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## Final thoughts on (a potential) Brexit: Imposing (and accepting) constraints on sovereignty

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# Final thoughts on (a potential) Brexit: Imposing (and accepting) constraints on sovereignty

by Brian Christopher Jones\*

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Justifications for constraints or losses of sovereignty have particular merits, some more defensible than others. In the UK's case, there is little doubt that joining the EU has resulted in at least some loss of sovereignty (despite the fact that Parliament retains the right to repeal the [European Communities Act 1972](#)). Even though the UK knew going in that there were [serious sovereignty implications](#), probably few could have predicted in 1972 that the EU would now resemble such a close political union, [potentially](#) on the verge of incorporating a federalist structure. Nevertheless, Britain has been a willing—if begrudging—member along the way, ratifying [treaties](#) and participating in the European project. And while the Union has certainly been [tested](#) throughout the years, the last decade has brought about its most serious challenges, with the [Greek financial crisis](#), and the recent EU [migrant crisis](#). With these two ordeals straining the functionality of a closer Union, the Tory government led the UK into a referendum on EU membership that has divided their party, and challenged their commitment to the European project. In February Prime Minister Cameron [negotiated a deal](#) he thinks will provide Britain more autonomy and prosperity, but [was generally panned](#) by the news media. While the majority of international leaders have [called on](#) the UK to remain in the EU, one vocal supporter stood out from the pack: Barack Obama.

President Obama [recently visited](#) the UK and forcefully—almost combatively— injected himself into the Brexit debate, thus appeasing the Prime Minister and those associated with the '[Stronger In](#)' campaign. In his remarks, President Obama laid out two primary justifications for limitations of sovereignty: improving economic prosperity and the 'influence' argument (principally focused around the maintenance of peace and security throughout the EU). Many in the British media labelled Obama's intervention a success, with the [Financial Times](#) calling it 'decisive' and 'troublesome' for the leave campaign, while a [Guardian columnist](#) proclaimed that it took 'Barack Obama to crush the Brexit fantasy'. Others were more [sceptical](#). Obama certainly did not quell the main backers of the Leave campaign, Boris Johnson and Michael Gove, who struck back forcefully, accusing Obama of [hypocrisy](#): America, they say, would never accept such constraints...and they may [have a point](#).

When asked during a [press conference](#) with David Cameron about whether the US would allow such sovereignty implications to be imposed on its own state, Obama stated, 'in all sorts of ways, the United States constrains itself in order to bind everyone under a common set of norms and rules that makes everybody more prosperous...That's what we built after World War II. The United States and the UK designed a set of institutions—whether it was the United Nations, or the Bretton Woods structure, IMF, World Bank, NATO, across the board'. Yet none of these institutions limit the US's sovereignty in the manner that the EU does for the UK. The sovereignty implications that Obama cites are primarily *external* constraints; e.g.,

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constraints on what the US can do outside of its borders (although some have significant connections to internal policymaking structures, such as the implementation of climate deals on regulatory policy regarding environmental pollution and waste). Such external constraints do not have a significant impact on the internal political and social order of the American state. The sovereignty constraints that many Brits are worried about, however, are *internal* such constraints: regulations from the EU that have general application to all member states, judgments from the CJEU that supersede judgments from British courts, or, more generally, the lack of democratic procedures and accountability within the EU, which has recently been highlighted by groups such as [DiEM25](#).

If we accept that globalisation pushes international and regional organisations to constrain independent state sovereignty, even if only external sovereignty, then the current situation between Britain and the EU becomes more acceptable. But there must be sufficient standards through which these constraints become acceptable. The main question that we should be focusing on is this: *are such sovereignty constraints adequate and worthwhile replacements for more direct mechanisms of democracy?* Judging from their joint press conference, Mr Cameron and Mr Obama would answer this question in the affirmative. Britain's membership in the EU, they argued, strengthened the national, regional and world economies, and made the European region—and perhaps the world—more secure and peaceful (the PM also made this case in a [recent speech](#)). These are certainly 'worthwhile' goals and they should significantly factor into the EU referendum. But major questions remain as to whether the EU is an 'adequate' replacement for more direct forms of democracy.

One interesting aspect of Britain's EU referendum that Prof Peter Leyland points out in his [updated book](#) on the UK constitution, is how the [European Union Act 2011](#) attempted to solve many of these difficulties as regards further EU economic and political integration. This piece of legislation specifies that if there are any changes to the current EU treaties (including if new EU treaties are implemented), if the UK decides to make the Euro the default currency, or if there is any enhancement in the powers of EU institutions, then in order for the UK to accept them, a national referendum must be held. In many cases this Act constrains UK ministers from supporting EU proposals, as there must be an Act of Parliament passed for them to do so.

The 2011 Act was widely known to be about parliamentary sovereignty, and was supposed to 'bring back' the notion of sovereignty to the UK—but the Act [does not contain](#) a specific sovereignty clause. What's more, if parliamentary sovereignty was supposed to be strengthened through this mechanism, the Act ultimately gives the British people more of a sovereign position than Parliament (although I [have previously argued](#) that parliamentary sovereignty and popular sovereignty are mutually reinforcing). Nevertheless, the 2011 Act has not played much of a part—if any—in the referendum debate to this point. It is almost as if those in the Remain (Stronger In) campaign, which includes the PM and much of the Conservative party that originally passed the measure, have forgotten the statute exists. And of course it is something that the [Vote Leave](#) campaign is unlikely to mention. The potentially unnerving consequences of neither side mentioning the 2011 Act, which severely limits UK governmental and ministerial action as regards the EU, is that it may very well display the impotence of national parliaments within the current EU structure.