

Global Britain Briefing Note

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Britain as an Independent Sovereign State

Is the UK still independent and sovereign? If not, how could she become so?

What is an Independent Sovereign State?

"Independent" and "sovereign" have overlapping but distinct meanings. "Independent" means "not being dependent on" and, by extension, "self-governing". Many countries observe an "Independence Day" to mark the date on which they ceased to be dependent on and governed by a colonial power and became instead independent and self-governing.

A state can be independent and self-governing without its citizens being free. Most of the world's population lives in such states. In the minority of states which are independent and whose citizens are free, a multi-party parliamentary democracy is the rule. To these states, the adjective "sovereign" can be applied.

Sovereignty is the inalienable possession of the individual. Sovereignty flows upwards from the individual to one or several layers of government. Sovereignty is indissociable from democracy, since the only way the individual can exercise his sovereignty is through democracy. Sovereignty is freedom.

The fundamental point about a fully-functioning democracy is this: what the individual can grant through the ballot box he can also take away. It follows that while sovereignty may be temporarily exercised by a government or a parliament, it is not possessed eternally or exclusively by these institutions. Rather, it is held and exercised on trust on behalf of the individuals who collectively make up the people; and that trust is renewed periodically through the ballot box. Sovereignty can be partially and temporarily entrusted to multilateral institutions, but never irrevocably.

Having defined both *independent and sovereign*, the original question: "What is an independent sovereign state?" can now be answered.

An independent sovereign state is a self-governing, fully-functioning parliamentary democracy.

Limits to Independence and Sovereignty

Independence and sovereignty have never been absolute. Individuals and states accept limitations on both. Nation states live in a condition of multi-faceted multi-dimensional interdependence. In recorded history few nations, even the most

powerful, have ever been wholly independent for more than very short periods of time. Interdependence is the natural condition of states.

Interdependence however is not synonymous with dependence. Interdependence is a relationship between juridical equals, between sovereign peoples. Dependence - like subsidiarity - can only exist where one body commands and the other submits, or where the body that commands circumscribes the freedom of action of the inferior.

The Essential Characteristics of the Independent Sovereign State

There are three essential, inescapable characteristics of an independent sovereign state.

The first, as defined above, is that it is a *fully-functioning parliamentary democracy* in which its citizens exercise effective sovereignty through the ballot box.

The second characteristic is the *power to revoke*. This concerns its relationships with other states. All states accept limits on their sovereignty: but an independent sovereign state NEVER accepts such limitations IRREVOCABLY. An independent sovereign state retains AT ALL TIMES the power and the right freely to withdraw consent previously granted. An independent sovereign state can - in all legality - revoke, renounce or re-negotiate treaties freely entered into; and its national parliament cannot bind a successor parliament in respect of those treaties.

The third characteristic is *legal self-sufficiency*: the exclusive power and right to make and interpret law for its citizens. This defines the self-governing nature of the independent sovereign state. Its own legislature has the exclusive right to make the law; and the last word on the interpretation of that law rests exclusively with its own ultimate court of appeal, which is situated on its own territory, staffed with its own nationals, deliberates and delivers judgements in the language of its citizens and arrives at its decisions exclusively by reference to national law and precedent.

Is Britain an Independent Sovereign State?

By virtue of her membership of the European Union ("EU"), Britain is not an independent sovereign state on the three counts defined above: the exercise of citizens' sovereignty through the ballot box, the power to revoke treaties, and legal self-sufficiency.

Parliamentary Democracy — In ever-increasing areas of national life, no vote of MPs in the House of Commons, however overwhelming, can affect, change or block decisions taken by EU bodies, in all of which Britain is in a permanent, small and diminishing minority position.

Even a landslide vote in a British General Election for a party with a radical manifesto would have a minimal impact on decision-making by EU institutions and their implementation in Britain. EU membership disenfranchises the electorate by severely curtailing its ability to express its wishes through the ballot box.

The Power to Revoke — The irrevocability and irreversibility of Community law - the one-way ratchet - are at the heart of the EU.

The concept of *acquis communautaire* is just that: "what has been acquired cannot be taken away". Subsidiarity is expressly not to be allowed to alter one iota of *acquis communautaire*.¹

The move to a Single Currency, with its comprehensive surrender of national economic management to a supra-national body, is *irrevocable*² and *irreversible*.³ Another example is Value Added Tax, which is already largely decided by the EU, not member states. Once VAT is applied to a category of goods or services it cannot be removed. Thus, the power to tax via VAT is irrevocably transferred from member states to the EU. Proposals to transfer from national to EU competence decisions over all other forms of taxation - "tax harmonization" - form part of the official agenda of the Commission and of a number of the member states, notably France. If implemented, they also would be irrevocable.

Under present arrangements, in the most crucial areas of national life, so long as she remains a member of the EU, Britain is powerless to revoke treaties or treaty obligations. She is ceasing to be self-governing.

Legal Self-Sufficiency — The law under which British citizens live in Britain is increasingly made and interpreted by foreigners outside Britain. The ultimate court of appeal for Britons, the European Court of Justice, is situated in a foreign country, Luxembourg. Britain is always, by definition, in a small minority in the European Council, the European Parliament, the European Commission and the European Court of Justice itself. The occasions on which she can legally exercise a veto are few and diminishing. The Westminster Parliament no longer makes the law. The law is made - and interpreted - overseas.

Making Britain an Independent Sovereign State

In theory, Britain could persuade her partners to so reform the Union that each member state regained national parliamentary democracy, the power-to-revoke, and legal self-sufficiency. There is nothing at present to suggest that such a proposal would even be contemplated, let alone adopted. On the contrary, there is abundant evidence that plans to further reduce member states' independence and sovereignty are well-advanced.

That being so, the only option available to Britain is to repeal the European Communities Act 1972, the legal basis for the supremacy of Community law.

That would invalidate Britain's adherence to the Treaty of Rome and all subsequent EU treaties, and would amount - at the very least - to a wholesale re-negotiation of Britain's relationship with the minority of European states which presently make up the "European Union".

The Exclusive Role of the Westminster Parliament

For British law to return to its pre-1972 status of being self-sufficient and not subject to the decision of any foreign institution, the British Parliament would have to regain its pre-1972 power of having the sole right to legislate for the British people. The ineluctable consequence would be that the European Parliament, in so far as Britain were concerned, would become redundant. Britain would no longer send MEPs to that Parliament.

Similarly, in so far as Britain were concerned, any legislation or regulation promulgated by the European Commission, the Council of Ministers or any other EU body would be void and inapplicable. The European Court of Justice would no longer have any status or rights or duties in respect of British law and British citizens. The House of Lords would once again become, for British citizens, the ultimate court of appeal.

British participation in the workings of the Commission, the Council and the other EU institutions would either cease altogether or become merely "consultative".

Conclusion

This paper is not concerned with the economic or geo-political arguments for Britain's staying in or withdrawing from the EU, or the alternatives to EU membership. Its aim is to set out the institutional and constitutional changes which would have to take place for Britain to become once again an independent sovereign state.

An independent sovereign state is the only structure which allows its citizens to enjoy the indissociable benefits of sovereignty, democracy and freedom. Neither the present-day EU, nor the evolving more "integrated" federalist version, offers such benefits. The conclusion is inescapable. Membership of the European Union is incompatible with being an independent sovereign state.

NOTES:

1 Consolidated Treaty on European Union, II Article 5 and Protocol 30(2), (3), and (4).

2 Idem: Article 123(4).

3 Idem: Protocol 24
