world clearly. It also demonstrates "just how dramatic clinging to a bad theory can be" and he rejects the contention the UK had derogated its sovereignty and needed to reclaim it.[25] It was less a case of restoring sovereignty but rather the case that by sharing, it could extend its sovereignty across mainland Europe.

International trade requires acceding to the regulation across borders, and so irrespective of whether this is products, services or data, sovereignty is the ability to have influence not only of regulation in domestic markets but also in the markets that the UK sells to and buys from.

The contested parts of the definition of 'sovereignty' can be summarised as being a UK-centric view that is focused, above all, on absolute physical control of borders, laws, and money rather than effective control of the things that will protect the UK's interests. The result is a reduction rather than an increase in the UK's sovereignty, according to Dr Nick Westcott of the Centre for International Studies and Diplomacy at SOAS University of London:

> This misunderstanding of sovereignty [had] impacted directly on the negotiations and explains why the government [had] consistently sidelined Britain's economic interests (except fishing) in the interests of what they declare to be Britain's 'sovereignty', rather than the national interest.[26]

Wescott criticised the Remain campaign for its critical failure to challenge the Leave campaign's definition of sovereignty, a movethat effectively threw away control rather than taking it back. Pre-Brexit, the UK enjoyed a thinner sovereignty than say the less absolute kind of sovereignty of North Korea, but this was more effective in protecting the UK's interests. The UK enjoyed greater influence in its main market and on EU policy where, although it may not always have got its own way, it had a voice that could prevent its neighbours from getting their own way too.

This reflects a broader point: that those who wanted to 'reclaim sovereignty' did not fully grasp what the word 'sovereignty' meant in practice or how contested a political concept it was. However, the subsidiarity that Prime Minister David Cameron had argued for was never going to satisfy those bent on 'reclaiming sovereignty'[27] and ultimately cost Cameron his job.

2. 'Sovereignty' and the role it played in the Brexit 'Leave' campaign in the UK

Margaret Thatcher and the rejection of the need for deeper political union in Europe

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[24] Don Herzog, Sovereignty RIP (Yale University Press 2020), 291

[25] See 'The United Kingdom's exit from and new partnership with the European Union' published 2 February 2017, Chapter 2, 'Taking control of our own laws' p.13: "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." This substantiates the argument, advanced by Herzog, that 'restoring sovereignty' which was in fact never forgone is now exposed in this UK Government White Paper 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 13.1.21]

[26] Nick Westcott, 'Sovereignty and Brexit: Control of what exactly? ' (UK in a Changing Europe, 26 November 2020) <https://ukandeu.ac.uk/sovereignty-and-brexit-control-of-what-exactly/> accessed 31 January 2021

[27] Don Herzog, Sovereignty RIP (Yale University Press 2020) 161

The seeds of the UK's eventual departure of the EU customs union and single market were sown over 30 years ago when Ireland held the Presidency of the European Community (EC) in 1990. Ireland's Taoiseach (Prime Minister) Charles Haughey twice met Prime Minister Margaret Thatcher for bilateral meetings in 1990 in which the two leaders discussed the future of Europe and the prospect of closer political union between the 12 EC members, following the end of the Warsaw Pact and the reunification of East and West Germany.

In its editorial '*Faultline that would lead to Brexit*'[28], the Irish Times reported that Thatcher had been dismissive of the need for deeper political union as proposed by Federal Chancellor Helmut Kohl, French President François Mitterrand and Commission President Jacques Delors. Instead, Thatcher saw Europe primarily as a trading block rather than as some supranational, federalist sovereign body: 'There was, first of all, an economic community. Then we widened it to develop European political co-operation. We have enough to digest at present. If we go further, we will create even wider divisions,'[29] she told Haughey.

In the meeting that took place at 10 Downing Street on the 13 June 1990, Thatcher excoriated the European Commission as an undemocratic 'politburo', questioned whether the European Parliament was 'a parliament at all' and continued to be dismissive of the proposal for greater political union within Europe.

Thatcher was clearly worried not just about questions of sovereignty but also about deeper political integration in Europe that could give birth to a more economically powerful and invigorated Germany on the UK's doorstep. Although not adverse to the enlargement of the European Union with other countries seeking to join, such as Norway, Austria and Sweden, Thatcher reserved her harshest criticism for the European Commission, whom she labelled as being 'anti-democratic.'[30]

Haughey said it would be possible to strengthen the power of the Council of Ministers in response to Thatcher's concerns of ceding more power to the European Commission. But this alone would not be sufficient in satisfying Thatcher's concerns regarding deeper integration.

Despite the frank exchange, Thatcher was not convinced that there was a possible solution to the call for deeper political integration within Europe that could be balanced with need to preserve the sovereignty of the UK as a member of that Union. In this, she revealed her thinking on sovereignty was rooted in the classic, Westphalian theory as described by Herzog:

> There is no paper before us. What does political union mean? Are they going to change the crowned head of every country? Are they going to change the president of your country? Each country has a parliament. Are they going to change that? If you give away your powers of taxation you have lost your sovereignty. In talking of a single currency, Delors must have had a rush of blood to the head. We are not going to have a single currency. [...] I am not in a position to commit my country for seven to nine years ahead. I don't know what is going to happen in the USSR. I don't know how Germany will develop.[31]

Following these meetings, Thatcher was forced to resign in November 1990, the longest premiership since 1827. However, her legacy for resisting deeper political integration in

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[28] Irish Times, 27 December 2020 https://www.irishtimes.com/news/politics/faultline-that-would-lead-to-brexit-evident-in-haughey-thatcher-meetings-1.4444755#.X-hZQ2GbWns.mailto [accessed 1.1.21]

[29] Ibid.

[30] Irish Times, 27 December 2020 https://www.irishtimes.com/news/politics/faultline-that-would-lead-to-brexit-evident-in-haughey-thatcher-meetings-1.4444755#.X-hZQ2GbWns.mailto [accessed 1.1.21]

[31] Ibid.

Europe and the assumption that this would destroy the sovereignty of the UK would become relevant some 30 years' later, with the profound effect on the future of the EU and its relationship with the UK.

Boris Johnson as the successor to Thatcher's legacy in resisting deeper political integration at the heart of Europe

Boris Johnson's conversion to the cause of the 'Leave' campaign can be traced to the General Election in May 2015. David Cameron, an old Etonian school friend, won the first Tory majority in a General Election since 1992 and vowed to hold a referendum on the UK's membership of the EU before the end of 2017. Meanwhile, having served two terms as the popular Mayor of London (4 May 2008 - 9 May 2016), Johnson stood for Parliament and was duly elected as MP for the safe seat of Uxbridge and South Ruislip.

On the 4 January 2016, Cameron announced that Ministers would be allowed to campaign for 'Leave' and on the 20 February 2016 the *Daily Mail* ran the headline on its front page 'Top Tories Announce Drive to Restore Britain's Sovereignty'[32] with a photocall of Chris Grayling MP, Leader of the House of Commons, flanked by John Whittingdale MP, Theresa Villiers MP, Michael Gove MP, Iain Duncan Smith MP and Priti Patel MP at the launch of the Vote Leave campaign at the group's headquarters in central London. Commenting on the Leave campaign, Grayling said: '[…] above all, it is a campaign to restore the sovereignty of our nation'[33].

Other sections of the British media took a different view regarding the stark choice of retaining sovereignty or capitulating to the promulgation of rules made by bureaucrats in Brussels. For example, *The Economist*[34] wrote that the real choice was either having a seat at the table in formulating those laws and rules and participating in power sharing rather than 'retrieving' sovereignty from the EU.

The Economist reported that leaving the EU would deplete the UK's political capital in Europe, not increase it, and in any event, sovereignty was a relative concept and not an absolute one:

> The flaw in this case lies in the tradition's idealistic definition of sovereignty. For Mr Johnson and Mr Gove, being sovereign is like being pregnant—you either are or you aren't. Yet increasingly in today's post-Westphalian world, real sovereignty is relative. A country that refuses outright to pool authority is one that has no control over the pollution drifting over its borders, the standards of financial regulation affecting its economy, the consumer and trade norms to which its exporters and importers are bound, the cleanliness of its seas and the security and economic crises propelling shock waves—migration, terrorism, market volatility—deep into domestic life. To live with globalisation is to acknowledge that many laws (both those devised by governments and those which bubble up at no one's behest) are international beasts whether we like it or not. If sovereignty is the absence of mutual interference, the most sovereign country in the world is North Korea.[35]

[32] 20 February 2016 https://www.dailymail.co.uk/wires/pa/article-3456029/Top-Tories-announce-drive-restore-Britains-sovereignty.html [accessed 13.12.20]
[33] The Belfast Telegraph https://www.belfasttelegraph.co.uk/news/uk/top-tories-announce-drive-to-restore-britains-sovereignty-34470671.html [accessed 13.1.21]
[34] "Boris Johnson is wrong: in the 21st century, sovereignty is always relative" https://www.economist.com/bagehots-notebook/2016/02/21/boris-johnson-is-wrong-in-the-21st-century-sovereignty-is-always-relative [accessed 2.1.21]
[35] Ibid.

Sovereignty as a political concept, that lacked the nuance as described by Westcott and Herzog from different points of view but arriving at the same conclusion, would not serve the national interests of the UK as the Leave campaign had claimed.

Cameron had assumed Johnson would back the campaign to Remain in a reformed Europe, in the hope that a thinner sovereignty would be more effective in protecting the UK's interests in its biggest market. But this assumed support was a political miscalculation that ultimately cost Cameron his job.

In the House of Commons, Johnson challenged Cameron to explain how his negotiations with the European Commission will help to assert the authority of parliament: "How will this negotiation restrict the volume of legislation coming from Brussels, will [it] change the treaties so as to assert the authority of this House of Commons and of these houses of parliament?",[36] questioned Johnson. It was clear that Johnson's definition of sovereignty was one that was uncompromising on the physical control of borders, laws, and money rather than focusing on the effective control of the things that will help protect the UK's interests and that included staying within European Union and influencing policy.

Cameron stood at the dispatch box and confidently explained that the UK should remain in the EU and that he only wanted to restrict the volume of legislation coming from Brussels to let the UK tend properly to its national affairs. Cameron was also trying to win over Johnson by negotiating an outcome whereby the UK Supreme Court or another official body powers akin to those of the German constitutional court had the right to assess whether legal acts by the EU's institutions remained within the scope of the powers of the EU. Cameron also tried to reassure Johnson that he would "put beyond doubt that this House is sovereign." [37]

Privately, Johnson was not convinced of such assurances. Reportedly paid £275,000 a year for a weekly *Daily Telegraph* column as an MP, in February 2016, Johnson drafted two columns – one arguing in favour of staying in a reformed customs union and single market and the other arguing in favour of leaving the EU.[38]

The published version would appear on 16 March 2016 but not before Johnson had taken a journey of his own in conversion to the cause of the 'Leave' campaign. The existence of both drafts surfaced in June 2016, although the published article that eventually appeared supported leaving the EU. At this point in his career, Johnson is now Foreign Secretary and is criticised for backing both the single market and free movement. In his draft article for backing the revised EU deal negotiated by Cameron and Donald Tusk, President of the European Council, Johnson writes:

> Ask yourself: in spite of all the defects and disappointments of this exercise – do you really, truly, definitely want Britain to pull out of the European Union? Now? […] Shouldn't our policy be like our policy on cake – pro-having it and pro-eating it? Pro-Europe and pro-the rest of the world? […] Taken together, with the sovereignty clauses – which are not wholly platitudinous – you can see the outlines of a new role for Britain: friendly, involved, but not part of the federalist project. Yes, folks, the deal's a bit of a dud, but it contains the germ of something really good. I am going to muffle my disappointment and back the PM.[39]

[36] https://hansard.parliament.uk/commons/2016-02-03/debates/16020344000001/UK-EURenegotiation [accessed 13.12.20]
[37] "EU Deal: Cameron vows to Put Commons Sovereignty beyond doubt" Guardian (3 February 2016) https://www.theguardian.com/politics/2016/feb/03/eu-deal-david-cameron-uk-parliament-sovereignty-beyond-doubt-boris-johnson [accessed 13.12.20]
[38] Tim Shipman, All Out War - The Full Story of how Brexit sank Britain's Political Class (William Collins 2016) 611-618.
[39] Ibid.

In contrast, Johnson put that draft to one side and later that same day produced another draft that argued why the UK should leave the EU. The article in favour of the UK leaving the EU began with the point about sovereignty and recalled the time when, as Mayor of London, Johnson found himself powerless to get the Department of Transport to change the law on the design of the lorry drivers' cabs, given that poor window visibility in continental trucks was a major factor in the increase of fatal accidents involving cyclists on London's roads.
Johnson wrote:

> The only trouble was they [Department of Transport] weren't responsible for the design of lorries. All that had to be settled in Brussels. […] Sovereignty is the ability to make our own rules when we desperately need them: and, conversely, to stop the flood of new rules that we don't want. […] This is leading to a dislocation in politics – a gap between the governed and the public. […] thankfully, the views of politicians like me will matter less and less, because the choice belongs to those who are really sovereign – the people of the UK. And in the matter of their own sovereignty they, by definition, will get it right".[40]

On the 16 March 2016, Johnson's opinion editorial (op ed) in the *Daily Telegraph* appeared under the headline: 'Boris Johnson exclusive: There is only one way to get the change we want – vote to leave the EU'. Johnson wrote:

> I am a European. I lived many years in Brussels. I rather love the old place. And so I resent the way we continually confuse Europe – the home of the greatest and richest culture in the world, to which Britain is and will be an eternal contributor – with the political project of the European Union. It is, therefore, vital to stress that there is nothing necessarily anti-European or xenophobic in wanting to vote Leave on June 23, 2016. […] This is a once-in-a-lifetime chance to vote for real change in Britain's relations with Europe. This is the only opportunity we will ever have to show that we care about self-rule. A vote to Remain will be taken in Brussels as a green light for more federalism, and for the erosion of democracy. [41]

Four months later, the *Press Gazette*[42] reported that Johnson was said to be 'embarrassed and angry' that his unpublished newspaper column setting out the case for Britain remaining in the EU had been leaked and published in *The Sunday Times* on 16 October 2016. Johnson offered the following explanation to *Sky News*:

> Everybody was trying to make up their minds about whether or not to leave the European Union and it is perfectly true that back in February I was wrestling with it, like I think a lot of people in this country, and I wrote a long piece which came down overwhelmingly in favour of leaving. I then thought I better see if I can make the alternative case for myself so I then wrote a sort of semi-parodic article in the opposite sense, which has mysteriously found its way into the paper this morning because I think I might have sent it to a friend. [43]

Some Tory grandees, such as Lord Chris Patten,[44]later argued that Johnson had been mistaken and that taking back sovereignty in such a way would be to surrender control as the UK would lose its influence over EU laws and regulations.

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[40] Ibid.
[41] https://www.telegraph.co.uk/opinion/2016/03/16/boris-johnson-exclusive-there-is-only-one-way-to-get-the-change/ [accessed 2.1.21]
[42] https://www.pressgazette.co.uk/boris-johnson-embarassed-and-angry-at-leak-of-unpublished-pro-remain-telegraph-piece-in-sunday-times/ [accessed 2.1.21]
[43] https://www.pressgazette.co.uk/boris-johnson-embarassed-and-angry-at-leak-of-unpublished-pro-remain-telegraph-piece-in-sunday-times/ [accessed 13.1.21]
[44] "Brexit: 'Ideological Crap about Sovereignty and Taking Back Control" (*Irish Times*, 22 July 2017) https://www.irishtimes.com/life-and-style/people/brexit-ideological-crap-about-sovereignty-and-taking-back-control-1.3162551 [accessed 13.12.20]

As the results of the Referendum showed a 52:48 percent split in favour of Brexit[45], it was only a matter of time before Cameron realised that his own position as PM was untenable, leaving open the question of whether Johnson would now take his chance to run for leadership and *de facto* become PM.

Despite the strong political allegiance Johnson had formed with Michael Gove, the Lord Chancellor, the cracks in Johnson's support from Gove quickly appeared and despite announcing his intention to stand, Johnson withdrew from the Tory Party leadership race, leaving Theresa May to become elected unopposed as leader on 11 July 2016 and succeeding Cameron as PM on 13 July 2016.

Although a fresh start and a new PM could have signalled a way to unite the UK Government around a consensus view on sovereignty in its negotiations with the European Commission, this too ended in failure for May and triggered the second Tory Party leadership contest because of Brexit. This time Johnson stood in a contested bid and on 24 July 2019 achieved his ambition and is elected Leader of the Tory Party and becomes PM.

On the 22 October 2019, the revised withdrawal agreement negotiated by Johnson's government cleared the first stage in Parliament, but Johnson paused the legislative process when the accelerated programme for approval failed to achieve the necessary support in the Commons and announced his intention to call a General Election to break the impasse. On 12 December 2019, Johnson secured an emphatic victory in the General Election, where taking back control of borders, laws, and money was now endorsed by the electorate and delivered an 80-seat majority in Parliament.

On 23 January 2020, Parliament ratified the agreement by passing the Withdrawal Agreement Act[46]; and on 29 January 2020, the European Parliament gave its consent to the withdrawal agreement. It was subsequently concluded by the Council of the European Union on 30 January 2020 and the UK left the EU on 31 January 2020.

Although the UK had formally left the EU, Brexit had not been completed. A trade and cooperation agreement (TCA) with the EU was now left to be concluded and the transition period for achieving this part of the Brexit process would expire at 23:00 on 31 December 2020.

3. 'Sovereignty' and the role it played in shaping the Trade and Cooperation Agreement (TCA)

The TCA was a balancing act in maintaining the 'sovereignty' of both parties

The TCA reflects, under exceptional circumstances, how both parties found a way to protect their sovereign interests but the degree to which this was achieved is open to interpretation. The Brexit trade negotiations included the concepts of state, jurisdiction and authority but built upon rhetoric that was more emotional and ill-defined (Goldsmith), indicating a more elastic and flexible interpretation of sovereignty (Walker, Jackson). To arrive at any conclusion as to whether sovereign interests of both parties have been protected, it is important to look not only

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[45] https://www.bbc.co.uk/news/politics/eu_referendum/results [accessed 3.1.21]
[46] Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community.

at the obligations that the TCA imposes but also at the balance in the rights and obligations of each party.

From the EU's perspective, the TCA safeguards the integrity of the single market with level-playing field obligations that go virtually beyond any other Third Country, including Switzerland. For its part, the UK Government negotiated down the EU on the dynamic alignment on state aid, eliminated any references to EU law, removed the role of the European Court of Justice except within the context of the Northern Ireland Protocol, and preserved its right to the territorial control over its own waters and borders.

Although recognising the UK secured a concession over removing concepts of EU law from the TCA, as well as the role of the European Court of Justice in dispute resolution, it had ceded a degree of sovereignty in some significant respects. These included signing up to a single governance system; a horizontal disputes resolution mechanism with the possibility of cross-retaliation (restricted to parts of the deal); robust provisions on the level playing field provisions and ongoing compliance with the European Convention on Human Rights (ECHR).

In essence, the trade deal was an act of defensiveness for the UK in protecting sovereignty and on the EU side it was about protecting the integrity of the single market. Both sides claimed the TCA achieved those objectives. However, it is too early to tell whether such a compromise will remain intact 12 months from now given the recent debacle over Covid-19 vaccines as discussed below.

Will the UK enjoy regulatory independence while trying to maintain zero tariffs and will the EU manage that divergence and prevent the UK from turning itself into an offshore assembly hub and a free port for US and Chinese firms with free single market access? The 'rebalancing mechanism' would need to be applied if that were to be the case and 'significant divergences' start to appear across the level playing field in a way that materially affected bilateral trade or investment. And the scope for this to happen is very wide: it applies to any future subsidies, or labour/social or environmental/climate protections and is applicable to both parties.

Remedies available to protect the 'sovereignty' of both parties

Johnson claimed that the TCA with the EU was a balance between the goal of restoring national sovereignty and achieving close and friendly cooperation 'in all the many areas where our values and interests coincide'[47] with the EU. It was also claimed that the deal struck was 'carefully judged to benefit everyone'[48] and the first of its type the EU had entered in its history. This allowed zero tariffs and zero quotas, preserving the benefits of free trade for millions of people in the UK and across Europe. At the same time, it was also recognised that implementing the commitments in the 2019 Political Declaration for maintaining a level playing field had become the most controversial aspects of the Brexit trade negotiations.

Under the rebalancing mechanism[49], both parties can formally review the balance of the TCA over time and enter into negotiations on amendments to the economic provisions of the agreement at the request of the other party. It also allows either party the right, in certain constrained ways, and subject to independent arbitration, to take countermeasures if they

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[47] Foreword by Boris Johnson to UK-EU Trade and Cooperation Agreement Summary (December 2020) https://www.gov.uk/government/publications/agreements-reached-between-the-united-kingdom-of-great-britain-and-northern-ireland-and-the-european-union/summary-explainer [accessed 13.1.21]
[48] Ibid.
[49] Trade and Cooperation Agreement Chapter 9 [Horizontal and institutional provisions] of Title XI

believe they are being damaged by measures taken by the other party in the areas of subsidies, labour and social, or climate and environment policies that would distort open and fair competition. If such measures are being used too frequently, then either party can trigger a review of these provisions and the trade aspects of the agreement more broadly, aiming to conclude with a different balance of rights and obligations. If divergences are found, then the UK or the EU can take unilateral temporary 'rebalancing measures' such as tariffs based on 'reliable evidence' rather than conjecture.

The new relationship between the EU and the UK is less than four weeks' old but has already been put through one gigantic stress test. On 29 January 2021, the European Commission invoked Article 16 of the Northern Ireland Protocol when it became concerned that Northern Ireland could be used as a backdoor to the UK for Covid-19 vaccines destined for the EU and effectively had unilaterally decided to put a hard border between Ireland and Northern Ireland to prevent this from happening.[50] Realising that the UK had the right to the Covid-19 vaccines that AstraZeneca had contractually undertaken to deliver from the EU where these were manufactured, the European Commission accepted it had made an error and quickly reversed its decision that appeared to have been taken without proper consultation with the Republic of Ireland and attracted international condemnation of this unilateral action.

It is important to note that the right to impose 'rebalancing measures' is available to both parties and subject to the proportionality test before an independent panel. Where rebalancing measures are deemed unjustified, the other party can take countermeasures.[51]

The concern is that any future 'tit-for-tat' response that could arise in similar circumstances could render the hard fought TCA impotent, even though each party has the right to request a review on the provisions on trade four years after it enters into force. Either way, the EU-UK relationship is going to be a key issue in the next UK General Election likely in three- or four-years' time and where the issue of sovereignty will be part of the ongoing legal and political discourse as it has been for the previous four and a half years.

4. Has the autonomy and 'sovereignty' of the UK and EU been preserved?

The formal announcement of Brexit by both parties on signing the Trade and Cooperation Agreement

In a news conference on the outcome of the EU-UK negotiations, held on 24 December 2020, European Commission, President Ursula von der Leyen, acknowledged that one overriding reason for Brexit was sovereignty and volunteered her belief what this meant from an EU perspective:

> Of course, this whole debate has always been about sovereignty. But we should cut through the soundbites and ask ourselves what sovereignty actually means in the 21st century. For me, it is about being able to seamlessly do work, travel, study and do business in 27 countries. It is about pooling our strength and speaking together in a world full of great powers. And in a time of crisis, it is about pulling each other up – instead of trying to get back to your feet alone.[52]

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[50] https://www.bbc.co.uk/news/uk-55865539 [accessed 31.1.21]
[51] Title XI, Chapter 9: Institutional provisions of the Trade and Cooperation Agreement (TCA) provides for the settlement of disputes between the parties by a Panel of Experts whose recommendations are not legally binding on either party.
[52] https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_20_2534 [accessed 3.1.21]

This view is closer to that of Walker, Jackson and Wescott as discussed earlier in this paper, where the concept of sovereignty is far more elastic than the one propounded by the UK Government.

Six days later, on the 30 December 2020, Johnson made his opening statement to the Commons on the European Union (Future Relationship) Bill that passed the TCA into UK law. He said:

> We [can now] trade and cooperate with our European neighbours on the closest terms of friendship and goodwill, whilst retaining sovereign control of our laws and our national destiny. And that unifying thread […] embodies our vision – shared with our European neighbours –of a new relationship between Britain and the EU as sovereign equals, joined by friendship, commerce, history, interests, and values, while respecting one another's freedom of action and recognising that we have nothing to fear if we sometimes choose to do things differently and we have much to gain from the healthy stimulus of competition. […] we are going to become a friendly neighbour – the best friend and ally the EU could have – working hand-in-glove whenever our values and interests coincide while fulfilling the sovereign wish of the British people to live under their own laws, made by their own elected Parliament.[53]

As expected, both Ursula von der Leyen and Johnson put a gloss on the outcome of the often-testy trade negotiations that came close to ending in a 'no deal' Brexit with both parties standing on the 'cliff edge' and looking at an uncertain future.

News coverage in the European media in the wake of the TCA

Coverage of Brexit in the European news media was often muted, compared with the headlines in the British and Irish news media that was polarised along the lines for 'Leave' and 'Remain'. Across mainland Europe, the coverage tended to raise questions as to what happens next for the UK outside of the EU. Commentators sympathetic to Brexit depicted this as an escape for the UK from a doomed German-dominated project that had fallen far behind the world's leading powers of the United States and China. For those commentators critical of the UK, Brexit was depicted as a folly that would weaken the West, torpedo what was left of the UK's global clout, undermine its economy, and ultimately leave it a less cosmopolitan set of islands that ended free movement of people.

In its leader, *France 24,* described Brexit as the 'UK turning its back on a tempestuous 48-year liaison with the European project for an uncertain Brexit future that will shape the fortunes of its people for generations to come.' It added:

> For five years, the frenzied gyrations of the Brexit crisis have dominated European affairs, haunted the sterling markets and tarnished the United Kingdom's reputation as a confident pillar of Western economic and political stability. Cast by supporters as the dawn of a newly independent "global Britain", Brexit has weakened the bonds that bind together England, Wales, Scotland and Northern Ireland into a \$3 trillion economy.[54]

A slightly different focus was taken by the German newspaper, *Süeddeutsche Zeitung*, that reported on the issue of Gibraltar avoiding a hard Brexit by striking an 11th hour deal to become part of the Schengen area with open borders. It reported:

> Spain and Great Britain (sic) basically agreed at the last moment to include Gibraltar in the Schengen area with open borders. This will prevent the border between Spain and Gibraltar on the southern tip of the Iberian Peninsula from becoming an impermeable EU external border from January 1, 2021 […].

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[53]Hansard https://hansard.parliament.uk/Commons/2020-12-30/debates/9E132CEF-83CA-40BA-B8B4-A7127A968B68/EuropeanUnion(FutureRelationship)Bill [accessed 13.1.21]

[54] https://www.france24.com/en/europe/20201231-brexit-is-on-the-verge-of-becoming-a-reality [accessed 3.1.21]

Instead, Gibraltar will now bind itself more closely to Spain and the European Union as a surprising consequence of Britain's departure from the EU.[55]

The Spanish newspaper *El Mundo*[56] reported on Johnson's speech ahead of the Commons debate on the TCA, urging Parliament to open a new chapter in UK history that would put an end to the nagging question of the UK's political relationship with Europe that had plagued its post-war history.

5. Conclusion

As a constitutional event, the UK's withdrawal from the EU and the subsequent TCA are unprecedented constitutional arrangements. In terms of the UK, few events have had such a profound impact on the legal framework as the UK's accession to the EU's sophisticated legal order and the gradual absorption of EU law into UK domestic law for nearly 50 years. The claims that the UK can be at once European and sovereign are not new and belong to a school of thought known as constitutional pluralism (MacCormick),[57] whereby two autonomous legal and political systems can interact at a high degree of intensity, making simultaneous claims to ultimate authority (sovereignty) without one being inferior to the other. Conflicts between two systems interacting in this way should be resolved according to 'radical pluralism' or principles shared by, or external to, both systems (Walker)[58].

This description mirrors the state of affairs brought about by the Withdrawal Agreement and the TCA between the UK and the EU, and arguably reflects the political and legal position that existed when the UK was part of the EU. Constitutional pluralism also questions whether 'Taking Back Control' as the platform of the Brexit 'Leave' campaign had been conveniently stretched over the concept of 'sovereignty-modern' as a cloak for pursuing a range of wider nationalistic interests. Key to understanding the idea of constitutional pluralism is that the system is organised in a heterarchical rather than hierarchical order; in other words, no one rule or order is higher than another and parties invest in a cooperative rather than competitive relationship to achieve common goals.

The public statements of Ursula von der Leyen and Johnson[59] at the point of the UK's departure from the EU provided evidence of this direction of travel, but the existence of the 'rebalancing mechanism' in the TCA points to an expectation at some point in the future that the UK and EU will be in competition with political and legal consequences that may necessitate a revision of the agreement entered into in 2020.

As discussed earlier, Walker and Jackson argued that 'sovereignty-modern' is a concept that has more elasticity, durability, and relevance than the classic concept of sovereignty as described by Herzog. Mac Amhlaigh argued that constitutional pluralism, post-Brexit, will remain relevant to the EU-UK relationship as well as within the EU well into the future. He wrote:

> […] it remains to be seen precisely how these provisions of the [Withdrawal Agreement] will be interpreted […]. The fact that the [Withdrawal Agreement] creates a presumption in favour of the supremacy of UK law and ultimate authority of the UK courts to resolve such conflicts and claims, does

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[55]   https://www.sueddeutsche.de/politik/international-madrid-und-london-entschaerfen-brexit-folgen-fuer-gibraltar-dpa.urn-newsml-dpa-com-20090101-201231-99-862014 [accessed 3.1.21]
[56] https://www.elmundo.es/internacional/2020/12/30/5fec57dcfc6c8358478b45b5.html [accessed 3.1.21]
[57] Neil MacCormick, 'Beyond the Sovereign State' [1993] 56 *The Modern Law Review*
[58] Neil Walker, 'The Idea of Constitutional Pluralism ' [2002] 65 *The Modern Law Review*, 337
[59] See 4. Has the autonomy and 'sovereignty' of the UK and EU been preserved? (above)

not mean that they will automatically be resolved in favour of the UK law in classically dualist terms, without any recognition of the validity and authority of EU law.[60]

One implication of the post-Brexit EU political and popular landscape might be that it clears the way for further and deeper integration in a more federal direction thereby spelling the end of constitutional pluralism as a normative principle relevant to the EU.

In his New Year's Eve televised address, on 31 December 2020, French President Emmanuel Macron said the TCA struck with the UK was "defending our interests, our industries, our fishermen and our European unity," before stressing the necessity of building "a stronger, more autonomous, more united Europe." [61] He added:

> The United Kingdom remains our neighbour, but also our friend and ally. This choice to leave Europe, this Brexit, was the child of the European malaise and of many lies and false promises. Our destiny is first and foremost in Europe.[62]

The surge in pro-EU support since Brexit is well documented, with pro-EU leanings across the continent. Equally, populist anti-EU movements in other EU Member States have subtly changed their demands for exit to demands for internal EU reform to satisfy populist agendas.[63] It does not follow that a surge in support for the EU will definitely translate into an unambiguous desire for a sovereign, federal, European future. Indeed, there may be a growing call for the repatriation of power from the centre to Member States, something that Cameron was seeking to achieve as a price for remaining within the EU.

In conclusion, autonomy and sovereignty of the EU and UK can be claimed as victories by both parties but as the recent Covid-19 vaccine debacle illustrates, the EU will continue to watch the UK with suspicion as it exerts its sovereign powers. In 2019, German Chancellor Angela Merkel warned:

> the speed of how one agrees certain standards for data, how fast can one create diverse platforms, how can one bring the digital world into one's country could give the UK a competitive advantage over the EU. With the departure of Great Britain, a potential competitor will naturally arise, meaning Great Britain will join the ranks of the US and China.[64]

It was this shared view among the 27 EU Member States that guided the fractious trade negotiations in the knowledge that one day in the future the EU and the UK would become competitors; hence the importance placed by the European Commission to protect the single market and insist that the UK signed up to competing on a level playing field.

In the end, the TCA negotiations were framed by the EU and not the UK. And although the UK and the EU may now be equally sovereign as they both claim, it does not follow they are necessarily sovereign equals.

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[60] Cormac Mac Amhlaigh, 'Back to a Sovereign Future?: Constitutional Pluralism after Brexit' [2019] 21 *Cambridge Yearbook of European Legal Studies* 41-58

[61] https://www.politico.eu/article/emmanuel-macron-uk-a-friend-and-ally-despite-brexit/ [accessed 3.1.21]

[62] Ibid.

[63] https://www.politico.eu/article/populist-attitude-to-eu-matteo-salvini-far-right/ [accessed 3.1.21]

[64] https://www.wsj.com/articles/with-brexit-the-u-k-finds-sovereignty-doesnt-necessarily-mean-getting-its-way-11608897659 [accessed 3.1.21]