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MASTER THESIS

The Impact of the 2016 Brexit Referendum on Parliamentary

Sovereignty in the UK

Submitted by

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Dedication

To my mother, a very strong and gentle soul who taught me to trust Allah, believe in hard work and that so much could be done with little.

To my rock, my hero and my lighthouse, my Father.

To my dear sisters “Nor El Houda” and “Nedjma” and my little brother “Mohammed”.

To my best friend “Chouiteh Nor el Imane” Whom I shared with, the good and bad moments for a whole six years of studying together

To all my beloved ones

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Universities Mohammed Kheider and Mohammed el Bachir el Ibrahim.

Declaration

I Mehemmel Dounia, declare that this thesis was composed solely by myself and that it has not been submitted for any previous degree. Except where states otherwise by reference or acknowledgment, the work presented is entirely my own.

Abstract

The decision to hold a referendum on the UK membership in the EU in 2016 has caused a great impact on the traditional doctrine of parliamentary sovereignty. The proposition of the UK taking back control from the EU was expressly referred to in the context of the principle of parliamentary sovereignty. Paradoxically, parliament was purported to require an exercise in direct democracy, through a referendum, in order to provide the necessary legitimacy for it to reassert its own sovereignty. The present dissertation aims to determine the consequences the 2016 EU referendum on the UK membership, has had on the traditional doctrine of parliamentary sovereignty. Moreover, this dissertation involves a conceptual side on the parliamentary sovereignty principle, based on A.V Dicey theory, as well as, an explanation of the role of referendums in the UK to provide the reader with the background needed to fully understand the significance of this study. This dissertation relies on critical data analysis of the gathered sources and employs the qualitative, historical and analytical approaches. Findings in this comprehensive Study suggest that there was a shift of power from parliamentary sovereignty to popular sovereignty which, as the study suggests, is stemmed from populist politics that controlled the political life in the recent years. The study concludes that by the EU referendum, the UK found itself with a transformed constitutional structure in practice, but with an unchanged reliance in theory on the traditional notion of parliamentary sovereignty.

Keywords: Referendum- Brexit- parliamentary sovereignty- popular sovereignty- United kingdom.

List of Acronyms

CJEU	Court of justice of the European Union
ECA	Economic cooperation agreement
EEC	European Economic Community
EU	European Union
HRA	Human Rights Act
MP	Member of parliament
PPERA	Political parties, Elections and Referendums Act
UK	United Kingdom

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General Introduction

Introduction

The UK is famously one of the few parliamentary democracies under a constitutional monarchy, in which the monarch is the head of the state whereas the Prime minister is the head of the government. The unique status of Britain is based not just on being a parliamentary democracy, in the typical sense of the executive depending on parliamentary confidence but beyond that, on the central UK constitutional tradition of parliamentary sovereignty, which makes the parliament the highest Authority in the country with no written Constitution to bind its powers.

However, the doctrine of the parliament being the highest authority in the United Kingdom has been the subject of intense debate since Britain's first application to join The European Community in 1961 and later with the passage of the European Community act 1972 Because of the restrictions imposed by the European Union Laws (Tim, 2019) this was the main argument held by the leave campaign during the negotiations on Britain's membership in the European Union. The leave campaign put much emphasis on the lost parliamentary sovereignty and they started to convince the people with the idea that withdrawing from the European Union is a must in order to restore the serenity of the parliament and the people.

Eventually the British government held the promised referendum in June 2016; the results were for leaving the European Union with a slight majority of votes. The British government Eventually the British government held the promised referendum in June 2016; the results were for leaving the European Union with a slight majority of votes. The British

government listened to the “will of people” and officially withdrew from the European Union in 31, January, 2020, ending 47 years of membership in the European Union.

Statement of the problem

Parliamentary sovereignty was always a Central issue in the British politics. Especially, during the Brexit negotiations in which range of concerns was exhibited by various actors in the United Kingdom and much emphasis was placed on the lost parliamentary sovereignty which, according to the leave campaign, non could restore unless Britain withdraw from the European Union.

This desire to rekindle the power of the British Parliament was Central to the campaign in favor of Brexit. Paradoxically, the British government held a referendum in 23rd of June 2016 as a tool that allows the British citizens to express their views on the membership of Britain in the European Union and not the parliament. The latter is supposedly the supreme authority that is responsible for making such a great decision as Brexit which is considered to be a major constitutional change. Yet, the UK Parliament has curiously appeared as a bystander to the whole process.

Research questions

In this concern many questions are raised and most of them focus on the actual role of the parliament in Britain and on the compatibility of using a referendum to decide on brexit with the doctrine of parliamentary sovereignty. And also about who is really empowered to make bigger decisions in the UK is it the people or the parliament?

This research focuses on the impact of using a referendum to make a major constitutional change and its compatibility with the doctrine of parliamentary sovereignty as the major

question of the research. This work intends to investigate some specific research questions on this subject;

- What is the position of parliamentary sovereignty in the United Kingdom?
- What is the status of referendums in the British constitution?
- Was the EU referendum legitimate?
- To what extent the use of the brexit referendum has impacted the British constitution and parliamentary sovereignty tradition in the UK?

Methodology

This study uses the descriptive, analytical and qualitative approaches during the research in order to realize the impact of the brexit referendum on parliamentary sovereignty. Also the historical method is used in this study in order to provide examples of how parliamentary sovereignty was challenged, which is relevant to the core of the study. Furthermore, the present study depends on a variety of sources, books and articles, written by scholars on the subject matter of the research. Also, it follows the eighth edition of the Modern Language Association (MLA) style.

Aims of the study

The study aims to draw attention to the concept of Parliamentary sovereignty and the challenges that face this fundamental doctrine in Britain's constitution and to give a deep explanation of the status and use of referendums in the UK. In addition to this, the research aims to shed light on the potential consequences that the use of referendums in general and the brexit referendum of 2016, specifically, may have on parliamentary sovereignty and representative democracy.

Significance of the study

This research is significant because it shed the light on a very important side of the brexit referendum that has not been highlighted enough. Thus, this study is essential as it focuses on the fact that Brexit referendum did not only affect the UK- EU relations, but also it has its own impact on one of the most crucial constitutional principle, parliamentary sovereignty. Therefore, it is essential to understand how the British constitution is being reshaped in the recent times and how new principles and ideologies are added to it.

Structure of the study

The present dissertation consists of three chapters. The first chapter parliamentary sovereignty in the UK; is conceptual in nature, it gives a deep explanation of the concept of parliamentary sovereignty and its position in the British constitution depending on A.V Dicey's classical theory of this principle. Also it discusses some challenges to this principle starting from the European Union first application to the recent brexit referendum.

The second chapter the legal status of referendums in the UK, It describes the position of referendums in the UK's constitution, as well as, their role in a representative democracy system of government. Also a great part of this chapter is dedicated to the description of the brexit referendum; its nature and legitimacy in addition to the parliament's position during the vote.

The third chapter the impact of the EU referendum on parliamentary sovereignty, this chapter is analytical in nature. It is divided into two sections; the first section deals with the EU referendum as a constituent power. The second section deals with the aftermath of the

EU referendum and some of the most important events during the brexit process, in which the parliament was marginalized.

Chapter One:

Parliamentary sovereignty in the UK

1.1 Introduction

It is well known that the UK's political system is one of the oldest political systems in the world. Britain is a constitutional monarchy that is ruled by a king or a monarch with the acceptance of the parliament's advice. It is also called a parliamentary democracy in which the government is guided by the Parliament which is elected by the people. The official Head of the State, the monarch, enjoys very limited powers. However, the supreme position in UK's government belongs to the parliament which enjoys higher status than the monarch himself. The high position of the UK's parliament is guaranteed by the constitution under the principle of Parliamentary sovereignty that is described as being the hallmark of the British democracy.

This chapter attempts to explain the concept of parliamentary sovereignty with conceptual and historical approaches as well as investigating its Orthodox position in the United Kingdom's constitutional law. Furthermore this chapter critically investigates the historical challenges that contested the doctrine of sovereignty of parliament throughout history starting from the UK's entry to the European Union passing by Devolution, the Human Rights Act until the United Kingdom's recent withdrawal from the European Union (Brexit) and the EU referendum.

1.2 The British Parliament; origins, structure and functioning

The houses of Parliament are usually known as the "Palace of Westminster", symbolizes Great Britain. Its image adorns everything and the decisions made in its corridors of power have shaped Britain's history, past and present.

1.2.1 History and Origins

The British parliament is often called "the mother of Parliaments"; it is one of the most ancient parliaments in today's world. It has been called the Palace of Westminster since 1265, it was in this year that the first elected parliament appeared however, the idea of parliament was not

brand new; it has appeared in 1066 by the Anglo-Saxons and also in the period that was after the Norman Conquest (Stefan, 43). The parliament of the United Kingdom is a result of centuries of gradual development. Thus, its nature is inevitably different from other parliaments in other parliamentary countries around the world. It was the result of the victory of the legislature over a long history of struggle between Kings and parliaments in the pre-Union England history; the struggles that ended up by establishing the parliament at the heart of the UK's Constitution. (Zajak, 09).

In The early 17th century parliamentary authority was considered to be weak because of its incapability to enforce any laws without the assent of the monarch. Following the Magna Carta, the parliament forced the king Charles I to assent to the petition of Rights in 1628 which asked for a settlement of parliament's complaints against the King's non-parliamentary Taxation and imprisonments without trial. This did not solve the problem between Parliament and King. Yet, it led to the outbreak of the Civil War. It was until 1688 when the Glorious Revolution took place that Parliament succeeded to establish its Superior position mainly after the Bill of Rights was passed in 1689 which substantially limited the powers of the crown through the reaffirmation of the authority of parliament in relation to the taxation burdens, taking the right to suspend the laws passed by the legislature from the monarch, and preventing the Monarch from keeping a standing army in the peace time. The principles stated in the Bill of Rights empowered the parliament to enjoy a higher status than the Crown. (Zajak, 10).

In 1832, the reform Act was passed, the act reformed the whole electoral system of England and Wales, it helped to improve the legitimacy of parliament as a whole and gave the House of Commons greater influence over the "formation and the political complexion of government". In 1840, Lord Campbell declared that the validity of any act that appears in the

parliament cannot be challenged in a court of law; this approach was confirmed in 1871 and remains the official line today (12).

1.2.2 Structuring and functioning of the British Parliament

The British Parliament is a bicameral Parliament that consists of two Chambers or two houses; the House of Lords (the Upper House) and the House of Commons. The House of Lords consists of 750 members, the main role of this house is to discuss non controversial subjects or matters or examine projects for which House of Commons does not have time. The members in the House of Lords are not elected representatives however; they are well experienced former politicians that form an assembly. On the other hand the House of Commons is the main house in the parliament due to its legislative power, it is consisted of 650 members which are elected by the people as Representatives. One of the main significant aspects in the House of Commons is the given importance to the parliamentary opposition “the Shadow cabinet”. Members of The Commons debate the important and big political issues of the day and proposals for new laws as well as making decisions on financial bills. Generally, the decisions made in one house have to be accepted by the other in this way the two chamber system acts as check and balance for the both the houses. The British Parliament is the complete sovereign under the Constitutional tradition of parliamentary sovereignty (“the Two- House System”).

1.3 The concept of Sovereignty

The concept of sovereignty is one of the most disputable notions in political science and international law that is closely associated with the difficult conceptualizations of state, independence, government and democracy. The expression of “sovereignty” is extracted from the Latin word “superanus” which originally meant the equivalent of supreme power. Yet, its implication often has diverged from this conventional View (Elliot, 2018).

Sovereignty is a political concept that means the presiding authority or the supreme power. In a Monarchical system, the source of power or sovereignty rests in the monarch. In Democratic systems of government the Authority resides in the people and is exercised through Representative bodies like the Congress or the parliament. Sovereignty is defined in Leon Duguit's *droit constitutional* as "the common power of the state, it is the will of the nation organized in the state, it is right to give unconditional orders to all individuals in the territory of State" (113). Howard L. Lubert mentioned in his work *Sovereignty and Liberty in William Blackstone's Commentaries on the Laws of England* that Blackstone defined sovereignty as "the Supreme, irresistible, absolute, and uncontrolled authority in which the jurist summi imperi reside" (273). In the UK the concept of sovereignty is always associated with the Constitutional doctrine of parliamentary sovereignty.

1.3.1 Legal sovereignty

Sovereignty of the state may be treated from two points of views which are legal sovereignty and political sovereignty. Legal sovereignty is often associated with the supreme law making Authority in the state, this is the lawyers' conception of sovereignty, it is the body which has the capacity to issue final resolutions in the state. The legal sovereign can be the monarch, the dictator or the parliament. In the words of Dicey, Legal Sovereignty "can adjudge an infant of full age, legitimize an illegitimate child or if it thinks fit, may make a man judge in his own case" (Ankita, 2011).

1.3.2 Political sovereignty

In modern Democratic states a distinction has become established between the two kinds of sovereignty, legal and political, as legal sovereignty has been described as being the Supreme body in the state, there is above the Legal sovereign the political sovereign. As dicey mentioned

in his work *introduction to the study of the constitution*; “behind the legal sovereign there is another sovereign to whom the legal sovereign must bow” (37). The political sovereign in the modern states is often referred to as popular sovereignty (Ankita, 2011).

1.4 The legal source of Parliamentary sovereignty

Many regarded that the source of the power that the United Kingdom’s parliament enjoy is due to the absence of a codified form of the constitution. According to Edward Choi, the existence of a written constitution ensures that the legislature can only possess the powers limited to what the constitution allows. And in any endeavor to pass or ratify a legislation that contradict the constitution, the courts can involve themselves at any moment by denying to apply it , based on the ground that they are inconsistent with the principles of the constitution (Choi).

1.5 Albert Venn Dicey’s Theory

Parliamentary sovereignty, also referred to as parliamentary supremacy or legislative supremacy, is a concept that views the legislative branch as having absolute sovereignty over other government institutions such as the executive branch and judicial bodies. The most famous description of the doctrine of Parliamentary sovereignty is the classical account given by Albert Venn Dicey in his well known work *Introduction to the study of the law of the constitution 1885* in which he tackled many aspects concerning the doctrine and provided an important ground for a better understanding of the nature of parliamentary sovereignty and also its main characteristics.

1.5.1 The nature of parliamentary sovereignty

The doctrine of parliamentary sovereignty has long been described by the British Professor A.V Dicey as being “the dominant characteristic of our constitution” (82). Dicey's doctrine of parliamentary supremacy asserts that Parliament has the ultimate power to decide

what and how the laws should be. From a legal point of view, parliamentary supremacy has a special meaning since the doctrine is often seen as one of the vital pillars of the entire structure of the legal system. The classic definition of sovereignty is A.V Dicey's definition in the early 20th century in his book *Introduction to the Law of the Constitution*. Dicey summarized his point in this way:

The principle of parliamentary sovereignty means neither more nor less than, namely, that parliament [defined as the Queen the House of Lords in the House of Commons acting together] has, under the English Constitution the right to make or unmake any law whatever; and, further, that no person or body is recognized by the law as having a right to override or set aside the legislation of Parliament (82).

Dicey's traditional definition cast Parliament as the supreme legislative body and the courts, in this constitutional framework, occupy the subordinate position and their task in relation to acts of parliament is limited to only interpreting and applying them in the form of a law. The latter is defined as being "any rule which will be enforced by the courts" (83). Thus, the principle of parliamentary sovereignty has both positive and negative sides; the positive limb is when any acts of Parliament add a new law or modifies an existing one, will be updated by the courts. However, the negative side is the incapability of anybody to override or derogate from an act of parliament, including the courts. Despite the fact that parliamentary sovereignty has both positive and negative sides, this principle is fully recognized by the law of England (A.V Dicey, 83).

1.5.2 Characteristics of Parliamentary sovereignty

A.V Dicey claimed that the characteristics of parliamentary sovereignty might be understood from the term itself, he mentioned that the English people got used to be ruled by the

rule of supreme legislature to the point that they assume that all legislative bodies are sovereign and it is hard for them to differentiate between a sovereign law-making body and a non-sovereign one. Thus, it is important “to keep clear before our minds the properties of a supreme law -making body” (83), for Dicey the foreign observers are more clear-sighted than the English observers when it comes to the understandings of parliamentary sovereignty. Thinkers like; De Lome, Gneist and De Tocquville, gave a deep explanation of this subject matter and they all agreed on the fact that the sovereignty of parliament is “a salient feature of the English Constitution” (Dicey.82 ch2).

A.V. Dicey has identified three basic tenets that distinguish parliamentary sovereignty from other constitutional principles, the first feature is that parliament may alter any constitutional law; there is no law that Parliament cannot change, mainly because of the parliament’s ordinary legislative character. The Second feature is that there is no distinction between the constitutional and ordinary laws, due to the unwritten nature of the English Constitution. A.V. Dicey embraced this special character of England having no written constitution, he ensured that there is” no absolute need for reducing the Constitution to a written form, or even for looking upon a definite set of laws as specially making up the Constitution”. (85).

The no need for a written form of the Constitution comes from the fact that one law can be changed by exactly the same method as every other law, and the constitution of England might easily be turned into an act of parliament without suffering any material transformation of character. Third, the non-existence of any judicial or other authority having the right to nullify an act of parliament or treat it as void or unconstitutional; these three traits of parliamentary

sovereignty according to A V Dicey are an “exemplification of the quality and the flexibility of the British constitution”.(85-86)

1.6 Historical challenges to the doctrine of parliamentary sovereignty

The sovereignty of Parliament was once seen as an alternative for the exercise of the popular will it enjoyed some form of absolutism in sovereignty however, the orthodox conception of the absolute concept of parliamentary sovereignty had its relevant challenges both inside and outside the UK's constitutional structure, although it had long been considered a central tenet of British constitutionalism and despite the absence of codified Constitutional restrictions on the Parliament.

1.6.1 The European Communities Act and the UK’s membership in the EU

The United Kingdom’s period of membership in the European Union has to be of the most critical times when parliamentary sovereignty was challenged and weakened more than ever. The UK first applied to join the EU in 1961 however, it was only until 1970 that negotiations for membership had started. The then conservative party leader and prime minister Edward Heath made the step and Britain officially joined the European economic community (EEC), later became the European Union, on 1st January 1973 after signing the Treaty of accession in 1972 and enacting the European Communities Act 1972 (Elliot, 546).

The European Communities Act 1972 is an act brought by the UK Parliament which gives effect to the integration of the EU into domestic law (European Communities Act 1972). Its role is to represent EU law in the UK. The section 2(1) of the act states 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 recognized and available in law, and be enforced (European Communities Act, section 2).

The European Union, by issuing the European Communities Act, made it clear that the EU law supremacy over the national law of member states is a “reason d’être” in the union. Therefore, its passage was for so many considered to be a “lethal blow” to parliamentary sovereignty or the sign that parliament has abdicated its sovereignty because of the incompatibility of EU law with this constitutional principle (Elliot, 548)

before the UK has joined the European Community, the European court of justice had well explained that the EU law took priority over the laws of individual states, articulating a comprehensive principle of EU law Supremacy. The rationale for this principle is self-evident; the reason d’être of EU law is to create, with certain fields, a pan European system of Regulation and a body of rights, something that would be unattainable where member states are capable to opt simply by adopting contrary domestic Provisions”. The problem here lies in the contradiction of the supremacy of the EU law with the doctrine of parliamentary sovereignty (Elliot, 548)

The supremacy of the EU was strengthened by CJEU (Court of Justice of the European Union) which stated that the EU laws may override any domestic laws that contradict to the EU law. It also stated that the national courts are obliged to apply EU law in its entirety, and when it is necessary the court must set aside any provision of the domestic law that came into force with EU law. The CJEU went further to assert that not even a deep seated rule of national constitutional law could be used to challenge the authority of the EU law. All members of the EU face this fact however the fact that the EU claimed Supremacy over the UK’s law is very problematic because of the contradiction of those laws with parliamentary sovereignty that is the Keystone of the Constitutional law of Britain (Bruneau, 09).

1.6.2 The Human Rights Act 1998

The Human Rights Act 1998 (UK) represents the repatriation of European Convention of human rights to the UK; it is an Act that incorporates most of the Articles of the European convention to the domestic law of the United Kingdom. Yet, the act's main aim is to preserve the parliament's authority with allowing some of the human rights principles in the domestic law. HR imposes an interpretive obligation on the Judiciary which must be compatible with the convention of Human Rights. In case the legislative interpretation is not possible the Judiciary is required to declare legislative incompatibility and informs the parliament and the executive in the case of any violation and "shift the onus to remedy the defect on them" (Debeljact, 189). UK Parliament may then choose to amend the incompatible legislation or not to. The act appears to protect human rights while preserving parliamentary sovereignty (Debeljact, 190).

The United Kingdom has long refused the idea of adopting a Bill of rights that is judicially reviewable because of the contradiction of Bill of Rights with a historically core principle in the British constitution which is parliamentary sovereignty (Hiebert, 225). This view comes from the fact that an effective Bill of Rights requires a judicial remedial capacity to set legislation yet, giving the judges more Authority, the thing that contradicts with the notion of parliament being responsible of making final decisions.

According to so many the HR Act undermines the parliament's authority. Debeljak Julie, a foundational deputy director of the Castan centre of human rights, stated that the act has directly or indirectly affected the sovereignty of Parliament. She declared: "parliamentary post - HR act is simply not the same as pre-HR, act and the appreciation of this imperative for the success of the new institutional human rights compact" (22). Debeljak mentioned that there are three aspects of the Human Rights Act that confined parliamentary sovereignty; first, parliament

and the government are no longer able to enact any legislation taking into consideration the conventions of the Bill of Rights. Second, the judicial oversight of exercises of the parliament .and thirdly, the judicial Declaration of incompatibility discrete factors change the previous understandings of the notion of parliamentary sovereignty.

1.6.3 Devolution of power

The legislative framework for devolution was originally established in 1998 by the labor government by passing the Scotland Act of 1998, the governments of Wales Act 1998 and the Northern Ireland Act of 1998. There is in addition to that a non- legislative framework of agreements between government departments and the delegated bodies that helps to resolve disputes between central and local/ devolved governments (Torrance, 2019). Blair's constitutional reforms in 1998 led to the establishment of the Scottish Parliament and the Assemblies of Northern Ireland and Wales. These delegated parliaments have their own powers which Westminster cannot violate, under the convention, without proposing legislative approval. And this is a clear source of doubt about the authority of Parliament.

Devolution became an accepted part of the Constitution of the United Kingdom; it was introduced in Wales and Scotland and reinstated in Northern Ireland from the 1990s onwards. The decision to form these legislative bodies was approved in advance by the popular vote through referendums organized in the concerned regions. In this sense, the mandate is based on an exceptional form of popular consent (Blick, 2018).

It is very clear that devolution has placed some limitation on the sovereignty of parliament as it restricts some of the legislative powers of Westminster although, in theory, Westminster can legislate for Scotland, Wales or Northern Ireland even on devolved matters. However, in practice, Westminster is no longer sovereign over the domestic affairs of the

devolved territories. Devolution has been regarded as “a mean of Delegation of powers from a central parliament to the local legislatures” (jowell, 213). Which is inconsistent with the federalist system that is based on the separation of competencies between the Central and local governments. However, it has been suggested that, after the devolution of power the UK’s Parliament does no more than merely “supervises the devolved legislatures” (Bogdanor, 113).

1.6.4 Brexit

Britain's exit from the European Union is expected to be one of the most important events affecting the principle of parliamentary sovereignty, as it is one of the most important events in the history of the UK. The term Brexit refers to the withdrawal of the United Kingdom from the European Union and the European Atomic Energy Community on January 31, 2020, the United Kingdom is the first country to officially leave the European Union after more than 40 years of membership (Wellings, 2020).

The decision of the UK to leave the EU was not very surprising, especially, because the UK has always been a debatable member of the Union, the UK always kept distance from the EU; its own currency the Pound Sterling. It has refrained from joining the Schengen agreement which abolishes internal border controls within the EU. Furthermore, the political presidency in Britain always included people who are opposing the idea of the UK’s membership in the European Union and this determination was strengthened following the 2018 financial crisis that EU’s members faced during that time and the common currency of the EU-euro was being blamed for the post 2008 recession. Euroscepticism was further intensified because of the rise of immigration from poorer state of the EU to the UK and the fear of refugees from Syria and Africa (wellings, 2020).

While the arguments are primarily economic, the main argument to defend the decision of leaving the EU was the threat to the political sovereignty of the UK. For the leave supporters the very purpose of exiting the European Union was to take back control and restore the Lost Sovereignty of Parliament which, they argued, was highly undermined by the supernatural character of the EU law. In 2013 the British Prime Minister David Cameron had promised an “in or out” 2017 referendum on the UK’s membership in the EU, the outcome of the votes, however, was not certain as polls fluctuated between “narrow yes” or “no majorities”. What was clear then was the possibility that the UK could leave the EU in the following few years. After David Cameron resigned, Theresa May started the withdrawal process on 29 March 2017, putting the dates of withdrawal as 29 March 2019 yet she resigned as well, and was succeeded by Boris Johnson who was the one person that made the withdrawal official (Graham, Rubini, Rybus , 04).

This EU Brexit imposed too many questions; legal, political and economic questions regarding its likely impact on the UK and what the consequences will be after over 40 years of membership. Yet, bigger questions were raised and are still rising concerning the principle of Parliamentary sovereignty and if it is really resettled after the EU referendum especially, because the latter was also considered to be a threat to the traditional understanding of the Constitutional doctrine of parliament supremacy as well as representative democracy in the UK.

According to Roch, Dunin wasowicz; the result represented the most significant constitutional event in the UK since the restoration of the monarchy in 1660, since it showed that on the issue of Europe the sovereignty of the people trumped the sovereignty of parliament of course from a legal point of view, the referendum was advisory but the government committed itself to respecting the results and the outcome was seen by the majority of MPS as decisive (wasowicz, 2019).

Roch continues to argue that in 2016 a new concept was introduced into the British constitution, namely the sovereignty of the people. On this issue, Parliament has in fact become the third chamber of Parliament, and Parliament's sovereignty is now undermined not by Brussels but by the people (Wasowicz, 2019).

1.7 Conclusion

The status of the doctrine of parliamentary sovereignty in the Contemporary UK Constitution is much debated. Changes in the architecture of UK Constitution, the UK's entry to the European Union, the incorporation of Human Rights into domestic law, the Devolution settlement and the UK's withdrawal from the European Union, all present challenges to the legislative supremacy of modern-day Britain and to the relevance, coherence and desirability of this constitutional fundamental. It seems that the understanding of parliamentary sovereignty have moved away from the Diceyan version of sovereignty whereby Parliament can enact whatever it likes.

In an attempt to restore the lost parliamentary sovereignty the UK decided to withdraw from the European Union which was considered to be the most critical challenge to the doctrine, the UK officially left the Union in 31 January 2020. The argument that parliamentary sovereignty was eroding as a result of Britain's membership in the EU was a major one for the leave campaign yet the parliament's role came to be intensely contested during the UK's crisis over Brexit, especially after the narrow referendum vote in June 2016; parliament's became the forum for increasingly bitter policy battles leaving the legislative and executive divided, the thing that is uncharacteristic of the UK's Parliament system. Throughout the whole process the right site of constitutional sovereignty became highly confusing.

Chapter Two:

The legal status of referendums in the UK

2.1 Introduction

The EU referendum of June 2016 marked a significant juncture in the history of the United Kingdom politics. The public voted for leaving the European Union, indicating that they wanted to end a membership that spanned over four decades. This result sent into motion many questions about the position of referendums in the UK Constitution and their role in the UK democratic system, since it commonly known that the UK is a representative democracy, in which referendums have not been a significant feature of the Constitutional law. There is still uncertainty concerning their place and how they can accord with a Constitutional tradition based on Parliamentary supremacy.

In this chapter the investigation will be expanded to explore the Constitutional status of referendums in the UK based on a distinction between referendums which have “advisory” or “binding” effects. In addition to that, in this chapter there will be an examination of the use and reception of referendums as a direct democracy tool in the United Kingdom. And lastly this chapter is going to explore the EU referendum specifically, starting from its legitimacy, its advisory nature and the Parliamentary votes on the brexit issue.

2.2 Use and reception of referendums in the UK

Referendums play an important role within the political systems that tend to be Democratic in nature; they are particularly suited to resolving fundamental questions concerning sovereignty and constitutional change. However, according to the constitutional law referendums have no absolute power, they are restricted to a certain extent; they cannot replace the institutions of representative democracy and the citizens do not participate in all the policy decision-making process, Since it is the job of the Representatives in Parliament

to consider such issues in great details and to make informed decisions on a wide range of topics. Referendums are meant to include one crucial component of democracy, choosing between options through voting. Yet, other equally important dimensions of democracy like discussion, deliberation, and compromise are not intrinsic to referendums (independent commission on Referendums, 19).

The UK relationship with Referendums is quiet particular and peculiar, from a competitive perspective, and like in Europe where the general practice of referendum is provided by the Constitution. In the United Kingdom this situation is impossible because of the absence of a codified constitution. However, direct democracy is always idiosyncratic, given the national variations possible between referendums which are mandatory, initiated by governmental authorities or initiated by the citizens (Gordon, 215).

The debates on Referendums in the UK are narrower than many other European Democracies. Yet, the UK's approach is presented in more dramatic terms with the people viewed not as an organ of State but, as technical partner in the decision-making process, that is a superior political entity which sits beyond the institutions of government and above even the sovereign Parliament. The 2018 repeal of the short-lived advisory referendum act in the Netherlands and the 2016 EU Referendum are the best illustration of the challenges faced by the UK Constitution and the broader dilemmas posed by direct democracy and about the way that the Constitutional system should adopt in recognition of the growing significance of direct democracy involvement in the decision-making process (Gordon, 215).

It is known that the UK is a representative democracy, in which the use of referendums has been minimal over the years. It is only recently that we have seen an

increase in the recourse to the people both regionally and nationally. Before the referendum on the UK's European Union membership, only two national referendums were held in the United Kingdom; one on the maintenance of membership in the European community in 1975 and the other on the modification of the electoral system in 2011, the so called AV Referendum. At the regional level, there has been more experience with referendums although those referendums revolved around issues like devolution, the support for the peace and Independence treaty and so many others. It is noticeable that the widest, use of referendums has taken place at the local level, in regards to issues related to local Council arrangements and introduction mayors. Despite the fact that the referendum ability to increase the citizens' participation in the local Democratic process was questioned, it is undeniable that the local referendums were more familiar events in the UK than the national or regional ones (Suteu, 02).

When it comes to the governing referendums and the indication of the legal status of their results, The UK presents a mixed picture. The general law that governs its use at the national level is the Political Parties, Elections and the Referendums Act (PPERA) 2010. The PPERA Act established the rules for determining the questions of referendums, the official record of the referendum campaign, the authorized participants, donations and campaign financing. It is established the election commission as an independent oversight body to oversee the conduct of referendum and review electoral spending. PPERA also creates a chief officer with Junior on the responsibilities to administer surveys and Promises employees to administer them locally. Yet, what is not the PPERA's responsibility is the detailed rules needed to conduct individual referendums, the franchise to be used in the deciding on whether the results should be advisory or binding (Suteu, 03).

A report published by the House of Lords Constitution Committee concluded that there were some significant drawbacks to the use of referendums in the UK. However, the committee accepted their use in fundamental constitutional issues in spite of all the skepticism around their utility. According to Michael Gordon, any attempt to formally incorporate referendums into the political architecture would result in a “fatal flaw” which is the poor fit of referendums in the UK’s constitutional paradigm since, the constitutional position of referendum decisions is inherently precarious in the UK because of parliamentary sovereignty which “allows the parliament to displace or ignore any statutory criteria at the very moment it decided to hold a referendum or avoid a previous requirement” (Gordon, 218). The legal status of referendums is more complicated than the superficial reference to the constitutional fundamentals nor does parliamentary sovereignty suggest (Gordon, 219).

2.3 The legal status of referendums

The legal status of referendums in the UK is very precarious, as the British constitution is based on the principle of parliamentary sovereignty. Any referendum that is conducted in the UK must be based on legal authority which is always provided by basic law, (the supreme power of the English constitution), the highest form of constitutional law in the United Kingdom. This is the result of the legislative supremacy of parliament which provides the parliament with the right to call for a referendum at any time and on any issue. However, parliamentary sovereignty can be seen as an obstacle to the adoption of permanent rules that will ultimately create the conditions for a referendum. Thus, while the parliament’s authority grants the legal power to hold a referendum, it also limits the

adoption of legal framework requiring a referendum. These rules are subject to change in the light of the exercise of sovereign legislative power (Gordon, 224).

Thus, the Constitutional basis of parliamentary sovereignty appears to be incompatible with the idea of a formal legal decision made through different than the Constitutional position of referendums in the UK is very complicated, also there is a need to consider both the authority of the device as a matter of legal principle and its just outcome as a legal matter in discussing the legal stages of random decisions. In addition, a distinction between “binding” and “advisory” referendums is needed to examine the legal status of UK referendums.

2.3.1 Advisory referendums

Advisory referendum has been defined as being the type of referendums “wherein voters make their views known on important issues without binding the legislation to action” (Gordon). Their use is very rare in countries that are representative democracies such as the United Kingdom, where power is in the hands of Parliament. Parliament has the Legislative power that enables it to pass laws on any subject it chooses. According to this power the parliament is not legally obliged to first consult the public on the legislation proposed through a consultative advisory Referendum. However, although the parliament is not legally obliged to take the result of referendums into consideration, the result may put political pressure on the government or even give the government political power. Similarly the result of the consultation referendum has no binding force on the future of parliamentarians (Webster, 2017).

Advisory referendums are rarely held nationwide in the UK, only three national ones. The parliament supreme authority is the one that is responsible for making a decision of holding a referendum that is legally advisory MPs directly ask citizens for their reviews on a particular issue however the citizens' views only provide advice to the Sovereign decision maker, who can make progress in any way he wants. This method is evidence in the classics of Dicey's work on parliamentary sovereignty. For Professor Albert Venn Dicey, the supremacy of Parliament that was continuing which means that no Parliament can put restrictions on its successor (Gordon, 225).

The legal obligation that comply the referendum results will be a clear example of the unacceptable restrictions that bind the future parliaments. This was Dicey's view on Parliamentary sovereignty; he always stressed on the importance of the Orthodox doctrine in the UK politics and always considered it as the keystone of the Constitution. However, Dicey's position did not stay the same; Dicey came to defend the use of referendums as one of the many ways of spurning Irish self-government. Dicey stressed on the fact that a referendum gives the people a veto right over the major political changes that need to be implemented .many scholar saw that this development in Dicey's opinion in referendums and their importance in the democratic systems is a presentation of a shift in faith from parliamentary sovereignty to popular sovereignty .Dicey's change of position regarding the acceptance of referendums indicates that their position was always indirect and there was never a time when their position was so Direct in the UK Constitution (Gordon,225).

In his work, *referendums in the UK Constitution: Authority, Sovereignty and Democracy*, Michael Gordon mentioned that there is a wide need to question the status of advisory referendums, which is a manifestation of direct democracy and a manifestation of

the will of the people. As it is a very complicated decision-making process. Its Constitutional status not only reflects its legal official position, it also holds that the decisions taken through referendums represent the primary political and moral authority in democracies (229).

In a country that is found on a Constitutional democratic system, the referendum is approved by the constitution in accordance to the rules of the system, which is an expression of the irresistible will of the people. This does not come from its legal power although a great part of its legitimacy is initially stemmed from the law. On the contrary, it theoretically, based on structure in the rules and regulations of the political system, so the decisions taken during the referendum cannot be ignored. In this sense, the weight of the referendum results is great and can be formally attributed to the decision-making process through legal norms. Devolution in Wales, Scotland and Northern Ireland is a great example of this Democratic scheme and that the government is “underpinned” by the popular approval derived from these referendums (Gordon, 229).

The status of Advisory referendums thus, depends on whether it is taken from a purely legal perspective or from a wider political Constitutional point of view. However, even the legal status of referendums is more complex than expected due to the permanent centralization of parliamentary sovereignty because there are methods of understanding sovereignty which allow a certain degree of binding legal force to attach it to procedural requirements, such as, the need to hold a referendum. There is also a growing number of practical examples of UK parliament legislation which appears to make respect for referendum results a necessary part of the legal process for making certain decisions.

2.3.2 Binding Referendums

The results of referendums or citizens' initiative, in representative democracies may be legally binding, as determined by the law of the Constitution under which it is called, or it may be used by the authorities for advisory purposes only. In practice, advisory referendums are usually treated as politically, if not legally, binding. Especially if the result is decisive, as governments will not wish to be seen to oppose the will of the people (Bulmer, 16).

Nonetheless, the extent to which referendums can bind the legislative process was a major subject of debate among many scholars. In his work the UK's experiment with binding referendums and their requirements made it clear that Parliamentary sovereignty should now be understood in a way that helps to accommodate such procedural change to the legislative process. The inclusion of a Referendum as an actor the legislative process contributes to significant changes in the UK Constitutional law. Yet, it is very clear that the use of Referendums in the United Kingdom has gone beyond the "ad hoc" basic publication in the contemporary circumstances (Gordon , 228).

Referendums can no longer be seen as simple, individual, or limited legal mechanisms, there is real diversity in their use and the complexity of their legal status, regardless of whether they fill into the category of binding or advisory. In fact the differences between them showed their formal legal status as a part of their authority. Gordon stated noted "theoretically, both types of referendums are ultimately vulnerable to parliamentary sovereignty, yet in different ways both are resistant to parliamentary sovereignty.....this may be more a matter of degree rather than kind" thus, what is really important is the extent to which this kind of Referendums may affect the doctrine of Parliamentary sovereignty and the more complex Constitutional mix of the legal and

political considerations. So, there is a need to look beyond the legal status of referendums in the United Kingdom and consider their broader Constitutional impact, which is just as complex (229).

2.4 The EU referendum (2016)

The United Kingdom European membership referendum often referred to as the EU referendum or the brexit referendum took place on 23 June 2016 in the United Kingdom and Gibraltar to ask the British people on whether they wanted the UK to remain as a member in the European Union or they wanted it to leave the union. The majority of the Electorate voted for brexit (51, 89% to 48, 11%) with a turnout of 72%. The outcome of the vote was to be facilitated through the European union referendum Act of 2015 and the political parties, elections and referendums Act of 2000. The result was to be implemented by the then leader of the succeeding government, Theresa May, who initiated the official withdrawal process on 29 March 2017. And the UK was scheduled to leave the EU on 29 March 2019. Yet, after she failed to secure the backing of Parliament on her brexit deal she resigned, and was succeeded by Boris Johnson who extended the negotiation period up until 31 January 2020 (Trueblood, 2020).

According to Roch Dunin, the 2016 referendum represent a turning point in the use of referendums in the UK history because of its assumptions, the result, the political clash it caused and the Constitutional cleavages which it has opened and also its characteristics that differentiate it from other previously used referendums in the UK (Wasowicz, 2019).

This view was further discussed by Professor Meg Russell, who declared that the EU referendum has two major characteristics that made it unusual and different from

previously held Referendums in UK's political history. The first noticeable feature is that on prior referendums in the UK politics, most notably on devolution in the 1990s, the public was offered a change that is strongly advocated by ministers, an example of that was David Cameron who was professing a degree of Euroscepticism. He went into the referendum firmly favoring continued EU membership. This was the first unusual feature that distinguishes the EU referendum. The second notable feature in the EU referendum was that the electorate was asked to decide on a fundamental and broad principle, rather than a detailed manifesto for change (Russell, 446).

Therefore, the public was given a much bigger responsibility than the usual and previous referendum had ever given it. From this, we can conclude that these two characteristics were unusual not only in domestic, but also in international terms. On the previous referendums that are prior to the EU referendum, in which ministers supported change, details were generally already clear about the way the change would be executed. However, in the case of the Brexit referendum, because the majority of ministers and MPs were in favour of remaining, the decision was left to the public to decide first whether the UK should leave or remain in the EU. In addition to that, the public was invited to decide also in the terms and the way they wanted the decision to be executed on the case of voting on favor of "Leave" (Russell, 446).

2.4.1 The nature of the EU referendum

Many debates took place during the vote on Brexit on the nature of the Brexit Referendum and whether its outcome would be advisory or binding. The referendum was initially not legally binding because there was no requirement in the EU referendum act that say that the government is not obliged to implement its results, nor does it set any time limit

for implementing a vote to leave the EU. It was an advisory rather than a mandatory referendum, enabling people to express their opinion before any legislation might be introduced. However, according to John Redwood, there was no source that proved that the result of the EU referendum was only consultative and not binding although it has been described as being a respectable one (Redwood, 2016).

A UK referendum will only have the force to enforce the law if the act setting it up says so. In practical terms this would mean someone would be able to go to the court to make the government implement the results otherwise, as the high court declared in the 3rd November, “a Referendum on any topic can only be advisory for the lawmakers in parliament” (Redwood). Therefore, as a matter of law, neither the government nor Parliament has to do anything about the referendum. Yet, so many Brexiters took the advisory nature of the vote to strengthen their arguments against Brexit.

2.4.2 Legitimacy

After the EU referendum results, its legitimacy was immediately challenged. Many MPs argued the outcome was a shock and unreasonable and that they would not support the actions taken after the vote. Others argued that they represented their constituents, who had voted remain, and so would oppose the withdrawal. Yet, some scholars objected the decision to hold a referendum and the fairness of the franchise; they argued that there was a lack of a threshold for majorities in each of the UK’s four nations. Another promising line of argument was to say that the referendum did not settle the shape of the UK’s post-Brexit relationship with the EU (Ekins, 2017).

Therefore, the Referendum did not offer a mandate for any particular option. Nevertheless, the government expressly promised to implement the people’s decision even after the rejection of the majority of the members of Parliament and also the rejection of the political and social elites. Mainly because undermining the choice of the people would break the political trust between the people and the government. However, the elite cry of rage seemed largely beside the point when the new Prime Minister, Theresa May, undertook faithfully to implement the referendum result (Ekins, 2017).

2.4.3 Parliamentary votes

The outcome of the brexit referendum is widely known, with 52% of voters proclaiming that they wanted to leave the Eu. On the other hand, only around 25% of parliament’s members expressed that they voted on leaving the European Union. This resulted in a notable number of MPs considered as being “out of step” with their constituents on this issue, having expressed the opposite view than the majority did (Stafford, 2020). This is as shown by figure 1 below

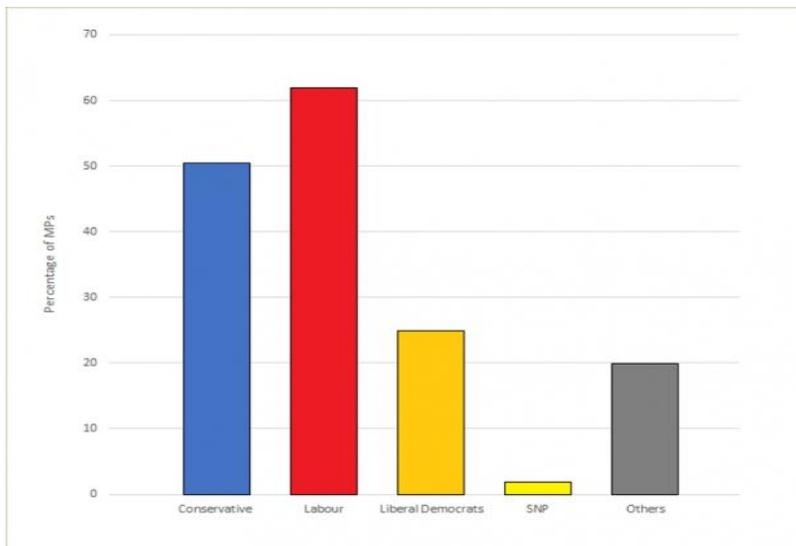


Figure 1: MPs who were “out of step” with their constituents at the 2016 Eu membership referendum (Stafford, 2020).

It is very clear that the majority of Parliament’s were struggling to reflect their constituents’ Opinions, as so many of them were for “remain” rather than “leave” which was what the majority of the voters choose. Because of the procrastination in implementing the decision to leave the European Union, many accusations were directed towards the remainder MPs; they were accused of trying to frustrate the referendum result. Yet, in reality it is not that simple, early on in the brexit process the vast majority of MPs voted to allow the UK to leave the Eu in spite of their position at the referendum because of the “will of the people”, as the people spoke MPs bowed to the pressure and voted for “leave” during the meaningful votes. The House of Commons passed the Notification of withdrawal bill in February 2017 which, gave the government the authority to trigger Article 50 and initiated the withdrawal process. Unsurprisingly, all MPs that voted to leave in 2016 supported the Bill, but what was then surprising was that 73% of MPs who voted to remain in 2016 also did the same and supported the Bill (Stafford).

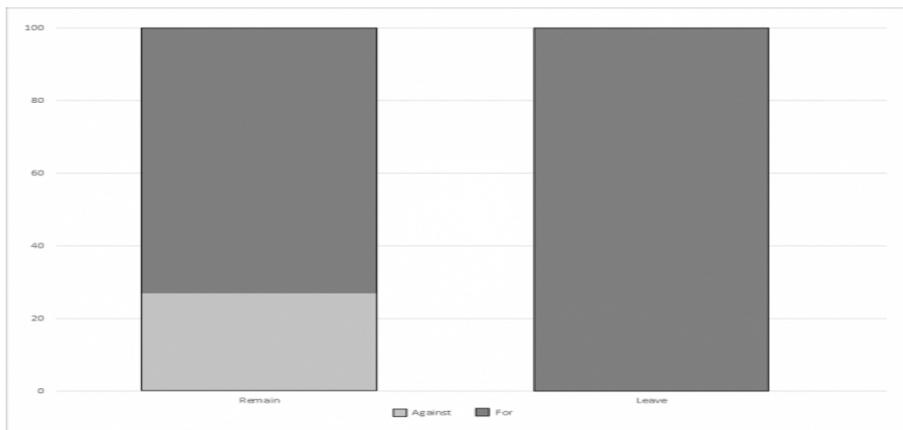


Figure 2: MPs votes on the triggering of article 50 based on their referendum stand point (Stafford, 2020).

It is very clear that, though the majority of MPs opposed Brexit however, the parliament overwhelmingly voted to trigger Article 50 and started the exit process, taking the will of the people into consideration, possibly in the hopes of keeping political stability as well as political trust between MPs and their constituents.

It was said that the vote obliged the Parliament members to act on their stated commitment to democracy and to justify their role in that democracy, in a populist, political climate that is rapidly altering. Politicians and MPs find themselves in big challenges especially concerning their political legitimacy. As Steven Fielding has stated; “politicians feel that they are not legitimate anymore in the way that they used to be” (Powell, 06). Thus, politicians approach to these challenges may shape the political system in the UK for the future (Powell, 07).

2.5 Conclusion

Since the beginning of the 1970s, referendums have been not only accepted as a Constitutional tool to make political decision, but have been widely used since then, at any governmental level whether it us national, regional or local. And sometimes on even some sensitive issues that are crucial to the future of the country. Thus, the 2016 Eu referendum is only the last line in a long chain.

The EU referendum was considered as a “watershed” moment in the UK history, as it represents a turning point in the use and the general understanding of referendums. Its

outcome resulted in an ongoing political and Constitutional turmoil, given its apparent potential to trigger such dramatic outcomes. Therefore, the salience of the referendum as a matter of study has increased. And since the vote to leave, almost every dimension of that referendum has been evaluated, many questions were asked about the use and reception of Referendums in the UK political history as well as, the status and the role of referendums in a political system that tend to be a representative democracy that is based on the traditional principle of Parliamentary sovereignty.

Chapter Three:

The Impact of the EU referendum on parliamentary sovereignty

3.1 Introduction

The EU referendum has had its, momentous as well as long term, consequences. Not only on the united kingdom relationship with the European Union, but also it played an important role in altering our perception of the UK's democratic system and contributed in reshaping the total understandings of the British constitution and its fundamental principles, especially the concept of Parliamentary sovereignty.

Parliamentary sovereignty is an elusive concept that needs to be carefully studied because of its importance in the British democracy. Thus, the core of this chapter is an analysis of the extent to which this traditional concept was affected by the use of a referendum as a tool of direct democracy to decide on a significant Constitutional change as "Brexit". And how the referendum has raised more Constitutional questions than it solved, as well as, analyzing the marginalization of Westminster during the process that followed the referendum, including invoking Article 50.

3.2 The EU referendum as a constituent power

In the UK, the concept of constituent power is rarely used due to the fact that the UK is a representative democracy in which, any separation is regarded unnecessary because of the traditional principle of Parliamentary sovereignty. In such systems, parliamentarians and representatives promote the people's interests rather than their desires as opposed to the delegates, who would be bound to represent the people's desires and views. The parliament has many powers, like the ability to amend or make changes to the Constitution. In this sense the parliament holds a constituent power. Crucially, this means that the powers held

by parliament arises from parliament itself or, the crown in parliament, instead of belonging to the people and being exercised by Parliament (Powell, 11).

3.2.1 Andrew Arato's theory

Andrew Arato's account of constituent power is one of the most notably famous accounts on the term "constituent power". According to him, constituent power is a political power that is different from the legally constituted power. The former is a prior and superior to all constitutional laws, while the latter is regulated by law. Its bearer is an integrated shared subject, the people which is the immediate source of legitimacy. The people have a unified will that is above and beyond any legal or even moral norms. Furthermore, the term implies that there can be no substantive limits on what the people want (Arato, 90).

However, according to Schmitt, the "people's will" is easy to be misunderstood or misinterpreted. The reason why is that it needs to be interpreted by a Sovereign dictator whose main mission is to turn people's will into a Constitution that is legitimized by the people. The Sovereign dictator - parliament- represents the unity of authority and power and can thus violate any separation of powers in the pursuit of making a Constitution (Schmitt, 83).

3.2.2 Constructing a Sovereign constituent power out of the electorate

Constituent power becomes a salient concept in events that resulted in making major Constitutional changes. Brexit is notably such an event, in which the constituent power has appeared again. During Brexit the political decision to leave the European Union was taken by the electorate in a, supposedly, legally "advisory" referendum. Thus, the decision was

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taken by the people rather than the parliament. In the words of the then Prime Minister David Cameron in the lead up to vote; “this is your decision, the government will implement what you decide” (Aristel, 06). This made it clear that the people have moved from advising on Constitutional change to deciding it. This obviously runs against the constitutional settlement and also the constitutional principle of parliament's supremacy and authority in the decision making Process. This is a type of “transgressivness” that marks the concept of constituents power (Aristel, 07).

Legally, the electorate who voted during the 2016 referendum constituted a “single electoral body in a referendum”. But they embodied also the full Sovereign power of what is said to be the “the people”. This has further elevated the legitimacy of the referendum from the electorate giving a consultative opinion to their representatives in the parliament to ultimately being a Sovereign decision-maker, that the parliament is obliged to implement its decisions without objection and without taking into consideration what the representatives in parliament position or opinions about the subject matter (Skrbic). This view was further discussed by British scholar Vernor Bogdanor who noted that:

The referendum has now established itself as a third chamber of Parliament, issuing legislative instructions to the other two. The sovereignty of the people is trumping the Sovereignty of Parliament.....The sovereignty of Parliament is now to be constrained not legally, of course, but for all practical purposes, not by Brussels but by the people (351).

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The view of the referendum creating a source of power that contradicts with the usual, legal source of authority was further discussed by Alex Powell who suggested that, the introduction of referendums to the UK Constitutional law makes the view of Parliament holding constituent power very complicated (885). John Laws identified this when he noted that:

The use of referendums creates a potential Constitutional danger. It is that the referendum appears to offer a source of democratic power which challenges the Democratic power of parliament, It creates two democratic poles, one representative -the elected legislature- and one direct -the people's vote (217).

To make this more clear, referendums are a manifestation of constituent power, especially in the recent years. The wider acceptance of referendums as a valid tool to make democratic decisions that may alter the Constitutional framework, has created a discursive impact which principally arises from the fact that the legal framework remains clear that the parliament is the ultimate source of legitimate power within the UK's Constitution. Yet, serious issues would arise in case the parliament dares to object the referendum decision. Indeed the act of holding a referendum suggests, discursively, that the source of power comes from the "people". Thus, the decision to hold a referendum itself is an obvious challenge to the Orthodox understanding of Parliamentary sovereignty (Powell, 12).

In summary, the device of the referendum as a tool of making political decisions that may create any changes to the Constitution has been portrayed as having strong extra legal legitimacy, thus making it an exercise of constituted power. The bearer of this constituent power was the people, which is a representation of the electorate who voted in the

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referendum. The result of the referendum was then turned up into a single will of the people. The implementation of this will is guaranteed by the government without taking into consideration the legal Sovereign powers or the separation of powers.

3.2.3 The will of the people

After the EU vote of 2016, the government ministers have used the rhetorical invocation of the “will of the people” as a method to silence the critiques and to defend their approach to the UK’s exit from the EU. Brexiters attempted to cast referendums as an expression of the general will of the people. And thus, painting a picture in which parliamentarians, if objecting the people, as “Saboteurs” who are attempting to undermine or override the will of the people (Powell, 15).

What distinguishes the political discourse during the brexit period of negotiation and even after the final decision to leave the EU was the populist thought. Brexiters and politicians who were in favour of brexit did not miss a chance to mention “the people” in their speeches. An example of this was the Prime Minister Theresa May’s speech of 20th May, When she claimed that “parliament has done everything possible to avoid making a choice”. In addition to that, she continued to say “you want this stage of the Brexit process to be done” addressing the parliament members (Schmitt, 63)

It is very clear that when looking to the status of Parliamentary Sovereignty in the UK Constitutional law and the role it plays in the country’s politics, that this kind of political rhetoric serves to, discursively, undermine the legitimacy of Parliamentary debate. And suggests that in the words of Carl Schmitt that “the representative must fall silent when the

represented themselves speak” (63). This has its own consequences on representative democracy

3.2.3.1 The rise of populism

After the vote of 2016 on the United Kingdom’s membership in the European Union, populism has come to dominate Britain’s political reality. Populism is a political program that champions the people; it usually combines elements of the left and the right, opposing large business and financial interests. As an ideology, populism was always considered by so many scholars and politicians as a threat to representative democracy and to the core principle of parliamentary sovereignty (Freeden, 06)

According to Michael Freedden, The brexiter has invoked a sense of populist ideology when defending the EU referendum results. They always described the referendum as the will of the people, conventionally, ignoring that 62.5 percent of the electorate (remainders and those who abstained from participating), did not vote to leave the EU but they are automatically included in that will (07).

When the High Court decided that that article 50 could not be triggered without the parliament's approval, the pro-Brexit press emphatically evoked to start a populist dichotomy. The British press as well as politicians and government ministers were a crucial element in this process. *The Daily Telegraph*, a very famous magazine puts as a headline “the judges versus people”. While *the Daily Mail* went further to put a headline that describes the judges as the enemies of the people; the journal put under the photograph of

the three judges of the high court a big headline that said: “the enemies of the people” (Freedon, 08).

Not only was the press frustrated from the High Court decision, government ministers as well made declarations condemning the high court and accusing the judges of trying to undermine the will of the British people. For instance, Sajid Javid , communities secretary, when he declared on the BBC 1’s *Question Time* that, the high court's decision was an absolute attempt to “frustrate the will of the people and it is unacceptable” (Javid, Questions Time, 2016). There are so many other examples of how politicians and even governments ministers involved key populist terms in their everyday political language in order to paint a picture in which the parliament and the high court appear as objecting the people when objecting any step of the brexit process (Freedon, 08).

3.3 The Aftermath of the EU Referendum

Parliamentary sovereignty was not only affected during the brexit voting, but also in aftermath of the 2016 referendum, several events like the triggering of Article 50, and the attempt of Theresa May to present a new ideology that may undermine the authority of the parliament to the constitution were a proof that there was a shift in the usual thinking about the status of the power of Westminster.

3.3.1 Shift in powers

The recurrent use of referendums as a tool to allow the people in Britain to express their opinions on major constitutional issues such as the EU membership created the shift of powers from almighty parliamentary sovereignty towards popular sovereignty. Thus,

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creating or establishing a new source of authority, namely, the electorate voting in a referendum instead of the crown in parliament in doing so, a political legitimacy that outranks the political legitimacy of Westminster. This was particularly the case with the European Union Act of 2011, says Ronan MC Carar, As he noted that “The European Union Act 2011 provided that a referendum would have to be held in the event of any further transfer of power from the UK to the European Union” (MC Carar,2016) . The act thus, set the precedent That’s the act of transferring powers from the European Union by the parliament and without taking into consideration the agreement of the people via referendum, would be an illegitimate act (Ringesein, 06).

3.3.2 Marginalizing parliament

During the whole Brexit process, the UK Parliament was transformed from being a decision law-making body to being an observer and a bystander. And this was asserted after its marginalization during the initiation of the withdrawal process.

3.3.2.1 Article 50

The process of triggering of article 50 and the controversy over which institution to trigger it in order to start the withdrawal process from the EU, was one of the main events that happened after the European Union referendum and which contributed in revealing how parliamentary sovereignty was a “hallow word” in the mouth of most of the Brexit proponents.

Article 50 is the treaty provision that controls the UK's exit from the EU, it was first inserted by the Lisbon Treaty amendments in 2009 into the treaty on European Union

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(TEU). The article provides the needed details about how the withdrawal process is to be implemented and also how the negotiations are going to be conducted (Douglas, 1025). Before The Brexit referendum article 50 was less discussed. Yet, during the Brexit process it was a live issue, however, this time the questions are about the role of parliaments in an action that appears to be dominated by the executive.

The government lawyers argued that the royal prerogative should be the one that is responsible for the operation of article 50. Thus, no parliamentary scrutiny is required. This as many considered the use of royal prerogatives to activate article 50 instead of obtaining authorization from parliament is not a valid action. In this concern, the House of Lords constitution has asserted that; it would be constitutionally unacceptable, not to mention setting a disturbing precedent, for the government to act on an advisory referendum without explicit parliamentary approval, particularly one with such significant long term consequences (House of Lords committee, 14).

The Article 50 challenge is fundamentally about how the royal prerogative intended to be involved in the Brexit process. Even if the statutory authority to trigger Article 50 nevertheless plausibly existed, the preference to rely on the prerogative seemed bound to fail after the Supreme Court tried to reaffirm what has stayed from parliamentary sovereignty and dealt a blow to the executive supremacy. Yet, that does not mean that Westminster did not face a challenge, the attempt itself to infringe on what is, supposedly, a task of Parliament indicates the confusion that parliament faced that period.

3.3.2.2 The May Doctrine

The view of Theresa May does reflect the political reality of the post-referendum period, as she claimed that the parliament should never defer to the public opinion, despite the fact that, in principle, neglecting parliamentary majority can always overturn a referendum result. Theresa May made her position very clear during the debate on triggering Article 50 when she claimed that, those people who argue that Article 50 can only be triggered after agreement in both houses of Parliament are not standing up for democracy, they are trying to subvert it They're not trying to get Brexit right, they're trying to kill it by delaying it (Nat le Roux).

Theresa May did not stop at this point, she also went on to elaborate a new Constitutional proposition called “the May doctrine”. The doctrine states that the mandate delivered by the referendum is powerful to the point that parliament, the court and the devolved legislatures, cannot question its results and also those legislative bodies have no legitimate role in initiating its implementations. (Nat le Roux).

Nat le Roux claimed that the May doctrine proposition is very questionable in two respects. First, in its acceptance that the people have delivered their verdict with , in the words of Theresa May, “emphatic clarity” , while in fact the majority in favor of brexit was narrow(51,9%), this the referendum result is a mandate. Second, .the May doctrine implies that a referendum result give the government a Constitutional “trump card” that allows it to override the parliament, which is very novel yet “dangerous” Constitutional doctrine that challenges the doctrine of Parliamentary sovereignty. May was dismissive about the claim that the government should not trigger Article 50 by itself without obtaining the permission

of the parliament. She asserted that these claims were a “tactic to delay Brexit” and subvert democracy (BBC, 14).

3.3.2.3 The Miller case

Many disagreed with Theresa, as they believed that the withdrawal from the EU without parliament’s permission is an unlawful situation, many of the members of the public took legal actions against the government. Miller V secretary of state for exiting the European Union, or as it is known, informally, the Miller case, was heard at the high court, where Miller defended the necessity of Parliament’s approval for the application of Article 50. Miller’s argument was based on the fact that restoring parliamentary sovereignty which was undermined by the EU should only be the responsibility of the parliament to take his power back (Supreme Court, 2016. 19).

However, the government disagreed with his claims and defended the government choice by the fact that when the UK leaves the EU the EEC Act would simply cease to apply thus, former treaties would not exist. Furthermore the government claimed that the royal prerogative may override Parliamentary sovereignty, since brexit is an exceptional event, in which the royal prerogative may take decisions without the parliament in such events (Maguire, 31).

After weeks of debate on this issue, the high court delivered its verdict on 3 November 2016 in favour of Miller. The decision stated that the government had to obtain parliamentary permission to trigger Article 50. The government was not happy with the high court decision and decided to appeal to the Supreme Court. Ultimately the Supreme Court

dismissed the government's appeal citing the same reason as the high court which is basically, parliamentary sovereignty (Maguire, 31).

The Miller case is a great example of how the government resisted and tried to undermine the legitimacy of Parliament to the point that so many Brexiters went to consider the high court and the Supreme Court decisions as declaring war on British Democracy.

3.4 Competing legitimacies

The EU referendum has created the difficult political situation, which is the problem of two different sources of legitimacy in a country that is supposedly a parliamentary democracy. As Nat le Roux As mentioned that "Referendums are potentially this stabilizing because they generate alternative, competing sources of democratic legitimacy". The EU referendum created the debates above the democratic legitimacy that is responsible or should trump the other in the case of majority of public voting on the opposite view that the parliaments hold. Despite the fact that in Britain the governing norm of the constitution holds that parliamentary majority can always overturn a referendum results. Yet, in reality or at least in the particular circumstances of the EU referendum, this is less clear. Especially after the government declared that the result of the referendum will be implemented whatever the result is (Nat le Roux).

With that being said, it can be argued that a new constitutional principle was that contradicts the core principle of Parliamentary sovereignty, at least in some specific cases, which is popular sovereignty.

3.4.1 Popular sovereignty

One of the consequences of the EU referendum is the introduction of an aspect of popular sovereignty to the British constitution, the thing that creates a paradox with another fundamental Constitutional principle of parliamentary democracy. Vernor Bogdanor, a prominent Constitutional law professor mentioned that: “parliamentary sovereignty in the UK is like the proverbial Cheshire cat, all gone but for the grin” (Bogdanor, 07).

Popular sovereignty was unexpectedly endorsed by ministers and even politicians. David Cameron, prime Minister, was one of the main figures who endorsed this inferior principle to the British constitution. In a speech to the House of Commons, he declared that:

Last week was one of the biggest democratic exercises in our history with over 33 million people from England, Scotland, Wales Northern Ireland and Gibraltar, all having their say Although leaving the EU was not the path I recommend, I’m the first to praise our incredible strength as a country”. (Cameron statement on the result of the EU referendum, 2016).

To put this simply, popular sovereignty provides the people with the ultimate power to make changes and decisions that may affect the constitution. And in such system that is based on ultimate popular sovereignty, the judicial branch has the right to strike down a law. In addition to that, the people or voters are freed from the restraints that representative democracy system puts on them.

The whole situation was an irony, says Juliette Biardeaud, when obliging the parliament to ignore its own will in the name of Parliamentary sovereignty. Indeed, both

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houses of Westminster, the House of Lords and the House of Commons, appeared to be in favor of remaining in the EU. Yet, it was reported by the financial think tank OMFIF, that 70% of MPs were against Brexit, with only 20% in favor and 10% unknown (07).

To sum up, the referendum's major point was to restore the lost parliamentary sovereignty which was stolen by the EU; the UK parliament has appeared as a curious bystander during the whole Brexit process. According to Lord Butter, a former cabinet secretary; "any push for a re-run attempt to stop the withdrawal would trigger major political crises, but it was paradoxical to prevent parliament acting as it sees fit". There are so many scholars who argued that, the parliament should have done what it sees good for the country since MPs are representatives and not delegates in the sense that, they exercise their judgment according to the interests of the country and not simply to abide the popular will (Biardeaud, 06).

3.5 Conclusion

The irony of using referendum to restore parliamentary sovereignty and the marginalization of parliament during the Brexit process ,as well as, the triggering of article 50, and the debate on which source of power is responsible for initiating the withdrawal. While supposedly, the parliament should be the one taking this step, proves that the doctrine of parliamentary sovereignty, in its traditional form, was under high pressure. Although, in theory, the UK Constitutional law states that parliamentary sovereignty is an untouched doctrine. Yet, in reality, parliamentary sovereignty could not consist as an island, untouched by the radical changes entailed by the United Kingdom's withdrawal from the EU.

General Conclusion

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In the modern day United Kingdom, we can say that the classical accounts given by A.V Dicey about the doctrine of the supremacy of parliament, is somehow out of place. Nevertheless, parliamentary sovereignty is still the general principle of the British constitution, recent circumstances starting from the EU membership to the Human Rights Act until the EU referendum of 2016, prove that this core principle is and was always under pressure.

Taking into consideration the research undertaken and information gathered, it would be appropriate to deduce that the referendum of 2016 is the straw that broke the camel's back. It helps in revealing and regarding the true place of parliamentary sovereignty within the United Kingdom political and constitutional culture. As objections to the UK participation in the European Union integration were often founded on the claim that it presented a threat to parliamentary sovereignty through accepting a legal and institutional order that took precedence over Westminster parliament and the legislation it produced. However, come on do you suffer referendum to restore the parliament's power instead of parliament itself and the events that followed the vote mainly the triggering of article 50 and the initiation of the withdrawal process all are the best evidence of the devaluation of this "basic principle".

The study also concludes that the negotiation process has shaken representative democracy to the core, as the introduction of variants of direct democracy within the framework of representative democracy during the Brexit process, create the clash between the two opposite democracies.

Furthermore, the study concludes that representative democracy and direct should always be, carefully, kept separated from each other, due to the fact that each one of the two opposite democracies has its own political logic and if the two are thoughtfully mixed up, the result would inevitably, be a constitutional mess. And thus requiring another source of legitimacy to intervene and this was the case of during Brexit. As the EU referendum came into conflict with principle of parliamentary sovereignty, thus requiring the high courts of justice to restore the balance.

The combination of popular sovereignty and Parliamentary sovereignty within Britain has, alongside the intensification of populist politics, which became increasingly clear since 2010. With the conservative leadership switching its reaction to Eurosceptic threats. Away from the shift was structural change in British politics situated.

While aiming to strengthen Westminster, through a referendum promise, the conservative party has in fact eroded the very principle of parliamentary sovereignty which they had pinned their hopes on to protect. The breakthrough of populist politics says a great deal about the health of British democracy, rather than being a sign of the revitalization of the relationship between state and citizens, the reactive referendum measures now embodied in English law and British politics are manifestation of its malaise.

Finally, the issue of Parliamentary supremacy being undermined by the use of referendum to decide on brexit has proven to be a worthy of reckoning. In view of the fact that it helps to understand how the brexit referendum increases pressure on unstable points in the traditional constitution, making other outcomes possible. One possible outcome is the emergence of a “populist” democracy which gives the executive greater power relative to

the UK parliament, judiciary and devolved governments. And the institution of referendum might also give a distinctive place within this new populist democracy though the constitutional status of referendums remains very unclear.

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ملخص

كان لقرار إجراء الاستفتاء على عضوية المملكة المتحدة في الاتحاد الأوروبي خلال خروج بريطانيا من الاتحاد الأوروبي، تأثيرًا كبيرًا على العقيدة التقليدية للسيادة البرلمانية. حيث أن اقتراح استعادة المملكة المتحدة للسيطرة من الاتحاد الأوروبي كان غالبًا في سياق مبدأ السيادة البرلمانية. إلا إن المفارقة، كانت أن البرلمان طلب ممارسة الديمقراطية المباشرة، من خلال إجراء استفتاء، من أجل توفير الشرعية اللازمة له لإعادة تأكيد سيادته. تهدف الأطروحة الحالية إلى تحديد عواقب استفتاء الاتحاد الأوروبي لعام 2016 من أجل عضوية المملكة المتحدة في الاتحاد الأوروبي، على العقيدة التقليدية للسيادة البرلمانية. علاوة على ذلك، تتضمن هذه الرسالة جانبًا مفاهيمي لمبدأ السيادة البرلمانية، وشرحًا للدور الذي تلعبه الاستفتاءات في بريطانيا لتزويد القارئ بالخلفية اللازمة لفهم أهمية هذه الدراسة بشكل كامل استنادًا على نظرية داي. تعتمد هذه الأطروحة على تحليل البيانات الهامة للمصادر التي تم جمعها وتوظف المناهج النوعية والتاريخية والتحليلية. تشير النتائج الواردة في هذه الدراسة الشاملة إلى أنه كان هناك تحول في السلطة من البرلمان ذي السيادة إلى السيادة الشعبية والتي، كما تشير الدراسة، نابعة من السياسة الشعبية التي سيطرت على الحياة السياسية في السنوات الأخيرة. خلصت الدراسة إلى أنه من خلال استفتاء الاتحاد الأوروبي، وجدت المملكة المتحدة نفسها مع هيكل دستوري متغير في التطبيق، ولكن مع اعتماد ثابت من الناحية النظرية على المفهوم التقليدي للسيادة البرلمانية.

كلمات مفتاحية: استفتاء - خروج بريطانيا من الاتحاد الأوروبي - سيادة برلمانية - سيادة شعبية - المملكة المتحدة