

Studies and Comments

Brexit - the 2016 referendum on European Union membership

Professor **Antonio Goucha SOARES**¹

Abstract

This article explores the Brexit referendum, focusing on the political events that led to the vote, namely, the Conservative Party's return to power, David Cameron's attempts to appease the European divide within his party and the role played by the British Parliament in the whole process. It then discusses whether the referendum was the most suitable way to decide on European Union membership, considering the sovereignty of the British Parliament, as well as the contrast between representative democracy and direct democracy.

Keywords: *Brexit; European Union; referendum; representative democracy; United Kingdom.*

JEL Classification: K33

1. Introduction

The relationship between the UK and European integration has been problematic from the beginning. The Hague Congress in 1948 was the first step in the process of an ever closer Union, for it enabled the creation of the Council of Europe in London the following year, yet Winston Churchill, who chaired the Congress, called for the making of a Union between European States in which the United Kingdom should not take part.

Nor, in the 1950s, did the United Kingdom join the European Economic Communities, the initiative that would lead to the Treaties of Rome in 1957. On the contrary, the United Kingdom promoted the European Free Trade Association, whose aim was to counterbalance the Common Market.

It was only after two failed attempts to join the European Communities in the 1960s – the result of President De Gaulle's veto - that the United Kingdom signed the Treaty of Accession in 1972, paving the way for the so-called widening of European integration.

However, the British Parliament's decision to join the European Common Market raised strong domestic controversy. As a result, it was submitted to a first referendum on European membership in 1975. This referendum was called by a Labor government whose leftwing had opposed the accession to the European Communities promoted by a Conservative government. The referendum aimed to appease the distrust towards a large European market among the party's

¹ Antonio Goucha Soares - Jean Monnet Professor of European Law, ISEG – Lisbon School of Economics & Management, Universidade de Lisboa, Portugal, agsoares@iseg.ulisboa.pt.

constituency, especially the working class vote². In addition to the Labor leftwing, the national movements of Scotland and Wales supported the UK's exit from the European Communities. However, in an election with an important turnout rate, two-thirds of voters confirmed European membership (64%).³

The course of the United Kingdom in the European construction has been marked by a clear singularity, which has placed it in frequent contrast with its counterparts, particularly with the Franco-German axis⁴. There are numerous examples of British identity in the integration process, from the so-called British rebate of Mrs. Thatcher, to the rejection of the Charter of Fundamental Social Rights of Workers at the time of the Single European Act, from the refusal of the single currency in Maastricht, to the rejection of the Schengen Agreement in the 1990s and the Fiscal Compact during the euro crisis.

Moreover, throughout the deepening of European integration, the United Kingdom frequently drew red lines against the expansion of European competences, from the so-called social Europe to common taxation, from the Charter of Fundamental Rights to the intergovernmental nature of the Common Foreign and Security Policy. A striking moment in the British perspective was the debate on the future of the Union launched by German Foreign Minister Fischer, proposing a European Constitution and conferring a leading role for the European Parliament. Blair, perhaps the most pro-Europeanist of the heads of government of the United Kingdom, opposed the British vision of a Europe based on the primacy of the Member States, with the upgrading of the European Council to the rank of a separate institution.

In a way, the current European Union embodies the limits of the British consensus in the four decades following the first enlargement. Throughout the various constitutional agreements, the United Kingdom significantly shaped the development of European construction. In some cases, the UK's stubborn position would in time reveal itself a wise one, as indeed happened with the so-called opting-out from the economic and monetary union, a provision that would repair it from the turmoil that hit the eurozone with the 2008 financial crisis.

This article analyzes the Brexit referendum, focusing on the political events that led to the popular vote. It also aims to answer the following question: was the referendum the right way to decide on the exit of the United Kingdom from the European Union, taking into account the principle of the sovereignty of the British Parliament and the model of representative democracy on which the political system rests?

² Evans, G., Carl, N., Dennison, J., *Brexit: The Causes and Consequences of the UK's Decision to Leave the EU*, in M. Castells et al. (ed.), *Europe's Crises*, Cambridge: Polity Press, 2018, p. 386.

³ 17,37 million votes for European membership (67.2%), against 8,47 million votes for leaving the EEC (32.7%).

⁴ Matthijs, M., *Europe after Brexit. A Less Perfect Union*, „Foreign Affairs” 96, n°1 (2017), p. 93.

2. The Treaty of Lisbon

The Treaty of Lisbon, which was supposed to complete the political building of the Union initiated with the Maastricht Treaty, expressly recognized the right of Member States to leave the European Union. The provision of Article 50 of the Treaty on the European Union reproduces the secession clause laid down in the Constitutional Treaty, which was abandoned by the Member States following its rejection in referendums held in two founding countries.

Leaving the European Union was a contentious issue in the European debate. The Treaty of Rome dealt with the accession of new countries to the European Community, but made no reference to the reverse process. The lack of an express provision in the Treaties, coupled with the unique legal nature of the European Communities and the so-called dynamic of integration, made the subject a recurrent motive for academic discussion. The argument against the denunciation of the Treaty of Rome by a Member State – which refused to apply the principles of international law of the Vienna Convention on the basis of the specific nature of the European Communities' legal order – even underlined passages from foundational decisions, such as *Costa v. ENEL*, where the European Court of Justice mentioned that the 'Treaties carry a permanent limitation of the sovereign rights of the Member States'⁵. The underlined passages were, however, somewhat decontextualized.

The right of withdrawal from the European Union was to be enshrined in the Constitutional Treaty, in order to emphasize that the adoption of this new fundamental law of the European Union would not affect the conventional nature of the agreement between the Member States. Thus, it opposed to the idea of popular sovereignty that would stem from a genuine constitutional act. Consequently, with the coming into force of the Lisbon Treaty, Member States were able to exercise the right of withdrawal from the EU, stated by Article 50 of the Treaty on the European Union, as of December 2009.

3. The British Conservative Party

European construction has been a kind of curse for the leaders of the British Conservative Party. Indeed, as a result of the increase in speed of European integration after the fall of the Berlin Wall, the prospect of a single currency and a unified Europe led Margaret Thatcher to resign from her position as Prime minister in 1990. John Major's governments would stumble over a number of obstacles related to the deepening of the European Union, from ratification of the Treaty of Maastricht to the exit from the European monetary system, from the appointment of Delors' successor to the European embargo on British beef, a consequence of the so-called mad cow crisis.

The Conservative Party returned to power in 2010 after a long stint in the desert of the political opposition. The party had long been fragmented on European

⁵ European Court of Justice, *Flaminio Costa v. E.N.E.L.*, Case 6/64, 3 June 1964, p. 614.

policy, with a sharp split between Europhiles and Euro-skeptics. The rise of the United Kingdom Independence Party (UKIP) contributed to deepening this cleavage, insofar as it radicalized the speech of the anti-European wing among Conservative MPs. Moreover, the first Cameron cabinet, in coalition with the Liberal Democratic Party, had to face the financial crisis that hit the European countries.

Despite ruling in coalition with a pro-European party, Cameron had to make concessions to the sovereign claims from parts of his parliamentary bench. As a result, in 2011 the British Parliament approved the so-called *European Union Act*, which imposed calling a referendum whenever the transfer of new powers to the European Union was at stake. In particular, it would be necessary to confirm by referendum decisions on joining the so-called enhanced cooperation, the exercise of opt-outs within the area of freedom, security and justice, or the adoption of procedures for the simplified revision of the Treaties, introduced by the Lisbon Treaty.

The sovereignty clause that the *European Union Act* was supposed to embody would not, however, prevent the anti-European upheaval among the backbenchers of the Conservative Party. This group, which opposed the country's membership of the European Union, wanted to hold a referendum on the subject, a demand that Prime Minister Cameron could not even consider, since he led a coalition Cabinet in alliance with a pro-European party⁶.

However, poor management of the euro crisis by the European Union and the UKIP's rise in the British political arena, which threatened to conquer a few conservative strongholds, led Cameron to change his strategy regarding the demands of the radical wing of the Party. Thus, in a famous Bloomberg speech in 2013, Cameron promised to call a referendum on the European Union membership if the Conservative Party reached an outright majority in the next legislative elections. Such a situation seemed unlikely according to polls, which showed strong opposition to the austerity policies followed by the Cabinet at the time. In addition, a referendum on remaining in the Union in case of an outright majority would be preceded by a new agreement between the UK and the EU on their future relationship⁷.

It should be recalled that in the recent political life of the United Kingdom referendums have been used to decide on key constitutional issues. Indeed, since Tony Blair's premiership, referendums have been considered a political tool that would add greater legitimacy to the settlement of constitutional debates⁸. Several matters have been submitted to the citizens' vote, in particular the devolution of powers to the different nations of the UK, the creation of local parliaments endowed with legislative powers and the granting of tax powers. Moreover, the famous majority voting system, considered by many as a buffer to plural representation in the British Parliament, was subject to popular decision in 2011, which refused its amendment towards a more proportional basis.

⁶ Craig, P., *Brexit: What Next? Brexit: A Drama in Six Acts*, „European Law Review” 41, (2016), p. 448.

⁷ *Idem*, p. 449.

⁸ Evans, G., Carl, N., Dennison, J., *op. cit.*, 2018, p. 387.

A major case in the use of popular vote to decide on key political issues was the referendum on the independence of Scotland in 2014. Indeed, the recognition of the Scots' right to self-determination by the United Kingdom is a further example of the uniqueness of British democracy when compared to other multinational countries of the European Union, namely those who deny their citizens the fundamental right to determine their political status.⁹

4. The 2015 legislative elections

During the campaign for the 2015 legislative elections, the Conservative Party restated in its electoral manifesto the promise made by Cameron to call a referendum on European Union membership, in case of an outright majority of seats in Parliament¹⁰. Not only did Cameron take up the promise announced in the Bloomberg speech, but above all, he sought to stop the UKIP's growth, which had already won a disturbing advantage in the 2014 European Parliament elections. As the UKIP was a single issue party, focusing exclusively on leaving the European Union, the holding of a popular vote on the subject was seen as a political move to reverse the ascendance of the party in national politics, while at the same time easing the rift over the European issue within the Conservative Party.

Thus, unlike the 1975 referendum, which sought to resolve the European issue within the Labor Party and its social base of vote, the second European referendum was a result of the Conservative Party's increasing unease about the European Union, particularly within the Members of Parliament. It was also an attempt to staunch the electoral threat posed by the UKIP.

Against all expectations, Cameron won the 2015 legislative elections, with an outright majority of 331 Members of Parliament (out of 650 MPs). UKIP came in third place in percentage terms, far exceeding the votes obtained by the outgoing coalition partner, the Liberal Democratic Party.¹¹

After the elections and forming the single party Cabinet, under growing pressure from its party's Eurosceptic wing, Cameron submitted to Parliament a bill to call a referendum on the country's membership of the European Union. The so-

⁹ The right to self-determination was enshrined as a fundamental right by the 1966 International Covenants on Human Rights adopted within the framework of the United Nations, treaties with binding force. Despite the so-called cold war on human rights arising from the division between civil and political rights on one hand and economic, social and cultural rights on the other, self-determination spearheaded both human rights treaties in similar words: '*All peoples have the right of self-determination. By virtue of that right they freely determine their political status*'.

¹⁰ Wingfield, D., *The Brexit Case: Does the Constitution have a place for democracy?*, „University of Queensland Law Journal”, 35, n°2 (2016), p. 343.

¹¹ In the 2015 legislative elections the Conservative Party reached 36.9%, electing 331 MPs; followed by the Labor Party with 30.4% votes, and 232 MPs; the UKIP came third, with 12.6% votes, but only elected one MP. In contrast, the Scottish Nationalist Party elected 56 MPs, with only 4.7% votes. The liberal democrats were reduced to 8 MPs, despite obtaining 7.9% votes. Two thirds of the citizens registered (66.4%) voted in the elections. Cfr: <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/uk-general-elections/2015-uk-general-election-results>, consulted on 1.10.2019.

called *European Union Referendum Act 2015* was approved by the House of Commons by a large majority, fixing a popular vote to take place by the end of 2017. The question on the paper would be simple and clear: *should the UK remain a member of the European Union or leave the European Union?* The *Referendum Act* did not mention the binding nature of the popular vote – in line with the principle of parliamentary sovereignty – even though the Government reaffirmed its commitment to respecting the outcome of the voters' decision¹².

As noted by the Supreme Court, in the United Kingdom a referendum is not legally binding due to the sovereignty of the British Parliament. This does not, however, preclude recognizing unquestionable political force of the referendum outcome as a deliberative expression of public opinion.¹³ Thus, although the results of a referendum are only consultative, according to constitutional law the British political system acknowledges the political will expressed by voters.

The prospect of a referendum on the European Union membership led Prime Minister Cameron to enter into negotiations with Brussels with a view to obtaining concessions, which would reinforce the uniqueness of its Member State's status. Following a letter sent in November 2015, the European Council sealed an agreement in February 2016 on four key points raised in the letter. The agreement, named 'Decision on a new framework for the United Kingdom in the European Union', was intended to be used on the interpretation of the Treaties.¹⁴ The Decision would come into force from the date on which the United Kingdom communicated to the Council that it had decided to remain a member of the European Union.

The most important aspects of the European Council Decision on the new framework of the United Kingdom in the European Union concerned issues of sovereignty and the relationship between social benefits and free movement of persons. With regard to sovereignty, the Decision acknowledged that the United Kingdom was not required to further integrate into the Union, and this should be safeguarded in future revision of the Treaties. In particular, the idea of 'an ever closer union between the peoples of Europe', the founding motto of European construction, later to become part of the Treaty on the European Union, would not apply to the United Kingdom and could not serve as a legal basis on which to enlarge the scope of application of the Treaties or even to justify a broad interpretation of the Union's competences. The Decision also emphasized the role of national parliaments in the application of the principle of subsidiarity and reaffirmed the exclusive competence of the Member States in the area of national security, which the Union could not ignore.¹⁵

With regard to social benefits and free movement of persons, the European Council Decision was intended to meet the UK's concerns over an increase in

¹² Wingfield, D., *op. cit.*, 2016, p. 343.

¹³ United Kingdom Supreme Court, Judgment *R (Miller) v. Secretary of State for Exiting the European Union*, [2017] UKSC 5, 24 January 2017, § 124-5.

¹⁴ European Council meeting (18 and 19 February 2016) – *Conclusions*. <https://www.consilium.europa.eu/media/21787/0216-euco-conclusions.pdf>, consulted on 1.10.2019.

¹⁵ *Idem*, pp. 16-18.

immigration following the EU enlargement to Eastern European countries as well as the wider scope of British social security rules, with the abuse of rights through the so-called social benefit tourism. As is well known, migration has been the most sensitive issue for European public opinion over the last decade. Moreover, the United Kingdom was the country with the largest number of citizens from Eastern Europe, due to the fact that Prime Minister Blair did not use the seven-year transitional period regarding free movement of persons in the aftermath of the 2004 enlargement¹⁶. Migration pressure was therefore the central issue in the European Union debate.

The Decision on the new framework of the United Kingdom in the European Union provided that, given the differences in social protection between Member States, national authorities should be able to define the conditions of access to social benefits. The Decision thus made it possible to limit access to non-contributory work-related benefits for EU workers who were newcomers for up to four years. This move was seen as an 'emergency brake' for the British Government to cope with the increase in migratory flows. Similarly, in the case of family allowances for migrants whose children remained in the country of origin, the Decision authorized indexing the amount of the allowance to the living conditions of the country. The Decision further recognized that the United Kingdom was able to refuse to grant social benefits to persons exercising the right of free movement solely for the purpose of obtaining social assistance, the so-called social benefit tourism.¹⁷ The European Court of Justice took the same position.

The Decision recalled that the United Kingdom had decided not to participate in the euro area, keeping the pound sterling as its currency; not to participate in the Schengen area, instead maintaining control of persons at their borders; not to participate in most acts relating to police and judicial cooperation in criminal matters; and not allow the Court of Justice or the national courts to rule on the compatibility of national law with the Charter of Fundamental Rights of the European Union. Finally, the Decision added that if the outcome of the referendum were to determine the United Kingdom's withdrawal from the European Union, the legal instruments mentioned there would no longer exist.¹⁸

The date of the referendum on the European Union was presented after the announcement of the European Council Decision on the new framework of relations with the United Kingdom. David Cameron believed that the concessions obtained in the negotiations with Brussels would be enough to appease the incendiary moods within his party, claiming the European Council Decision as a reform of the UK's relationship with the European Union, for it addressed the main issues raised by Euro skeptics: sovereignty; immigration; social benefits; and the status of the London financial center.

¹⁶ Evans, G., Carl, N., Dennison, J., *op. cit.*, 2018, p. 388.

¹⁷ European Council meeting (18 and 19 February 2016) – *Conclusions*, pp. 19-22, <https://www.consilium.europa.eu/media/21787/02-16-euco-conclusions.pdf>, consulted on 1.10.2019.

¹⁸ *Idem*, p. 3.

5. The electoral campaign

The vote on the European Union membership was scheduled for June 2016. Traditional opposition parties such as Labor, Liberal Democrats or the Scottish National Party stated their intention to campaign for the country's continued membership in the European Union.

David Cameron – who considered the vote to remain in the Union as a major decision in the life of the British people – received support from closer sectors from his party, but soon realized that the European divide would continue even after the announced new relationship with the EU, and that Conservatives MPs would appear divided in the campaign for the referendum. Indeed, Justice Minister Michael Gove announced that he would campaign for Brexit, leading a group of six Cabinet members whose position differed from that of the Prime Minister. Similarly, the former Mayor of London, Boris Johnson, would take the leaving side, intensifying his rivalry with the party leader. For her part, Interior Minister Theresa May gave unenthusiastic support to stay in the Union, which she advocated only for reasons of strict national interest, such as protection against terrorism, trade with Europe and access to world markets, while considering that the Union would be far from perfect.¹⁹

During the months that preceded the referendum the political debate was led by Brexit supporters. Indeed, the focus of the discussion was always more concentrated on the subjects raised by Brexit supporters than on the pro-European side arguments. The latter group's approach vacillated between a campaign that was not so emphatically in favor of remaining – in fact, British parties have never been convicted Europeanists, in the continental use of the word – and a questionable strategy that called for the remain vote to be presented in a negative way, evoking the dangers that the British economy would face if the electorate favored Brexit.

Such an approach seems to have ignored the fact that English people have never been conditioned by fear during the most delicate moments of their history²⁰. This was blended with the rejection of institutions that supported such an understanding during the campaign: large financial traders in London, the Confederation of British industry, the big banks, the IMF, or the OECD. In a world that shows a growing fracture between skilled citizens – beneficiaries of globalization and other trade arrangements such as European integration – and people who have been left behind in the economic and technological changes over the last decades²¹, the latter's alignment with the remaining side fueled the argument of fear and became an element that increased the feeling of rejection that the disadvantaged social layers nourished against the ruling classes.

¹⁹ "EU referendum: Cameron sets June date for UK vote", *BBC News*, 20 February 2016, <https://www.bbc.com/news/uk-politics-35621079>, consulted on 1.10.2019.

²⁰ Craig, P., *op. cit.*, 2016, p. 448.

²⁰ *Idem*, p. 454.

²¹ Evans, G., Carl, N., Dennison, J., *op. cit.*, 2018, p. 391.

In the wake of the biggest crisis of European integration, which was triggered by the euro crisis and perpetuated by the refugee crisis, the British referendum campaign could have been an opportunity for remainers to have highlighted the different approach the country had taken throughout the deepening of the European Union. As is well known, even though isolated from their European partners, the British did not compromise with the creation of the monetary union. Although the decision would long be referred to as an English eccentricity, the euro crisis proved it to have been a wise political decision. Similarly, the refusal to participate in the Schengen area, with the abolition of cross border controls for free movement of people, left the UK in a less vulnerable situation than other Member States in response to the massive migratory flows of the 2015 refugee crisis.

Indeed, the United Kingdom was less exposed to the profound crisis of the Union than the other European powers. The European Council Decision on the new framework of the United Kingdom in the European Union emphasized not only this British uniqueness, but also acknowledged new safeguards in order to exempt the country from the never-ending EU search for more integration. Surprisingly, the British Government failed to take advantage of the special status obtained within the Union or the concessions drawn from the European Union with a view to the referendum.

For its part, the Brexit campaign spared no effort to convince the British electorate. In addition to the hot topics of migration – not even distinguishing between European citizens and third-country nationals – recovery of national sovereignty (*take back control!*), the economic and financial constraints arising from integration, and riding the wave of popular discontent with the ruling classes, the Brexit propaganda did not refrain from using shocking arguments. The icon of the campaign was Boris Johnson's bus that traveled the country announcing that the break with the European Union would enable the UK to save hundreds of millions of pounds a week, corresponding to the cost of a new hospital.

During the referendum campaign, polls showed close results between sides, with a slight advantage for the voters' preference for remaining in the European Union. In the days leading up to the vote, however, forecasts saw a rise in the Brexit vote. The polls also suggested a high turnout rate in the referendum.²²

6. The European referendum

The results of the referendum proved contrary to the expectations of most British observers, European public opinion and EU institutions, who hoped that in the end the voters' common sense would prevail. Moreover, they went against the indications taken from the exit polls on voting day and the forecasts made on the basis of the first results obtained in the vote-counting. The final count of the referendum showed that the majority of the citizens voted for leaving the Union. In fact, withdrawal from the EU obtained 17.41 million votes (51.9%), against 16.14

²² "EU referendum poll tracker", *BBC News*, 22 June 2018, <https://www.bbc.com/news/uk-politics-eu-referendum-36271589>, consulted on 1.10.2019.

million votes (48.1%) for remaining in Europe.²³ A difference of 1.27 million voters decided the race in favor of Brexit.

Compared with the 1975 referendum, which confirmed the accession of the United Kingdom to the European Community, the number of votes in favor of the Union was similar; the pro-European front at that time obtained 17.37 million votes (67.2%). However, the exit side soared from 8.47 million votes in the first referendum to a total of 17.41 million preferences in 2016. That is, after four decades, the European Union was rejected by twice as many British voters when compared with accession time. Notwithstanding this difference, that there were major changes between the Common Market in the 1970s and the current European Union should not be forgotten.

The turnout rate in the 2016 referendum on the European Union was high, reaching 72 percent of the 46.5 million registered citizens. In fact, turnout in UK parliamentary elections has steadily increased since 2001, when it stood at 59.4% of voters. However, in the next four parliamentary elections, turnout ranged from 61.4% in 2005 to 68.7% in 2017. Hence, turnout in the referendum on the European Union attained the highest rate since 1992, when it stood at 77.7%.²⁴

The high turnout rate in the 2016 referendum wiped out arguments against the referendum that were based on claims that people's lack of motivation to go to the polling station invalidates the popular vote. Considering that the abstention rate was higher in the young electorate, which is more open to Europe, remainers first tried to devalue the significance of the European referendum, on the basis of the smaller turnout by the youth. However, there are strong arguments to dismiss such objections. First, the subject had featured prominently in British politics in the previous years. Second, the political debate on Brexit during the election campaign was lively, and finally, the turnout rate was the highest for the last twenty years.

7. The transformation of the European Union

Given the magnitude of the vote, it is interesting to look for reasons that help to understand the British electoral behavior, other than the traditional issues arising from domestic debate concerning immigration, sovereignty and the financial costs of integration, all of which are mainly consequences of the United Kingdom's participation in the EU²⁵. Indeed, it can be argued that the voters' decision also incorporates an assessment of the European Union's performance. That is to say, in addition to considering that European integration allows more migrants to enter the job market, deprives the country of parts of its sovereignty and carries a burden on the national coffers insofar as the United Kingdom is a net EU payer, the British

²³ Electoral Commission, *EU referendum results*, <https://www.electoralcommission.org.uk/find-information-by-subject/elections-and-referendums/past-elections-and-referendums/eu-referendum/electorate-and-count-information>, consulted on 1.10.2019.

²⁴ "General election turnout 1945 – 2017", *UK Political Info*, <http://www.ukpolitical.info/Turnout45.htm>, consulted on 1.10.2019.

²⁵ Evans, G., Carl, N., Dennison, J., *op. cit.*, 2018, p. 383.

citizens' vote in the referendum still held a judgment on the direction of European integration.

The EU's recent past can shed light on the matter. Going back to the beginning of the decade, the Union was threatened by Greece's insolvency in 2010. After great European hesitations and under strong US pressure, the Union moved towards the Greek financial rescue. In fact, it took two financial bailouts, accompanied by relentless adjustment programs which plunged the country into a deep depression. However, the Greek sovereign debt crisis spread within the eurozone, with Ireland also being rescued at the end of the year.

In 2011, the sovereign debt crisis threatened the survival of the euro. The events followed a snowball course: Portugal asked for international financial aid, in exchange for a draconian adjustment program. Spain negotiated a mild rescue for the banking sector. At the end of the year, the euro hurricane caused damage in the political arena, with the European Union favoring replacing the elected prime ministers of Greece and Italy by technocrats. In the case of Greece, it was a response to Papandreou's daring to propose a referendum on the financial adjustment program.²⁶

In 2012 under pressure from Germany, the EU nations signed the famous Fiscal Treaty. The UK refusal to accept further assignments of sovereignty led to the agreement being concluded outside the Union's legal framework by the other Member States. It should be recalled that, under the abovementioned 2011 *European Union Act*, the United Kingdom would be required to call a referendum should it join the Treaty. However, due to an initiative of the President of the European Central Bank, in the summer of 2012, the euro crisis finally found a period of decompression.

This did not prevent 2013 from starting with a rush against Cyprus' savers, instigated by the Eurogroup. Following the contagion of the Greek debt crisis to the Cypriot banks, which had purchased large amounts of sovereign bonds, capital controls were reset and banks closed. The unusual decision to make clients bear the losses of banks, which was contrary to the existent rules, damaged depositors' trust, for they felt themselves to be the victims of a confiscation of their savings.²⁷

Unsurprisingly, the 2014 European elections would cause shock waves in the EU political arena due to the victory achieved by radical parties in the United Kingdom and France. Although elections to the European Parliament are held as second-order elections because citizens' choice is devoid of consequence, in 2014 this was clearly not the case. In fact, the 2014 elections allowed Mr. Juncker to be elected President of the Commission by the European Parliament – as announced during the election campaign – following a standoff with the Member States and should therefore not be seen as secondary elections. Thus, the spread of anti-European parties in the European Parliament elections constituted a serious warning about the growing misalignment of citizens towards European integration.

²⁶ "Greek PM Papandreou 'ready to drop' bailout referendum", *BBC News*, 3 November 2011, <https://www.bbc.com/news/world-15575198>, consulted on 1.10.2019.

²⁷ *Cyprus crisis: What are capital controls and why does it need them?* *BBC News*, 27 March 2013, <https://www.bbc.com/news/business-21937615>, consulted on 1.10.2019.

The year 2015 may well prove to have been the most lugubrious year in the history of the European Union. The worsening of the conflict between Greece and the eurozone authorities following the election of the first Tsipras Government ended in an open conflict with the Greek government calling a referendum on the adjustment sought by Brussels. The European institutions counteracted with a set of measures that led to the closure of banks in Greece. However, this situation did not prevent the existence of a clear majority of votes against more austerity. The decision by Greek voters ignited the ire of Germany, which wanted to expel Greece from the monetary union. French mediation enabled a compromise, with Greece maintaining the euro in return for the capitulation of the Hellenic Government²⁸.

Germany's activism in the punishment of Greece raised global indignation. In order to mitigate the negative impact on the country's external image, Chancellor Merkel unilaterally reversed the policy concerning the victims of the civil war in Syria²⁹. This situation caused a massive influx of refugees to the borders of south-east Europe, with clear consequences for the proliferation of nationalism and xenophobia, and paving the way for the growth of populist movements.

Indeed, in the five-year period preceding the British referendum, a number of situations occurring within the European Union had a strong impact on the process of European integration. Managing the euro crisis, as the main disruptive element, led to a series of intrusions by the European institutions on the governance of the affected countries, which ran contrary to the values of the European Union, first and foremost with regard to human rights, but also with regard to equality between Member States and the rule of law³⁰. In the same way, the pursuit of the main purposes of European integration, such as the well-being of peoples, was sacrificed to the detriment of policies intended to punish the nations hit by the sovereign debt crisis.

Thus, the European Union was deeply shaken by the euro crisis not only because of the giddiness of events, with the repeated risk of single currency implosion, but also because of the approach taken by some Member States to overcome the crisis, with the consent of European institutions³¹. In the aftermath of the crisis it would be difficult to recall the generosity of the European project with the ideal of a Union of fraternal countries or to believe in prosperity as the Union's purpose. The euro crisis changed the nature of the European Union, created rifts between different types of nations. It forged new power relations between countries and in their interaction with the European institutions. The long series of conflicts during the euro crisis depleted the genuineness of the European idea which the Union was still carrying.

²⁸ Offe, C., *Narratives of Responsibility: German Politics in the Greek Debt Crisis*, in M. Castells et al. (ed.), *Europe's Crises*, Cambridge: Polity Press, 2018, p. 276.

²⁹ Streeck, W., *Estruturas em Colapso: Reflexões sobre a Saída Britânica*, in W. Streeck and A. Vradis (ed.), *A Crise BREXIT*, Castro Verde: Narrativa, 2018, p. 72.

³⁰ Offe, C., *op. cit.*, 2018, p. 279-80.

³¹ Castells, M., *Achilles' Heel: Europe's Ambivalent Identity*, in M. Castells et al., *Europe's Crises*, Cambridge: Polity Press, 2018, p. 188.

When called upon to decide whether to remain in the European Union, British citizens may have remembered the sequence of disastrous events of the euro crisis in the years leading up to the referendum³². Beyond the problems that EU membership generated inside the country – in terms of migration, restrictions of sovereignty or financial constraints – it was the very image of the European Union that had deteriorated. It is true that the British, because they were outside the monetary union, saw the management of the euro crisis with greater distance. Nevertheless, this would not have prevented them from observing the different political overlaps that had taken place during that period, as well as noting that most countries affected by the crisis formed a kind of EU peripheral belt that shared a sort of historical link with the United Kingdom: as older territories or former colonies, as remote protectorates or nations liberated by the bravery of British troops.

The European Union's intransigence in handling the outcome of the British referendum is all the more significant because the EU itself refuses to acknowledge the transformation of European integration due to the euro crisis. The main reason for European institutions' difficulty in internalizing the transfiguration is that the Union has followed a narrative of the euro crisis that diverges from the current perception of the events outside the eurozone. Indeed, from the United States³³ to England³⁴, from Scotland³⁵ to Australia³⁶, numerous interpretations of the euro crisis pointed to the structural weaknesses of the monetary union as a key factor in the spiral of disruptions that hit the Eurozone.

However, the European institutions accommodated their interpretation of the euro crisis to Germany's narrative, which pointed to the lax attitude of southern countries as the main cause of events, blaming irresponsible fiscal policies that violated the rules of the Stability Pact in the first decade of monetary union³⁷. According to the narrative followed by the European Union, when the global financial crisis was felt in Europe, the governments of the affected nations faced growing difficulties in obtaining access to markets for their sovereign debt, resulting in the need to ask for international financial assistance.

8. The Referendum and representative democracy

The holding of the 2016 referendum on the European Union membership was subject to strong criticism directed at its very own political nature. The core of such objections was the inadequacy of popular vote to decide on an issue with the relevance of the European Union, given the complexity of the issues involved with membership and the technical nature of main challenges posed by European

³² Varoufakis, Y., *Comportem-se como Adultos*, Barcelona: Marcador, 2017, p. 11.

³³ Feldstein, M., *The Failure of the Euro*, „Foreign Affairs” 91, n°1 (2012), p. 115.

³⁴ Ash, T. G., *The Crisis of Europe*, „Foreign Affairs” 91, n°5 (2012), p. 4.

³⁵ Blyth, M., *Austeridade. A História de uma Ideia Perigosa*. Lisboa: Quetzal, 2013, p. 104.

³⁶ Mitchell, W., *Eurozone Dystopia. Groupthinking and Denial on a Grand Scale*. Cheltenham: Elgar, 2015, p. 79.

³⁷ Stiglitz, J. E., *O Euro. Como uma Moeda Única Ameaça o Futuro da Europa*. Lisboa: Bertrand Editora, 2016, p. 42.

integration. Thus, deliberation on the issue should be made in the right sphere of the political life of each nation – national parliaments – in order to preclude political pressure from populist movements and the rhetoric of demagogues.

The main criticisms to the referendum on the European Union membership focused on the risks that this initiative entailed for the role of political institutions within the framework of representative democracy. The referendum, as a paradigmatic expression of direct democracy, would be a subversion of the constitutional basis on which British democracy itself rests, a forerunner of the model of democracy widely adopted in Western countries. A decision on the withdrawal from the European Union by popular vote would constitute a departure from the fundamental principle of representative democracy, by circumventing the supremacy of the British Parliament.

In an alternative view, Bogdanor points out that one of the limits of the doctrine of parliamentary sovereignty lies in the fact that the quintessence of some political decisions requests a type of legitimation that goes beyond the decision taken by the representatives of the nation³⁸. In fact, citizens delegate through their vote the authority for Members of Parliament to pass laws, as well as to oversee the performance of the executive branch. However, Members of Parliament cannot transfer the legislative power entrusted to them to other bodies, even partially.

As a result, a decision on the transfer of powers and competences that belong to Parliament – to the supranational level or at the subnational level – should be confirmed by the authority on whose behalf the power is exercised, given that parliaments have a power delegated by citizens which cannot be transferred to any other entity. Such transfer of powers would always have to be submitted to the consent of the original holder by means of a referendum³⁹.

This principle, which the author traces back to John Locke,⁴⁰ justifies the reasons why the British Parliament rejected any initiative that challenged the popular decision expressed in both European referendums, although the results were not legally binding. In the case of the 2016 referendum, at the time of the popular vote there was a majority of members in parliament who favored the UK to remain in the Union. Thus, in hypothetical terms, they could even have reversed the popular decision⁴¹.

However, Parliament refused to make use of any kind of legal device that could prevent the meaning of the popular decision, avoiding the risk of a constitutional crisis that would affect the legitimacy of institutions, given the contrast between direct democracy and representative democracy⁴². In the same vein David Cameron, who was responsible for holding the referendum, decided to resign from

³⁸ Bogdanor, V., *Brexit, the Constitution and the Alternatives*, „King’s Law Journal” 27, n°3 (2016), p. 314.

³⁹ *Idem*, p. 315.

⁴⁰ Locke, J., *Second Treatise of Government*, in Locke, J., *Two Treatises of Government*, CUP, Cambridge, 1960, §141.

⁴¹ Bogdanor, V., *op. cit.*, 2016, p. 314.

⁴² Gordon, M., *The UK’s Sovereignty Situation: Brexit, Bewilderment and Beyond...*, „King’s Law Journal” 27, n°3 (2016), p. 339.

office because the majority of the people voted against his political guidance, effectively constituting an indirect motion of censure⁴³. The non-written constitution of the United Kingdom would thus face the emergence of a new principle of popular sovereignty which, in certain circumstances, would supersede the principle of Parliament's sovereignty.

As an alternative to the eventual subversion of the principle of Parliament's supremacy by popular sovereignty, at a constitutional level, Bogdanor admits that the recent practice of British political life would have led to the emergence of a third type of parliamentary chamber, set up by the use of referendum. In certain cases, this chamber would be able to guide the political of the existing chambers⁴⁴.

In a more traditional approach, Gordon recalls that Parliament was involved in the entire political process of Brexit, right from the approval of the *European Union Referendum Act 2015*, which allowed for a referendum on the EU membership. Thus, the British Parliament intended to give back to the people the decision of choosing between the country's remaining in the European Union, or the exit. Therefore, the decision to convene a referendum on this subject should not be understood as a repeal of parliamentary sovereignty, but rather as a demonstration of its supreme legislative power⁴⁵.

9. Conclusion

The process leading up to the UK referendum on Brexit in 2016 began five years earlier with Parliament's adoption of a law requiring some political decisions on UK participation in the European Union to be submitted to a citizens' vote. The Conservative Party manifesto for the House of Commons elections in 2015 reiterated the Prime Minister's promise to hold a referendum on the country's remaining in the European Union in case of an outright majority. At the beginning of the parliamentary mandate, the House of Commons voted for a referendum on the UK's decision on EU membership.

The question of who should decide on the withdrawal of a Member State from the European Union is processed in accordance with the constitutional law of each nation. In the case of the United Kingdom, constitutional law was understood to give citizens a fundamental choice for the future of the country, given the deep links created with the European Union for more than four decades. That the choice was sponsored by Parliament suggests that the decision to hold the referendum will not damage the foundations of representative democracy on which the British constitutional system is based⁴⁶. On the contrary, Parliament will have secured a process of constitutional evolution, seeking to extend the level of political legitimacy of decisions that focus on key issues of the country's governance.

⁴³ Bogdanor, V., *op. cit.*, 2016, p. 315.

⁴⁴ *Idem*, p. 315.

⁴⁵ Gordon, M., *op. cit.*, 2016, p. 338.

⁴⁶ Wingfield, D., *The Brexit Case: Does the Constitution have a place for democracy?*, „University of Queensland Law Journal” 35, n°2 (2016), p. 348.

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