Unpacking old and new conflicts of sovereignty in the European polity

SCHOLARONE™
Manuscripts

Unpacking old and new conflicts of sovereignty in the European polity

Abstract: In the post-Maastricht era, member states of the European Union (EU) have proved increasingly reluctant to transfer further competences to the supranational level and are willing to safeguard their sovereignty. Though, the responses to the contemporary multiple crises - related to economic and monetary policy, borders and migrations, or democracy and the rule of law - have brought about conflicts over values and sovereignty losses surrounding the legal, economic and political legitimacy of the EU. Against this backdrop, we argue that beyond the traditional contentious (re)distribution of competences between nation-states (national sovereignty) and the EU (and its embryonic forms of supranational sovereignty), new conflicts of sovereignty involve two other key types of sovereignty belonging to the democratic tradition, namely parliamentary sovereignty and popular sovereignty. This introductive article proposes a common analytical framework in order to investigate conflicts in their multi-dimensionality.

Introduction

While sovereignty is one of the oldest concepts in law and political science and it has been at the heart of European integration from the outset, there are a number of reasons to think that there is a pressing need to re-open this old debate and re-assess it in the light of today's challenges.

In the post-Maastricht era, member states of the European Union (EU) have proved increasingly reluctant to transfer further competences to the supranational level and are willing to safeguard their sovereignty (Bickerton, Hodson and Puetter 2015). At the same time, however, recent crises in various policy areas, such as immigration, borders, monetary policy, trade, etc., have prompted decision makers to consent, to various extents, new transfers of competences to the EU. This has nevertheless triggered unprecedented levels of contention about the values underpinning the EU common policies and what is perceived by many as new sovereignty losses. Thus, the conundrum lying in the notions of 'shared' (Wallace 1999) or 'pooled' sovereignty (Peterson 1997) has come back at the forefront of the debates surrounding the legal, economic and political legitimacy of the EU. Against this background, the main assumption underpinning this special issue is that, rather than the object of constitutional or theoretical debates, claims to sovereignty today have been exacerbated and politicized: they take the form of *conflicts of sovereignty* which are multidimensional and more divisive than ever thus involving crucial – and unresolved – dilemmas for decision makers.

Although the notion of sovereignty has been central in the debates triggered by the ongoing existential crises of the EU, it remains strikingly under-researched in political science and European studies. On the one hand, there is a burgeoning literature on how conflicts of sovereignty can influence the legislative outcomes at the EU level

(Winzen 2016) or how sovereignty issues have an impact on the revision of the treaties (Jachtenfuchs et al. 1998). On the other hand, some authors have investigated normatively the concept of sovereignty and its boundaries, discussing how it can be reconciled with European and global politics (Bellamy 2016, 1). In a more institutionalist vein, Fabbrini (2015) has dealt with how distinctive conceptions of sovereignty imply different visions of power relations between the EU member states and supranational institutions, and types of policies to be further centralized at the EU level. However, while the contestation of the current EU institutional arrangements and policies is on the rise, the body of empirical work on sovereignty in the EU remains relatively limited so far. This special issue therefore intends to bridge this gap by providing both a novel analytical approach and empirical analyses of today's conflicts of sovereignty in the EU.

To do so, the contributions gathered in the special issue will use a common analytical framework in order to investigate conflicts in their multi-dimensionality. We argue that, beyond the traditional contentious (re)distribution of competences between nation-states (national sovereignty) and the EU (and its embryonic forms of supranational sovereignty), new conflicts of sovereignty involve two other key types of sovereignty belonging to the democratic tradition, namely parliamentary sovereignty and popular sovereignty. From an empirical point of view, the authors investigate how these conflicts unfolded in a series of recent contentious episodes in European politics in three broad domains namely socio-economic policy, borders and migration, and democracy and the rule of law.

An increasingly complex debate

Sovereignty is and has always been a contested concept at the interference of law and politics (Hayward 2012, 65). Since the Peace of Westphalia in 1648 -- which established the international and internal order of sovereign states as well as the relationship between them -- the contours of this concept have been shaped by dynamics of Nation-State formation and attempts 'to move Western Europe beyond nation states', as Haas put it (1968).

With endeavours of new forms of regional integration, the end of World War II has opened a new phase for reconfiguring the boundaries of territories, political forces and institutional structures on the European continent. From the outset, this has triggered diverse political and scholarly debates on the subsequent reconfiguration of state sovereignty, with federalists arguing for the merging of former, and mostly bellicose, nation states into a European federation. Since then, the different mutations of the sovereignty issue in Europe have been discussed by various strings of literature and disciplines, mainly political theory, law, international relations and comparative politics, which have not always succeeded in establishing a dialogue with one another. In earlier work on EU integration, scholars sought to understand why states give up sovereignty, putting forward a variety of explanations ranging from rationalists and ideational accounts (Haas 1968; Hoffmann 1966; Moravcsik 1993; Marks, Hooghe and Blank 1996). In recent years, the focus has been on how social, political, cultural and historical factors have contributed to changing today's conceptions of sovereignty (Walker 2003). This fragmented body of research discusses directly or indirectly how the concept of sovereignty has been reshaped over time and, by the same token, the attempts to reconceptualize it in the EU post-Westphalian environment.

This introductory article can in no way do justice to the fascinating ramifications of these debates dealing with various conceptualisations of sovereignty. Yet, insofar as

a coherent debate has slowly emerged within the scholarly community, at least in the

field of EU studies (understood in the broad sense), we believe that the discussions

about how European integration affects sovereignty have become more complex,

shifting from an original focus on state sovereignty vs. supranationalism to a

multidimensional debate involving also the respective roles of parliaments and peoples

in democratic regimes.

Sovereignty is transformed, but how and to what extent?

From the end of World War II onwards, we have witnessed the emergence of a wide

range of international organisations and the growth of polities 'which are not states but

which rival states in terms of legal and political authority' (Walker 2003, 10). Since

then, there has been much talk among legal scholars about transfer of power and the

transformation of sovereignty in Europe. In this regard, analyses have fallen into two

main categories. On the one hand, those following state-centred positions, arguing that

sovereignty is located at one particular level in the hands of parliament and

corresponding majority government. On the other hand, those embracing a more

heterogeneous range of views either seeking to reconceptualize sovereignty in Europe

as a *sui generis* phenomenon characterised by constitutional pluralism[1] or by developing

a post-sovereign argument. While, for the former, the EU is a 'delegated authority', the

latter have sought to grasp the emergence of a new European configuration and the

---

[1]   According to Walker (2003, 4), constitutional pluralism 'is a position which
       holds that states are no longer the sole locus of constitutional authority but are
       now joined by other sites (…) of constitutional authority'. The relationship
       between them is 'heterarchical rather than hierarchical'.

transformation of this concept by introducing a wide range of metaphors pointing out

that sovereignty is 'pooled', 'shared', 'divided', 'split' or even 'marginal' and

'redundant' (MacCormick 1999). In academic debates, sovereignty oscillated like a

pendulum between different points of a continuum where, at one end some maintained

that sovereignty is at the core of the *meta language* of law and politics used 'to explain

and to justify the world' and, at the other end, those arguing that in the post-

Westphalian phase sovereignty is no longer key in the language of political imagination

(Walker 2003, 10).

These debates in EU law have been supported by compelling analyses in history

and political science. At the end of the 1960s, Hoffmann was arguing that what has to

be understood and studied is the transformation of national sovereignty, which 'has not

been superseded, but to a large extent it has been emptied of its former sting'

(Hoffmann 1966, 157). In his view, what had to be examined was 'not only the legal

capacity of the sovereign state, but de facto capacity at its disposal' (Hoffmann 1966,

158). In so doing, the historian Alan Milward (1992) has famously and compellingly

shown how ambitious post-national endeavours have rapidly dissolved into the firm

restoration of European nation states. With the waning of the federalist movement, on

the one hand, and the failure of the European Defence Community in 1954, on the

other, perspectives of political (and military) federalism were soon superseded by

limited functional economic integration. Furthermore, while the European Coal and

Steal Community from 1951 displayed a, functionally limited, but decidedly

supranational institutional setting, the Treaty of Rome founding the European Economic

Community put the stress on liberalizing markets among autonomous states deciding

jointly at the Council, the Community's most powerful institution. Against this

backdrop, scholars argued that the nation-state survived transformed (Hoffmann 1966) and even empowered (Milward 1992).

Yet, after three decades of nation state restoration, the 12 members of the EEC engaged from the late 1980s' onwards with an intensive form of economic and then political integration which triggered a debate on how it was altering the nature of national state sovereignty. Throughout the 1990s, many scholars have tried to grasp what the implications of the genuine European model of 'pooled' (Peterson 1997) or 'shared sovereignty' (Wallace 1999) were. Does the abolishment of national vetoes with the switch to qualified majority voting in most decision-making areas in the EU combined with a European top-down legal system mean the shift of Europe into a post-sovereign, post-national political order based on human rights (MacCormick 1999)? Or, should we rather conceive of it as a pre-sovereign configuration which 'shares and distributes sovereignty in ways that remove the arbitrary power of any single agent or agency' and where 'unity is constructed via a dialogue amongst a plurality, with the one being continually challenged, renegotiated and reconstructed as the other evolves and becomes more diverse' (Bellamy 2003, 190). While some authors have recently argued that state sovereignty must be abandoned to reconsider popular sovereignty (Habermas 2012), others maintain that sovereignty needs to be 'vertically and horizontally dispersed between units below, across and above the state' (Bellamy 2016, 1). Against this backdrop, the Court of Justice of the EU has been 'frugal' in its discussions of sovereignty, stating that the sovereignty of member states is limited rather than claiming that the EU itself possess sovereign authority. The Court rather developed a doctrine of supremacy, which appears to presuppose the EU's sovereign status (De Burca 2003). This seems to confirm the claim that European states have shifted from that of sovereign nation-states to that of 'member states' (Bickerton 2012).

In a nutshell, although many have argued that sovereignty is 'redundant', 'obsolete', 'eroded', 'devaluated' because of its transition and transformation ushered by the pressures of globalization and integration, it still remains a powerful concept which plays 'a legally normative and politically substantive role without an adequate substitute' (Hayward 2012). As Werner and De Wilde argued, most of the predictions about the end of sovereignty in International Relations and EU studies were and are wrong (2001, 285). The EU brings together a plurality of sovereignties, where member states are sovereign without an EU sovereign (Hayward 2012). The concept is subject to growing challenges but remains a key operating premise of systems of constitutional, international and supranational law. Against this backdrop, 'instead of asking what state of affairs corresponds to the idea of sovereignty', one should ask, according to Werner and De Wilde (2001, 284) *in what context a claim to sovereignty is likely to occur, to whom is it addressed and what normative framework is used to determine the legitimacy of a sovereignty claim.*

Normative approaches to power, authority, and democracy in the EU

A second debate has emerged in recent years which goes beyond the idea of reconceptualizing sovereignty, seeking to determine how to accommodate competence, authority, power and capacity in the EU considering recurrent claims to sovereignty and the rise of resistances to integration.

One strand of this debate is about the role of parliamentarism in the EU which has surfaced in relation with the so-called democratic deficit of the EU. A consensus among scholars has emerged on the diagnosis pointing to the weakening of a further form of sovereignty conceptualised in democratic theory, namely parliamentary sovereignty. Beyond theoretical contributions, there is now an important body of literature analysing the role of national parliaments in the EU multi-level decision

making (a.o. Auel and Höing 2014, Auel and Christiansen 2015, Hefftler et al. 2015, Winzen 2012). It converges towards the finding that, while the legislatures prerogatives and degree of adaptation to EU integration displays a great variation across the continent, their ability to participate in decision making or hold their government accountable for the decisions made in Brussels remains unsatisfactory with regard to democratic expectations, a trend which has been aggravated with recent reforms of EMU (Auel and Höing 2015, Fassone 2014, Hefftler and Wessels 2013). A general trend exacerbated by EU integration has been the relative autonomization of European executives and strategies of blame shifting of by-passing of European actors allowing governments to pass unpopular reforms while partly escaping the national democratic debate. At European level, the key role of non-majoritarian institutions, mainly the European Commission and the European Central Bank, also contributes to maintain EU politics insulated from electoral cycles and parliamentary politics. For a number of reasons, mainly pertaining the quality of representation at EU level (Farell and Scully 2007, Brack and Costa 2013), the EP, in spite of the continuous strengthening of its powers, has by no means compensated for the loss of power of national parliaments. And the structuring of a genuine, effectively functioning multi-level parliamentary system associating national parliaments and the EP has remained elusive until today. To democratize, and first and foremost the Euro-area where, some scholars have called for the direct involvement of national MPs either through a 'Parliamentary Legislative Initiative' (Kröger and Bellamy 2016) or the creation of a new powerful parliamentary assembly (Beetz 2018, Hennette et al. 2017).

More recently, the debate has turned to the problem of locating popular sovereignty as such in the EU polity. Ever since the famous Maastricht decision of the German Constitutional Court in 1993, there has been a sustained discussion surrounding

the "No demos thesis". In their judgement over the Treaty of Maastricht, the German

judges claimed that there was no pan-European demos underpinning a possibly fully

democratic European polity. The main problem of popular sovereignty in the EU, then,

is the impossibility to locale the sovereign which could empower the common

institutions. This argument was criticized for reflecting a - potentially specifically

German - "organic" or culturalist (if not nativist) conception of the demos conflating

citizenship and nationality, while a European demos could be rooted in a post-national

sense of belonging to a common set of political principles and institutions (Weiler

1995). However, far beyond the German legal culture, the "no demos thesis" seems to

echo common sense arguments, as well as a number of research findings pointing to the

difficulty of findings the necessary conditions for the emerging of a European demos

expressing popular sovereignty in the EU political system (for a recent summary see

Risse 2014). In addition to the continuously decreasing turnout for the European

Parliament election, possibilities for direct participation remain very at best,

dysfunctional at best or dysfunctional at worst. While public mobilization and protest

can occasionally have an actual impact on decisions made at EU level (Parks 2015,

Crespy 2016), they remain too occasional to sustain the presence of citizens' interests in

a genuine European public sphere or political space. The present evaluation of the

European Citizen Initiative, now into force since 2012, suggests that the transnational

organisation of voice is impeded by a number of structural factors.

Against this background, a group of political theorists claim that the EU should

be grounded in the recognition of the plurality of the various European *demoi*. A

European *demoicracy* should therefore be defined as a 'union of peoples who govern

together but not as one' (Cheneval and Schimmelfenning 2013). From the perspective

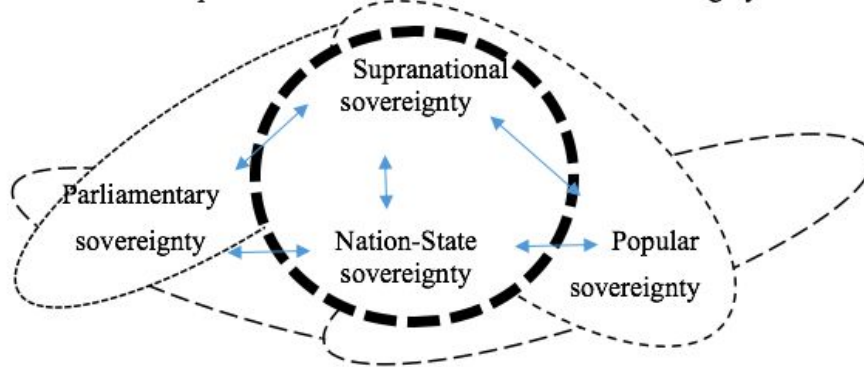of sovereignty, this means that national sovereignties derived from the national *demoi*

do not need to be merged, pooled, or shared, but that they need to be exerted *jointly.* As Cheneval and Nicolaidis (2017) explain, there are two sides of the exercise of joint sovereignty in a *demoicracy.* On the one hand, the fact that the various people remain distinct implies that they preserve the control (i.e. a right to veto or to exit the system) over the constitutive rules of the polity; on the other hand, this also implies that the various European peoples are bound to exert their sovereignty 'only in accord with all the other members of the polity or *demoi*' (241). How this can work in practice or be institutionally entrenched nevertheless remains unclear. Going back to representation, Beetz and Rossi suggest that 'most importantly, national parliaments should remain ever present in decision-making procedures in order to effectively institutionalise vote and voice in Europe's heterogeneous polity' (2017, 41). Yet, today's political praxis shows that a) at the intellectual level, the concept of *demoicracy* does not enjoy a political or societal consensus and b) at the practical level, joint sovereignty is not (yet?) an operational concept; rather the testing of the boundaries of various types of sovereignty in everyday politics fuels vivid conflicts which have a destructive potential for the democratic order in Europe.

A multidimensional approach to study conflicts of sovereignty

While previous works focused on the 'transition' of the concept of sovereignty from the Westphalian to the post-Westphalian stage and its political and legal reconfigurations in the EU polity, this special issue attempts to make a step forward by scrutinizing contemporary conflicts over sovereignty. The purpose is to understand how today's transnational political conflicts are the expression of a variety of claims to sovereignty in search for a political and legal reconfiguration of the EU polity. Taking stock of the scholarly and political debates described above, we distinguish between four types of sovereignty which are relevant to the current legitimacy crisis of the EU.

First, *state sovereignty* refers to the autonomy of the Westphalian Nation-State to rule on a territory delimited by borders. Since WW2, this type of sovereignty has been increasingly constrained not only by EU integration, but also by a more general transformation of the State in the face of globalization. Second, *supranational sovereignty* can be understood as the capacity of the EU to make decisions and pursue policies in the name of the member states' community as a whole only in the selected areas where competencies were granted to the EU by the Treaties. This involves essentially the autonomy of the EU as a legally unified subject to act with exclusive competences both internally and externally. While the notion of supranational sovereignty has not been theorized and remains a political taboo, the idea of a 'European sovereignty' has been recently championed by the French President Emmanuel Macron especially in relation with trade, immigration or security issues. It has also been echoed by the current Commission President Jean-Claude Juncker (2014-2019). Third, *parliamentary sovereignty* is understood as the capacity of parliaments, whether at regional, national or EU level, to take part in the political process by virtue of the principles of election and representation. This dimension raises the issue of multi-level representation which is crucial if legislatures are to remain key actors in decision-making as opposed to a mere instrument of symbolic politics. Fourth, *popular sovereignty* refers to the basic principle whereby the body politic confers legitimacy to decision makers in a democratic system. The people is the ultimate lawmaking authority, its *pouvoir constituent* and the legislative, the executive and the judiciary are *pouvoir constitués*, having received their power from the people (Lindahl 2003, 91). This implies the right for citizens to give continuous feedback to decision-makers and to participate in the political process in different ways including through non-conventional participation.

Table 1: Conceptual matrix: old and new conflicts of sovereignty

The main hypothesis guiding the research gathered here is that sovereignty conflicts have become more complex over time. While we traditionally think of the opposition between nation-state and supranational sovereignty, today's debates focus on the implications of EU integration with regard to parliamentary and popular sovereignty, both at the national and supranational level. Using this matrix to investigate conflicts of sovereignty (table 1), we therefore examine how, in contemporary contentious debates, various categories of actors across the European multi-level polity conceive of various types of sovereignty and which types are strengthened or, on the contrary, weakened by the unfolding of these conflicts.

We argue in this issue that conflicts of sovereignty are conflicts over legal and political authority, that is over claims to ultimate authority that can be made on behalf of the people or of the state through political or purely legal registers.

Conflicts of sovereignty can be explained in different ways. For those embracing traditional legal arguments opposing in EU studies nation state versus supranational sovereignty, 'as long as the nation state is the supreme authority', there is a potential for conflict' (Hoffmann 1966,158). Whatever sovereignty member states are willing to cede, 'they will take it back legally or less legally if necessary' (Menon 2008, 236). At a more general level, conflicts find their origins in different understandings of sovereignty which range from the state-centred views to post-sovereign conceptualisations. The

tension is embedded in the conceptual structure of sovereignty itself (Walker 2003, 8),

oscillating between legal and political registers, that is 'between the idea of law as

foundation of the polity and the idea of law as medium through which a non-legal or

political foundation to the polity is given legal expression'. The concept of sovereignty

suffers from a description fallacy, i.e. the idea that sovereignty 'should correspond to,

be measurable against and be described in terms of independent and objective reality'

(Walker 2003, 6), which denotes 'the power or capacity of the state to exercise full

control internally and to remain independent externally' (Werner and De Wilde 2001,

285). An alternative view is that sovereignty neither corresponds to some state of

affairs, 'nor it is commensurable with other concrete articulations of the abstract

concept of power' (Walker 2003, 7). Sovereignty involves a 'speech act' (Werner and

De Wilde 2001), that is a claim to ordering power. This understanding of sovereignty is

key to comprehend new and old conflicts of sovereignty in the EU polity.

Sovereignty has been invoked in many ways, incessantly, selectively, self-

servingly with consequences or not for the EU polity. According to Werner and De

Wilde (2001, 286), sovereignty is not less important when the power of the state is

diminished. On the contrary, they argue, strong claims to sovereignty are more likely to

occur in times of competing claims to authority. From this perspective, there is

continuity, as Walker put it (2003, 19). In contrast, we believe that discontinuity appears

in the *meanings and usages* of the term (see also Adler-Nissen and Gammeltoft-Hansen

2008, Saurugger 2013) and in the *forms* taken by these conflicts at the domestic and

supranational level, involving not only executive versus supranational institutions or

national versus supranational courts, but also parliamentary and popular sovereignty

versus domestic executive actors or supranational institutions (as illustrated in the

matrix). The lines of conflict contain more layers than in the past and this level of

complexity is a sign of novelty and discontinuity. Not only normative positions, but also

agents' self-interested strategies are bound to play a role in today's conflicts of

sovereignties. Ultimately, the context is new. While in the past the 'ever closer union'

was the only way forward and taking sovereignty back was unthinkable and legally

impossible, the Lisbon Treaty allows member states to withdraw from the Union in

accordance with their constitutional requirements. To what extent leaving the EU allows

to go back to the world of 'early sovereignty' is uncertain and from this perspective

Brexit is an interesting case.

The articles in this issue seek to shed light on these interactions between

meanings and usages and their continuity and discontinuity. They all aim at capturing

how old and new meanings of the concept of sovereignty are used in new ways by a

more diverse group of actors and concomitantly in different member states and policy

areas.

The articles are not only supported by the understanding of sovereignty as a

speech act but also by an epistemological posture according to which conflicts are not

independent of the perceptions and beliefs of social and political actors or of the

discursive claims in terms of which these perceptions and beliefs are articulated. As

Walker put it, these beliefs -- that this issue seeks to scrutinize in a variety of cases --

'help to constitute important institutional facts' (2003, 17).

This special issue shows how in each case political actors attach their

understanding of sovereignty to a specific vision of the EU in terms of power relations

between member states and supranational actors and types of policies to be developed at

the EU level (Fabbrini 2015). Each vision of the EU implies strengthening or

weakening the state, as 'weakening of state sovereignty helps promote a cosmopolitan

respect for individual rights and justice' (MacCormick 1999), while eroding state

sovereignty implies 'to weaken the capacity of domestic electorates to control and influence how they are governed' (Malcolm 1999). As Bellamy put it, three main conceptions can be identified in this debate: ideas defending state sovereignty, ideas suggesting transfer of power to the supranational level in order to deal effectively with global challenges and, ultimately, ideas suggesting going beyond any form of state sovereignty (Bellamy 2016, 2). However, beyond these three maximalist positions, a range of intermediate positions exist as to how sovereignty ought to be shared or jointly exercised. To be sure, those positions are bound to vary according to the types of rules (constitutive vs. policy making) and/or the issue area at stake (external vs. internal policy, economics vs. identity, etc.).

Our contribution

The contributions gathered here therefore address a common subset of questions: Which normative and theoretical arguments are at stake in today's conflicts in the EU? By which actors have they been defended and how? What have been the outcomes of the contentious episodes under study and with which implications for the EU polity as a whole? The studies deal with those issue areas which have fuelled the most conflicts, namely democracy and the rule of law, socio-economic policy, and migrations and border control.

A first area which has generated conflicts of sovereignty relates to democracy and the rule of law. Over the last 10 years, some countries from Eastern and Central Europe have not only constantly contested the legitimacy of the EU and the Commission to promote reforms in areas supposed to be at the core of state sovereignty such as judicial reforms (Coman 2017) but also, lately, they have challenged the duty of

supranational institutions to safeguard the common values on which the EU is founded. These debates have given rise to fundamental normative and legal questions concerning the nature of the EU's political regime and its role in protecting common values and preventing cases when member states put said values under considerable strain. This is more than an empirical puzzle for scholars. It is an existential threat and a political challenge to EU integration. Therefore, it invites scholars to study how sovereignty is instrumentalized by political actors and how different understandings of the rule of law-sovereignty nexus shape the EU's action.

A second area where conflicts of sovereignty have occurred recently relates to economic governance. As many researchers have contended since the establishment of the Economic and Monetary Union (EMU), the Eurozone area and its recent crisis has led to an asymmetrical system of sovereignty in economic policy (Maris and Sklias 2016). At Maastricht, member states protected their sovereignty by opposing further transfer of power to supranational institutions and by diluting ideas susceptible to increasing integration through negotiations and political compromises. As a result, the EMU's genesis contained two ingredients in tension: supranational constraints on fiscal policy, one the one hand, and national democratic sovereignty to decide on budgets, on the other. In other words, while monetary sovereignty was given up, fiscal responsibility remained with the nation state but has been increasingly constrained by the rules agreed in the Stability and Growth Pact adopted in 1997 and revised in 2013. Prior to the Eurozone crisis, conflicts of sovereignty remained latent. In contrast, the Eurozone crisis intensified conflicts and made them more visible than ever before. In the hot emergency crisis phase, the EU institutions, the powerful creditor member states together with the International Monetary Fund harmed the indebted countries sovereignty by imposing brutal conditionality for financial rescue upon them. In the

subsequent phase of institution building, the deepening of economic coordination

brought about increased interference of the EU institutions in the making of national

budgets and fiscal policies. In this context, contestation against the idea that there was

no alternative to austerity policy increased (Borriello 2017) and more generally, it

fueled the rise of mainstreaming Euroscepticism at both the national and the European

levels (Brack and Startin 2015).

Migrations and border control is a further area which has become a bone of

contention with numerous debates on the legitimacy of the EU's interference and

conflicts among states as well as between the EU institutions and member states. In

recent years, the Schengen area made the headlines and triggered existential debates for

the EU. Its survival has been put at risk by a series of unilateral decisions adopted by

certain member states which – in the name of their sovereignty - reinstated controls at

their internal borders. In addition, since 2015 onwards, the plan proposed by the

Commission to relocate refugees from Italy, Greece and Hungary to other EU member

states in order to develop mutual solidarity and shared responsibility has become a bone

of contention at the EU and national level. A new concomitant conflict has erupted at

the EU level about the authority and the locus of power where decisions about borders

can be taken and how sovereignty can be maintained intact while in the same time

conferring some powers to supranational institutions. More broadly, sovereignty is at

the heart of conflicts over membership, boundaries, and territorial fragmentation, as

contention in Catalonia and the Brexit have shown. This shows that conflicts of

sovereignty take place at various levels, in different domestic situations and pertaining

to different policy areas. While each case deserves attention, we argue in this issue that

a comprehensive understanding of theses multifaceted and multilevel conflicts of

sovereignty is needed.

The article of **Borriello and Brack** concentrates on Eurosceptic and populist parties to examine the meanings that populist political parties attribute to sovereignty in the wake of the economic and migration crises. It argues that the populist upsurge reflects the existence of competing versions of sovereignty. Through a comprehensive analysis of the discourses of four populist parties (the Front National, the Five Star Movement, Podemos and UKIP), it reveals that sovereignty is a key issue for these parties but there are crucial differences among them, that can be explained by the two dimensions of the European political system they mostly challenge, i.e. the spatial and/or functional dimension. It convincingly shows that the divergences refer to the ideological position of the party. The four parties share a common opposition to the EU and a populist stance. But their position on the ideological spectrum (left/right and GAL/TAN), along with the national contexts, determines the meanings parties attach to sovereignty and the emphasis they put on each type of sovereignty. By disentangling the various dimensions of sovereignty and the tensions among them in populists' discourses, it allows a more nuanced understanding of their opposition to the European political system.

European norms, especially regarding democracy and the rules of law, have been one of the burning issues recently, as some countries seem to ignore or hijack European values. The contribution of **Coman and Leconte** focuses on the discursive strategies of executives in Central Europe in recent conflicts of sovereignty by looking at the cases of the governments of Hungary, Austria and Poland. Relying on the concept of 'argument de rétorsion', they argue that these governments frame their standoff with the EU as a fight for European values, thereby reclaiming for themselves a formula ('Europe of values') in the name of which they are being criticized at EU-level. Through a compelling discourse analysis, they show how Victor Orban discursive strategy has

been mainstreamed. Indeed, the authors clearly demonstrate that next to the usual

discourse presenting supranational and nation-states sovereignty as being incompatible,

a new discourse has emerged in recent years, according to which supranational

sovereignty is incompatible with parliamentary and/or popular sovereignty. The old

argumentation based on state sovereignty is now combined with a new rhetoric which

consists in appealing to common, European values. And the three governments portray

themselves and what they do as the true expression of common, European values, which

they pit against a soulless EU, grounded on elitist principles and mercantilist values. As

they use the EU as a platform to promote their own understanding of European values

while defending an authoritarian form of government at home, these new sovereignty

claims seek to alter the liberal foundations of the EU and may represent a serious

challenge for the EU in the years to come.

Crespy and Ladi for their part concentrate on the Greek crisis and more particularly the

2015 referendum to assess to what extent referenda are useful tools to enhance popular

sovereignty in the EU. They rely on the insights of the literature on *demoicracy* to

understand which institutional devices can be implemented to allow the exercise of joint

popular sovereignty in the EU. To do so, the authors make an original distinction

between unilateral and embedded referenda. A unilateral referendum concerns an issue

which can be settled by one people (or demos) alone such as membership or opt-outs. In

contrast, an embedded referendum asks a question about an issue which cannot be

decided by one people only like in the case of treaty ratification and more specific

policy issues. They convincingly show that the reasons behind the Greek referenda

during the debt crisis were instrumental and had very little to do with the 'voice' of the

people. Furthermore, they highlight the multiple conflicts of sovereignty that occurred

in the case of the 2015 referendum and demonstrate that this referendum has rather

contributed to exacerbate conflicts of sovereignty than to the exercise of demoicratic

join sovereignties.

One of the main challenges over the last few years has been the exit of the UK from the

EU and the future relationship of the country to the EU. Often presented as the

paramount example of sovereignty conflict between the EU and a nation-state, the

debates surrounding Brexit are very interesting to understand conflicts of sovereignty in

today's EU. *Bickerton* analyzes this crucial case and argues that the significance of

Brexit is not to be found in a clash between London and Brussels but rather in the rival

accounts of sovereignty within the UK. He carefully analyzes the process of

'constitutional modernization' (Loughlin 2018) that the UK has undergone and its

effects on the practices of sovereignty. He emphasizes that because this process has not

been legible for British people and has not been at the heart of a public debate, several

competing accounts of sovereignty have developed within the UK polity. His findings

clearly show that while conflicts between states and Brussels remain present in EU

politics, they may be less important for the future of the EU than the conflicts between

competing understandings of sovereignty at the national level.

Saurugger and Terpan come back to one of the contentious issues in the study of

regional integration: How much sovereignty is transferred to supranational institutions

and how do these institutions react to these transfers of sovereignty? The authors

concentrate on one particular institution – the European Court of Justice -- and examine

its position regarding the four types of sovereignty highlighted in this introduction. To

do so, they look at the Court's rulings pertaining to the EMU since the beginning of the

economic and financial crisis in 2008. They argue that it is necessary to study

sovereignty not as abstract term but in action. Sovereignty is actively used in the EU

multilevel governance system where power is unequally distributed between policy-

making levels. They find that the Court has exclusively supported supranational

sovereignty, whether plaintiffs were civil society actors or member states. While

Members states have favoured new intergovernmental solutions during the EMU crisis,

the CJEU remains a defender of supranational integration against lose

intergovernmental policy coordination leaving more leeway to individual member

states.

Border management is one of the traditional competences of sovereign states from a

Westphalian perspective. But European integration has deeply challenged this field, and

with the migration crisis, a new European Border and Coast Guard Agency has been

created. ***Delheixe and Duez's*** article look at the creation of this new agency to

understand its implications for the lingering conflict of sovereignties in the EU. They

highlight the crucial nature of border management of the EU. Contrary to the nation-

state, borders no longer demarcate the confines of the political territory in today's

Europe. They now run literally through its geographical space and figuratively through

the core of its political project. As a result, border management policies contribute to

forging a political community. Therefore, Delheixe and Duez argue that the mandate of

the new Border and Coast Guard Agency provides a unique vantage point to scrutinize

the conflict of sovereignties between the supranational and national levels, but also

between various definitions of sovereignty. Their analysis reveals that the design and

powers of the new agency is a second-best solution rather than corresponding to a single

political actor's preference. And because the compromise that led to the agency's

creation is seen as piecemeal and unsatisfactory by most of the negotiating parties, it

will be of little use to silence future sovereignty claims. They consider that it will be at

the center of recurring conflicts of sovereignty in the years to come.

Finally, **Beetz**'s contribution examines the relation between popular sovereignty and the EU's democratic deficit. It argues that despite the EU's sui generis nature, the democratic principle of popular sovereignty is a fruitful lens to theorize institutional models of EU democracy. The article interestingly analyzes two key questions: how this democratic principle should be understood in Europe's multi-layered polity on the one hand and, on the other hand which politicians should represent citizens in EU decision-making procedures. Beetz proposes to distinguish four distinct conceptions of popular sovereignty in Europe's transnational setting and discusses the implications for parliamentary representation. It shows that the current democratic deficit results, at least in part, from a conflict about the appropriate conception of popular sovereignty in Europe's transnational polity. Any solution to alleviate this deficit will need a choice in the conception of popular sovereignty to be at the basis of institutional reforms. And people will need to accept or at least acquiesce to this conception. Institutions and ideas will have to become congruent on the appropriate democratic norm for the Union. Until that time, the author argues, conflicts about appropriate conception of popular sovereignty are likely to continue to challenge the stability of the European Union.

References

Adler-Nissen, R. and Gammeltoft-Hansen, T. (2008) (eds) *Sovereignty Games, Instrumentalizing State Sovereignty in Europe and Beyond*, Palgrave.

Auel, K. and Hoing, O. (2014) 'Parliaments in the Euro Crisis: Can the Losers of Integration Still Fight Back?', J*ournal of Common Market Studies*, 52(6), 1184-1193.

Auel, K. and Christiansen, T. (2015) 'After Lisbon: National Parliaments in the European Union', *West European Politics*, 38(2), 261-281

Auel, K. and Höing, O. (2015) 'National Parliaments and the Eurozone Crisis: Taking Ownership in Difficult Times?', *West European Politics*, 38(2), 375-395

Beetz, J. P. (2018) 'From Practice to Principle and Back. An Application of a New Realist Method to the European Union's Democratic Deficit', *Political Studies* 66(2): 339-355

Beetz, J. P. and E. Rossi (2017) 'The EU's Democratic Deficit in a Realist Key: Multilateral Governance, Popular Sovereignty, and Critical Responsiveness', *Transnational Legal Theory,* 8(1): 22-41

Bellamy, R (2003) 'Sovereignty, Post-Sovereignty and Pre-Sovereignty: Three Models of State, Democracy and Rights within the EU', in *Sovereignty in transition. Essays in European law* edited by Walker, N. (ed) Portland, Hart Publishing. 167-189.

Bickerton, C.J., Hodson, D. and Puetter U. (eds) (2015) *The New Intergovernmentalism: States, Supranational Actors and European Politics in the Post-Maastricht Era*, Oxford: Oxford University Press.

Borriello, A. (2017) '"There is no alternative": How Italian and Spanish leaders' discourse obscured the political nature of austerity', *Discourse and Society*, 28(3): 241-261.

de Burca, G. (2003) 'Sovereignty and the Supremacy Doctrine of the European Court of Justice', in Walker, N. (2003) (ed) *Sovereignty in transition. Essays in European law*, Portland, Hart Publishing, 449-460.

Brack, N. and Costa, O. (2013) 'The Challenges of Territorial Representation at Supranational Level: the Case of French MEPs', *French Politics*, 11(1), 1-23.

Brack, N. and Startin, N. (2015) 'Introduction: Euroscepticism, from the margins to the mainstream", *International Political Science Review*, 36(3), 239-249.

Cheneval, F. and Schimmelfennig, F. (2013) 'The case for Demoicracy in te European Union', *Journal of Common Market Studies,* 51(2): 334-350.

Cheneval, F. and Nicolaidis, K. (2017) 'The social construction of demoicracy in the European Union', *European Journal of Political Theory*, 16(2):235-260.

Coman, R. (2017) 'Central and Eastern Europe: the EU's struggle for rule of law pre- and post-accession' in Ariadna Ripoll Servent and Florian Trauner (eds) *The Routledge Handbook of Justice and Home Affairs Research*, Routledge, London, 264-275.

Crespy, A. (2016) *Welfare Markets in Europe. The Democratic Challenge of European Integration*, Basingstoke, Palgrave.

Fabbrini, S. (2015) *Which European Union? Europe after the Euro Crisis*, Cambridge University Press.

Farrell, D. and Scully, R. (2007) *Representing Europe's Citizens?: Electoral Institutions and the Failure of Parliamentary Representation*, Oxford, Oxford University Press.

Fasone, C. (2014), 'European Economic Governance and Parliamentary Representation. What Place for the European Parliament?', *European Law Journal*, 20(2), 164-185.

Haas, E. (1968) *The Unitying of Europe: Political, Social and Economic Forces 1950-1957*, Sandford, Sandford University Press.

Habermas, J. (2012). *The Crisis of the European Union. A Response.* Cambridge, Polity.

Hayward, J. (2012) 'National Governments, the European Council and Council of Ministers: A Plurality of Sovereignties. Member States Sovereigns without an EU sovereign', In Hayward, J. and Wurzel, R. (eds.) *European Disunion. Between Sovereignty and Solidarity*, New York, NY, Palgrave, 65-81.

Heffler, C. and Wessels, W. (2013) *The Democratic Legitimacy of the EU's Economic Governance and National Parliaments,* IAI Working Papers 1313, Roma: Instituto Affari Intrenazionali.

Heffler, C., Neuhold, C., Rozenberg, O. and Smith, J. (2015) *The Palgrave Handbook of National Parliaments and the European Union*, Basingstoke, Palgrave.

Hennette, S., Piketty, T., Sacriste, G. and Vauchez, A. (2016) 'For a Treaty Democratizing Euro Area Governance – (T-Dem)', available at http://piketty.pse.ens.fr/files/T-DEM%20-%20Final%20english%20version%209march2017.pdf

Hoffmann, S. (1966) 'Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe', *Daedalus*, 93(3), 862-915.

Kröger, S. and Bellamy, R. (2016) 'Beyond a constraining dissensus: The role of national parliaments in domesticating and normalising the politicization of European integration', *Comparative European Studies*, 14(2), 131-153.

Lindhal, H. (2003) 'Sovereignty and Representation in the European Union' in *Sovereignty in transition. Essays in European law* edited by Walker, N. (ed), Portland, Hart Publishing.

MacCormick, N. (1999) *Questioning Sovereignty: Law, State and Practical Reason*, Oxford: OUP.

Marks, G., Hooghe, L. and Blank. K. (1996) 'European Integration from the 1980s: State-centric versus Multi-level Governance', *Journal of Common Market Studies*, 43(4), 341-78.

Maris, G. and Sklias, P. (2016) *Asymmetrical Sovereignty, European Integration, and the Grey Zone of European Union Politics.* Working Paper, 4/2016, Centre for Europeal Law, University of Birmingham.

Menon, A. (2008) *Europe. The State of the Union*, London, Atlantic Books.

Moravcsik, A. (1993) 'Preferences and Power in the European Community: A liberal Intergovernmentalist Approach', *Journal of Common Market Studies*, 31(4), 473-524.

Parks, L. (2015) *Social Movement Campaigns on EU Policy*, Basingstoke, Palgrave.

Peterson, John (1997) 'The European Union: Pooled Sovereignty, Divided Accountability', *Political Studies,* 45 (3), 559–578.

Risse, T. (2014) 'No Demos? Identities and Public Spheres in the Euro Crisis', *Journal of Common Market Studies*, 52(6), 1207-1215.

Saurugger, S. (2013) 'Is there a sovereignty problem in the EU?', Working paper HAL, https://halshs.archives-ouvertes.fr/halshs-00911482.

Walker, N. (2003) (ed) *Sovereignty in transition. Essays in European law*, Portland, Hart Publishing.

Wallace, W. (1999), 'The Sharing of Sovereignty: the European Paradox', *Political Studies,* Volume 47, Issue 3, 503–521.

Weiler J. (1995) 'Does Europe need a constitution? Reflections on demos, telos, and the German Maastricht decision', *European Law Journal*, 1(3), 219–58.

Werner, W. G. and De Wilde, J. H. (2001) 'The Endurance of Sovereignty', *European Journal of International Relations*, 7(3), 283-313.

Winzen, T. (2012) 'National Parliamentary Control of European Union Affairs: A cross-national and longitudinal comparison', *West European Politics*, 35(3), 657-672.

Winzen, T. (2016) 'From capacity to sovereignty: Legislative politics and differentiated integration in the European Union', *European Journal of Political Research,* 55, 100-119.