Twitter Thread by George Peretz QC



George Peretz QC
@GeorgePeretzQC



I’m afraid I think this definition of sovereignty (“freedom to make your own law”) is either useless or incoherent.

> My latest (as ever, I don't write headlines).
>
> It's important people try to explain what sovereignty is and why we are where we are. If you like elephants, read my explanation.https://t.co/mhh7Sjk6Er
>
> — Steven Barrett (@SBarrettBar) December 10, 2020

Very large numbers of international treaties require the UK to make, or not make, law. The UN Treaty requires us to impose sanctions. The Antarctic Treaty requires us to prohibit unlicensed operators organising tours to Antarctica. GATT restricts our ability to set tariffs.

@SBarrettBar appears to think that such provisions do not infringe his definition of “sovereignty”, but he fails to explain why not.

He asserts, without explaining why, that a level playing field term would infringe “sovereignty”. But the LPF terms being discussed simply set out actions that the EU is able to take if the UK legislates (or does not legislate) in certain ways.

Why is that different in legal principle from WTO rules that (for example) allow other states to impose high tariffs on our widget industry if we exercise our sovereign freedom to pass laws that exempt widget-making from UK tax?

Ultimately, the error here is to see “sovereignty” as something you either have or don’t have: a binary. But it isn’t, unless your definition is one that leaves only North Korea as a “sovereign” state.

It’s a very English peculiarity - possibly dating back to Hobbes, certainly to Dicey - to think about sovereignty in that peculiar reductionist, binary, way.

In the US, for example, States are often talked of as “sovereign” though their sovereignty is limited by the Constitution (which as from 1865 it has been clear they cannot leave): and even where they are sovereign their conduct is often affected by eg conditional federal grants.

In any event, if those invoking “sovereignty” want to wave it around as the basis for taking highly consequential political decisions, they need to do rather better at explaining what they’re talking about, and why things they dislike infringe it and things they like don’t.

NB there is a useful sense in which the EU Treaties affect sovereignty in the way that eg GATT doesn’t: the EU Treaties require Member States to accept as law - and to require their courts to apply - rules made collectively by the EU. Direct effect.

Note that in that sense the Withdrawal Agreement infringes UK sovereignty, since eg the NI Protocol and citizens rights provisions have direct effect and allow EU rules to have direct effect.

Parliament can always legislate to the contrary - and stop that happening in domestic law - but then it always could have done that while the UK was in the EU.

But as far as I can see nothing in the EU’s proposals for an FTA require direct effect. In Stephen’s language, no elephant (if that’s how he defines it).