Comparative European Politics
https://doi.org/10.1057/s41295-022-00270-z

ORIGINAL ARTICLE

Antagonistic understandings of sovereignty in the 2015 Polish constitutional crisis

Ramona Coman[1]

Accepted: 18 January 2022
© The Author(s), under exclusive licence to Springer Nature Limited 2022

Abstract

Since the 2015 parliamentary elections in Poland, the government led by the Law and Justice party (PiS) has sought to win two interwoven battles: the restoration of 'a strong state' internally and 'regaining sovereignty' in the country's relationship with the EU. By examining the 2015 constitutional crisis in Poland, this article seeks to understand how and why a domestic dispute over the nomination of constitutional judges has transformed into a conflict of sovereignty in the EU polity. The paper shows that the claims to sovereignty of political, social, and legal actors reflect opposing conceptions of this principle as well as of democracy and the rule of law. PiS' understanding of State sovereignty is rooted in the past, echoes its Hobbesian conception, and is reminiscent of Carl Schmitt's notion of the political and of democracy. In 2015, this conception was pitted against the supremacy of the Constitution (legal sovereignty) and the ideal of shared sovereignty. Drawing on 20 parliamentary debates, this paper shows that the 2015 Polish constitutional crisis encapsulates a conflict of sovereignty over who holds the most legitimate representation of the people and who should have the last word in key political conflicts and constitutional settlements.

Keywords Sovereignty · Shared sovereignty · Constitutional pluralism · Constitutional crisis · Poland · Law and Justice Party (PiS)

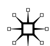
Introduction

Sovereignty is a long-standing principle associated with the emergence of the modern state when the desideratum of all rulers was to gain both internal and external control (Grimm 2015: 6). The meaning of the concept has changed over time, more profoundly so as States in post-war Europe agreed to create supranational polities

✉ Ramona Coman
Ramona.Coman@ulb.be

[1] Political Science, Institute for European Studies, Université Libre de Bruxelles, Bruxelles, Belgium

Published online: 28 March 2022



in order to address transnational problems (Walker 2003) and curb the dangers of nationalism. Because 'no state today is sovereign in the traditional sense of the term' (Grimm 2015: 6; Bellamy 2003) and because of the disputed reconfiguration of sovereignty brought about by the creation of supranational institutions, it has been often argued that this principle is outdated (Lindhal 2003: 87). And yet, the history of EU integration has been shaped by different conflicts of sovereignty, some of them latent, others more visible and divisive. As Bellamy put it, sovereignty has remained central to the nature of politics (2013, 158). In recent years, this concept has been brought back to life by both political and legal actors within the EU polity (see Bickerton et al. in this issue). Among the most recent examples of this, in May 2020, the German Constitutional Court ruled that the decisions of the European Central Bank on the Public Sector Purchase Program exceeded EU competence (2 BvR 859/15, 2 BvR 980/16, 2 BvR 2006/15, 2 BvR 1651/15).[1] In October 2021, the Polish Constitutional Tribunal ruled against the primacy of EU law, a principle also challenged by the German Constitutional Court in the past (Alter 2021). Still, the Polish Constitutional Tribunal's 'rebellion' against the primacy of EU treaties needs to be situated in its domestic context.

Between October 2015—when PiS won the parliamentary elections—and the ruling of the Polish Constitutional Tribunal against the primacy of EU law in October 2021, political and legal actors in Poland invoked the sovereignty principle in different ways in order to provide legitimacy to a profound political transformation. In 2015, the Polish Constitution was violated by the PiS government and the Constitutional Tribunal was paralyzed and subverted in the name of sovereignty (Sadurski 2019, 15). In 2021, however, the Constitutional Tribunal, with a majority of judges who had been appointed by PiS in the interim, considered in its judgment K 3/21 some provisions of the Treaty on European Union (TEU) to be inconsistent with the Polish Constitution.

Against this backdrop, this article examines how and why a domestic conflict over the nomination of constitutional judges in Poland in 2015 transformed into a domestic and European conflict over sovereignty. It shows that the Polish Constitutional crisis, and the subsequent debates around it, revealed antagonist political and legal conceptions of *who* is the sovereign and *where* sovereignty should be institutionally located. Drawing on 20 Polish parliamentary debates,[2] the article shows that the Law and Justice party's understanding of State sovereignty is rooted in the past, echoes a state-centred conception reminiscent of Carl Schmitt's notion of the political and of democracy (Bunikowski 2018), and was pitted in 2015 against the supremacy of the Constitution (legal sovereignty) and the idea that sovereignty can be shared. PiS' understanding of sovereignty is anchored in an anti-liberal vision of democracy and the rule of law fostered by the reinvention of political/intellectual conservatism in Poland (Bunikowski 2018; Bluhm and Varga 2019; Behr 2021;

[1] https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2020/bvg20-032.html.

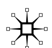
[2] Data was collected and translated from Polish by Jan Kordys, with the support of the Jean Monnet Module 'Rule of law and mutual trust in global and European governance' (599,377-EPP-1–2018-1-BE-EPPJMO-MODULE—2018–1778, 2018–2021).

Buzogány and Varga 2021). In contrast, the opposition Civic Platform party, whose claims about sovereignty are expressed only in reaction to the ruling party's conception, seems to appeal tacitly to key features of liberal democracy, which 'in this part of the world became an obligatory syntax of political thought' (as pointed out by Craiutiu, quoted by Bluhm and Varga 2019: 3). Government and opposition clash over their views in the Sejm in which each camp is almost equally represented. The Constitutional Tribunal plays referee between the two, with positions on the issues at stake that have changed over time. Indeed, the Tribunal has shifted from being a veto player against PiS in 2015 (and before), into an ally supportive of the latter's understanding of sovereignty, or, as Sadurski stated, 'an obedient servant of the executive branch' (2019, 85).

This article is organised as follows: a review of theoretical debates around sovereignty in Sect. 1 distinguishes between the state-centred approach and the ideal of shared/pooled sovereignty at the EU level with a focus on (1) *who* should represent the people and (2) *where* sovereignty should be institutionally located. These two dimensions constitute the analytical framework of this article. "The changing role of the Constitutional Tribunal in Polish constitutions and the propensity for institutional conflict" section starts by retracing the key moments of Polish constitutionalism since the adoption of the first Constitution to illustrate the institutionalisation of sovereignty and the uneven role given to the Constitutional Tribunal over time. "The 2015 Polish constitutional crisis: from a conflict between the government and opposition to a conflict of sovereignty" section introduces the 2015 constitutional crisis in Poland and shows how it has transformed from being rooted in a government-opposition dynamic into a domestic and European conflict over sovereignty. Section 3 analyses claims on sovereignty in the context of this crisis, looking at how it is invoked by the ruling party PiS (its representatives in the Sejm and in government), the opposition (mainly PO members in the Sejm), and Polish legal actors. Their understandings of the concept involve different opinions about *who*—executives or parliaments?—performs the most legitimate representation of the people and *who*—parliaments or courts?—shall have the last word in constitutional settlements in a context of democratic backsliding.

A perennial debate: how is sovereignty to be realized?

Sovereignty is a key concept in political and legal discourses (Adler-Nissen and Gammeltoft-Hansen 2008). Its content has evolved over time (Grimm 2015) from a state-centred conception of sovereignty during the *Renaissance* to its pooling and sharing beyond the state in post-war Europe (Walker 2003). Sovereignty is about the establishment of an institutionalised form of government able to impose itself on society as an instrument of legitimate power (Loughlin 2003: 56). Whatever the loci of its institutionalization—within nation-states or beyond the state—two questions are key: how is the principle of sovereignty to be realized? And who has the last word? (Krasner 1999; Walker 2003; Adler-Nissen and Gammeltoft-Hansen 2008; Grimm 2015; Brack et al. 2019). In other words: *who should exercise it in the name of the people* and *who decides who decides*? Both the state-centred approach



to sovereignty and its sharing beyond the state have given rise to different answers to these questions.

The state-centred conception

On the one hand, sovereignty has been traditionally defined as an attribute of the State, absolute, perpetual (Bodin 1993), and indivisible (Hobbes), referring to its capacity to retain full internal control and external independence. In other words, it is the right of the state to exercise supreme authority within its territory and to control access to it (Bellamy 2003: 167). Often associated with the Treaty of Westphalia (1648), the concept was thoroughly discussed later, in the context of the American and French revolutions of the eighteenth century, not only in abstract terms but also with regard to its institutionalisation. In the United States, Madison conceived a sovereign American people to overcome the sovereign state, while in the French tradition the debate was centred on the opposition between popular sovereignty (Rousseau) and national sovereignty (Siéyès). Thus, plural claims to sovereignty have always existed. The question of 'who decides who decides' has given rise to different institutional configurations, settled throughout constitutional processes, as higher sources of legitimacy. As the introduction to this special issue explains, the loci of sovereign power vary from one tradition to another. In some political regimes, the legislature is free from legal limitations (Armstrong 2003; Craig 2011) while in others it is subject to them, depending on the ways in which the people are meant to exercise power. Thus, in some cases, sovereignty is said to reside in the institution of Parliament, while in other political contexts it may dwell in the Constitution (de Burca 2003, 451). The emergence of constitutionalism emphasised that even the legislative power is subject to the law in a constitutional state (Grimm 2015, 68). This echoes the liberal understanding of democracy in which civil and political rights are protected and governmental action is constrained by the law, which is interpreted and applied by independent judges (Allan 2001: 2). None of the powers should be above the law but, more importantly, popular sovereignty should prevail. However, the dominant liberal conception of legal norms was challenged in the context of the crisis of the rule of law in the 1930s. Carl Schmitt, the right-wing authoritarian political thinker who opposed the liberal conceptions of democracy, put forth a reconceptualization of democracy and sovereignty in his *Political Theology* (2005) (Bunikowski 2018). In his conceptualization, the sovereign is the one who has 'the last decision'. Taking 'sovereign decisions' is beyond and above any normative principles. In *The Concept of the Political*, he argued that 'the sovereignty of law means the sovereignty of those men who draw up and administer the law'. Judges are denied real independence as any 'inhibitions' and 'controls' on state power are considered 'unpolitical' and a limitation of sovereignty (Scheuerman 1994: 37). Put another way, in Schmitt's view, the executive could legitimately overrule constitutional norms and undertake profound constitutional revisions (Scheuerman 1994: 79). From this perspective, the sovereign 'truly expresses the political unity of the population' and 'embodies the constitution's original vision of a 'homogeneous people [*volk*]'.

The reconfiguration of sovereignty beyond the state

On the other hand, after WWII, the tragedies of the first decades of the twentieth century gave birth to the idea that the protection of fundamental rights could not be entrusted solely to the states. The creation of new polities like the EU challenged the traditional meaning and the centrality of sovereignty (Walker 2003; Craig 2011). While Bodin (1993) rejected the idea of a mixed sovereignty to legitimize the absolutist power necessary to pacify the wars of religion, the project of EU integration was driven by arguments in favour of 'shared' or 'pooled' sovereignty (Moravcsik 1998) to establish a new political and legal order (Walker 2003; De Burca 2003; De Witte 2003; Fabbrini 2014). The old key constitutional questions remain: How can the principle of sovereignty be realized beyond the state? Who has the last word? Just like in the classical debates, part of the discussions around sovereignty in the EU polity have focused on the problem of locating popular sovereignty. The EU legal order is inconsistent with the sovereignty of the parliament (Bradley 2011: 53) because there is no European demos but several *demoi* (Nicolaïdis 2013; Cheneval and Schimmelfennig 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 need to be exercised *jointly* (Brack et al. 2019: 6) through the voices of national and European parliaments.

Whilst this joint exercise of sovereignty may work in theory, in practice it raises an important question. What happens when conflicts of sovereignty emerge? How are they to be resolved? In the EU polity, every holder of sovereignty is only the highest in its sphere (Grimm 2015, 114). The EU has been shaped through dialogue rather than through confrontational methods of settling conflicts (Grimm 2005, 118). The Court of Justice established the primacy of EU law over national law through its 'quiet revolution' (Weiler 1994). While some scholars used the concept of 'normative disorder' to describe this reality, others used the one of 'constitutional pluralism' (Shaw 1999) as a way to reconfigure the idea of sovereignty in a polity beyond the state like the EU (Walker 2003; Baquero Cruz 2016). Constitutional pluralism, understood as a non-hierarchical relationship between legal orders, implies that 'states are no longer the sole locus of constitutional authority' (Walker 2003: 4). The concept was meant to rationalize 'competing claims of final authority and of judicial attempts to accommodate them' (Fabbrini 2014, 21), in a polity in which national and supranational sources of authority co-exist. In this debate, like in many national constitutional debates, the question of 'who should have the last word' has remained open. Those who coined this normative view argued that constitutional pluralism should neither lead to a 'new unity nor fixed hierarchy of constitutional authority nor, at the other extreme, to a fragmentation of authority' (Walker 2003: 4). This new paradigm is based on the mutual recognition and interpenetration of constitutional sites located at different levels (Walker 2003, 4) and on a dialogue 'to manage conflict (…) in a process of mutual accommodation', which is nevertheless sometimes far from being an 'idyllic interaction' between legal orders. If none can undermine the others by appealing to its own sovereignty, what remains then is the possibility to debate opposing standing points (Grimm 2015: 119). Dialogue is the essence of the liberalism that scholars like Schmitt attacked, seeing negotiation as

'cautious half measure, in the hope that the definitive dispute, the decisive bloody battle, can be transformed into a parliamentary debate and permit the decision to be suspended forever in an everlasting discussion' (Schmitt 2005, 63; see Bunikowski 2018: 287).

The institutionalisation of sovereignty in Poland

Poland's ancient constitutional tradition dates back to the thirteenth century when the Poles began to reflect on how to limit the powers of arbitrary governments (Brzezinski 1991; Cole 1998). The successive Polish Constitutions institutionalised sovereignty in different ways and either empowered or disempowered the Constitutional Tribunal depending on the historical context at the time. "The changing role of the Constitutional Tribunal in Polish constitutions and the propensity for institutional conflict" section discusses the changing role of this institution in the various Polish constitutions, while "The 2015 Polish constitutional crisis: from a conflict between the government and opposition to a conflict of sovereignty" section focuses on the 2015 conflict leading to the paralysis of the Constitutional Tribunal.

The changing role of the Constitutional Tribunal in Polish constitutions and the propensity for institutional conflict

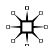
In 1791 Poland was the first country in Europe to adopt a constitution. However, while Western Europe was moving towards the liberalism of the Enlightenment, the Polish Constitution reflected growing Polish nationalism (Cole 1998). With this Constitution, King Slanislaw Augustus aimed at securing internal independence (Brzezinski 1991: 61) and recreating a unified state along with a cohesive political system based on checks and balances, including an autonomous judiciary (Brzezinski 1991, 65). The 1791 Constitution became the symbol of independence, sovereignty, and democracy. However, it was short-lived as Poland cessed to exist as an independent state in 1795. As Davies put it (2013: 5), 'for most of the 150 years, from the abdication of King Stanisaw August' in 1795 to 'the retreat of the German Army from Warsaw' in 1945 'Poland was little more than a name' and 'stateless was the Poles' normal condition'.

Since then, several constitutions have been adopted with varying roles for the three branches of power. The 1920 Polish constitution proclaimed the power of the parliament, introduced limitations on the role of the President (Cole 1998) and provided for an independent judiciary, allowing the Court to review the acts passed by the Senate but not those adopted by the Sejm (Brzezinski 1991: 76). But democracy did not last. The 1930s paved the way towards executive centralisation and authoritarian turns in the region. The 1935 Constitution strengthened the power of the President, marking a decisive break with liberal parliamentarism (Brzezinski 1991). The constitutional and institutional design witnessed a radical change after 1946, following the model of Russia's Stalinist constitution of 1936. The communist ideal was to create the conditions of a new social order in which the very concepts of the state

and law would disappear. The source of law was the Communist Party representing the interests of the working people, not the Constitution. The idea of an independent judiciary was rejected as was judicial review considered to be a limitation on the sovereign rights of the Parliament (Brzezinski 1991: 94). The judicial branch was meant to promote the interests of the Party.

After the collapse of communism, Poland regained its independence and adopted a temporary Constitution. Despite the political enthusiasm of the 1989 revolutions, the main political parties were divided on the foundational principles of the new political regime. From 1990 to 1997, the 'Little Constitution' was meant to resolve the existing 'political paralysis' caused by disputes between the President and Parliament or between the President-Parliament-Government. It was only in 1997 that, after long political discussions, a new Polish Constitution was adopted. In its Article 4, it stated the 'primary sovereignty of the Nation', which exercises its supreme authority directly or indirectly, through the Sejm and the Senate (Article 10). In May 1997, the new Constitution was approved by only 53% of citizens, while 46% voted against it. For a majority of Poles, the symbolism of the new Constitution progressively faded Blokker (2020), Czarnota (2017). The 1997 Constitution aimed at diminishing the propensity for conflict by delineating the areas of competences of the different State institutions. Thus, the constitution-makers substantially limited the powers of the President and empowered the Prime minister who was responsible before the Sejm. Ultimately, they strengthened the role of the Constitutional Tribunal vis-à-vis both the executive and the legislature, empowering the former over the latter two, its decisions being final and binding (Sadurski 2019: 327). The post-communist transition to democracy has been marked not only by political battles between presidents and prime ministers but also by constitutional ideational struggles. Conflicts between the Constitutional Tribunal and the executive branch or between the former and the Supreme Court were not unusual (Manko 2014: 80). The Constitutional Tribunal played a key role in the first years of the transition with judgements on questions related to the separations of powers and a series of important societal issues such as abortion, religion, lustration, or media freedom (Sadurski 2019: 43). Most of its decisions—such as the invalidation of the abortion law and the subsequent restrictive policy in that matter—were controversial. While some of its rulings reflected a compromise on polarized societal issues, others mirrored the conservative views of judges and the prevailing attitudes in society (Sadurski 2019: 59). Nonetheless, the Court aligned the Polish legal system with EU law and established some key principles of democratic governance (Sadurski 2019: 60). Not only was the relationship between the Court and the government and Parliament shaped by tensions, but there were also struggles between jurisdictions, in particular when the Supreme Court refused the decisions of the Constitutional Tribunal. As Manko explained: 'The war of the courts' was generated by two legal cultures: an ultra-formalist one followed by the Supreme Court, seen as a legacy of the communist past, and an interpretivist one, put forward by the Constitutional Tribunal (2013, 81).

2015 was a new key moment in the recent history of Poland. In the name of sovereignty, the Polish government led by PiS 'captured' the Constitutional Tribunal in an 'all-out assault on liberal constitutionalism' (Sadurski 2019: 4, 5). This next section retraces the origins of the conflict. This will help shed light in the last section



on the antagonist understandings of sovereignty through which political and legal actors seek to reinstate a specific conception of internal and external sovereignty.

The 2015 Polish constitutional crisis: from a conflict between the government and opposition to a conflict of sovereignty

The plot can be summarized as follows. Before the end of its mandate, the ruling Civic Platform party (PO) sought to renew the composition of the Constitutional Tribunal. After the Law and Justice (PiS) party won the October 2015 parliamentary elections, the new government blocked the nomination of the judges that had been appointed by the PO. Thus, the 2015 Polish constitutional crisis began as a typical conflict over court-packing between the government (PO) and opposition (PiS). But the conflict developed far beyond the disputed nomination of constitutional judges. The decision by governmental majorities to nominate new judges on the Constitutional Tribunal went through different stages in crescendo, moving from a typical conflict between the government and its opposition in the Parliament (1), to one between the government, the opposition, and the Constitutional Tribunal (2). This conflict in turn sparked a conflict of sovereignty at the domestic level resulting from the paralysis of the Constitutional tribunal and the violation of the Constitution (3). Ultimately, this became a European conflict of sovereignty (4), opposing the Polish government and the EU polity (the Commission, the European Parliament, and the Court of Justice).

Stage 1—Domestic conflict: government vs. opposition (June–November 2015)

The origins of the conflict go back to 2013 when the government led by the Civic Platform considered reforming the election of judges and modifying the Act on the Constitutional Tribunal (Sejm, Druk nr. 1590, 2013-07-10). Discussions lasted more than a year. In April 2015, a few months before the end of the legislature, the ruling Civic Platform (PO) introduced an amendment which later became the source of conflict. The Act was adopted in May 2015 and signed in June 2015 by the new president, Andrzej Duda (PiS). This allowed the PO governing majority to choose five judges during the last session of the Sejm in October 2015. Observers argued that the Polish Parliament overstepped its constitutional rights (Matczak 2017: 2) as it should have appointed only three judges. The opposition, mainly members of the Law and Justice Party, contested the constitutionality of this action. Against this backdrop, President Duda declared that the election of the five judges was a 'gross violation of democratic principles and the stability of a democratic state based on the rule of law' (Helsinki Foundation for Human Rights 2016: 19).

Stage 2—Government vs. opposition domestic institutional conflict in the Sejm and the Constitutional Tribunal (November–December 2015)

In October 2015, PiS won the parliamentary elections. One of the new government's first legislative initiatives was to 'rectify the mistakes made by the

previous Sejm'. PiS put forth a new Act to change the ways the President and Vice-President of the Constitutional Tribunal were elected. The Act was adopted on 19 November 2015 without much debate and consultation. One day later, the Senate voted on the Act and the President signed it, allowing the replacement of the judges whose tenure was to expire in 2015. The governing majority launched the procedure to elect five constitutional judges. In December 2015, the new judges were elected but on the basis of the Act on the Constitutional Tribunal which was not yet in force (Helsinki Foundation for Human Rights 2016: 22). The procedure was contested by the Civic Platform in front of the Constitutional Tribunal, which called upon the Sejm not to take any action aiming at appointing the new judges.

Stage 3—Domestic conflict of sovereignty sparked by the paralysis of the Constitutional Tribunal (December 2015–20 June 2017)

On the 3rd December 2015, the Constitutional Tribunal declared that the election of the judges whose tenure was to expire in November was constitutional. It argued that the election of judges whose tenure was to expire in December 2015 was, however, in violation of the Constitution. As a result, three judges could not start their tenure in the Constitutional Tribunal and President Andrej Rzeplinski (whose mandate ended in December 2016) did not assign cases to the judges appointed by the new Parliament (Judgement of the Constitutional Tribunal K 34/15, 3 December 2015). This should have been the end of the conflict, as the judgements of the Tribunal are final and irreversible. Yet, the Chancellery of the Prime Minister declared that the judgement of the Tribunal was invalid as it was not issued by the full bench, but by a bench of only five judges. The election of judges generated a heightened conflict between the government and the opposition on the one hand, and between the government and the Constitutional Tribunal, on the other. The Government suspended the publication of the decisions of the court, leading to its paralysis.

This transformed the dispute between the government and the opposition over the nomination of judges into a more profound conflict over how the basic norms of national and popular sovereignty should be institutionalized. What was at stake was not only the nomination of judges but the dismantlement of the post-1989 political regime, without revising the Constitution as it lacked the majority to do so (Sadurski 2019: 5; Bill and Stanley 2020: 384). Since 2016, more than 20 legislative acts have been passed by the PiS government, reshaping the functioning of the Constitutional Tribunal, the National Judicial Council, the Supreme Court, and ordinary courts. According to Sadurski, these measures are an 'assault on liberal constitutionalism'. While each piece of legislation was 'innocuous enough', their cumulative effect showed how democracy could collapse in a short period of time (Sadurski 2019: 327). In only two years, the separation of powers was undone and replaced by executive aggrandisement (Bill and Stanley 2020). After the nomination of the new judges, the Court became an ally of the government (Sadurski 2019), showing support for PiS's understanding of sovereignty and the rule of law, and—implicitly—for the measures concerning the judiciary.

Stage 4 A conflict of sovereignty at the European level (since the launching of the Rule of law framework by the European Commission in 2016—ongoing)

The Polish domestic conflict transformed into a conflict of sovereignty at the EU level when, in 2016, the European Commission initiated the rule of law framework procedure which involves scrutinizing the measures adopted by the Polish government and inviting the authorities to a dialogue on this topic. In light of domestic developments, the Commission stated[3] that 'there is a systemic threat to the rule of law in Poland' considering that 'the Constitutional Tribunal is prevented from fully ensuring an effective constitutional review'. After two years of dialogue with the Polish authorities, the Commission concluded that the situation had not improved. In December 2017, as a measure of last resort, the Commission triggered Article 7 TEU which applies when member states fail to comply with the values enshrined in Article 2 TEU, including the rule of law. Ultimately, on 7 October 2021, the Polish Constitutional Tribunal ruled against the primacy of EU law, stating that articles in the treaties conflict with the country's constitution (K3/21, Judgment in the name of the Republic of Poland, 7 October 2021 (see Thiele 2021). The Constitutional Tribunal that was paralyzed and 'captured' in 2015 as Sadurski put it (2019, 4) has become an ally of the party by establishing the unconstitutionality of article 1 and 19 of the Treaty on EU and postulating a 'blanket primacy of the Polish Constitution' (Thiele 2021).

Moreover, the conflict has not remained confined to Poland's institutional arena. From the moment the first measures were adopted by the Law and Justice Party, citizens, judges and prosecutors as well as representatives of other legal professions mobilised in many cities throughout the country against the limitations on the independence of judges. These mobilisations culminated in January 2020 in the *March of a Thousand Robes*, when judges from more than 20 EU and non-EU member states joined their Polish counterparts in a silent march of protest through Warsaw, 'in an unprecedented public display of international judicial solidarity' (Davies 2020).

Antagonistic understandings of sovereignty

In 2015, Law and Justice came to power with a discourse against the liberal order that had been installed after 1989 (Zielonka 2018, 10), disparaging the post-communist transition and EU accession. PiS sought to 'correct the unjust consequences' of the post-1989 transformations, as declared by most of its representatives (Morawiecki, 20/02/2018). Before the parliamentary elections of 2015, the party looked to gain support by unifying conservative circles and denouncing the 'betrayal of the liberal elites' who transformed the country into a 'Western colony' (Behr 2021). Although the Kaczynski brothers participated in the roundtable talks that negotiated the transition to democracy in the 1980s, the outcome represented

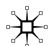
[3] https://ec.europa.eu/commission/presscorner/detail/fi/IP_16_2643.

for them 'a rotten compromise' (Koncewicz 2016, 2018), which allowed former communists to stay in power. PiS leaders lamented that the 1997 Constitution was 'illegitimate' and that it promoted 'leftist and liberal values, including the protection of acquired rights and the safeguards of procedural justice' (Matczak 2018: 5). The party made its name in politics by promising the end of communist vestiges in Poland. PiS is also known for its hostile attitude towards judges (and elites in general). In 2005, when Lech Kaczynski became the third president of the Republic, he proposed a lustration act, which was struck down by the Constitutional Court in 2007. Over time, PiS developed a narrative about the law as an obstacle to justice (Matczak 2018: 6), criticising the empowerment of the courts, often presented as bastions of corruption, and lamenting that judges act as a 'juristocracy'. As early as 2005, PiS sought to change the functioning of the judiciary, but the constitutional change it envisaged was impossible to achieve because it lacked the two-thirds majority in the Sejm required by the Constitution. After the parliamentary elections in October 2015, the PiS government initiated a comprehensive process of state transformation, including an overhaul of the judiciary.

Since 2015, PiS has sought to win two interwoven battles: the restoration of 'a strong state' and 'regaining sovereignty' in the country's relationship with the EU. In its efforts to transform the political regime, PiS has attempted to reconfigure sovereignty both internally and externally. Internally, in 2015 PiS proclaimed the sovereign right of 'who governs', vis-à-vis of the Constitutional Tribunal which it saw as a threat to State sovereignty. In 2021, through the judgement K3/21 of the Constitutional Tribunal, it proclaimed the sovereignty of the Polish Constitution over EU law.

PiS' understanding of sovereignty is rooted in the past. Its argument in 2015 that the political sovereignty of 'who governs' should prevail over legal sovereignty is reminiscent of the communist era in Poland when the will of the single party prevailed as the sole expression of the popular will. As Bunikowski (2018: 294) underlined, the political and legal philosophy of the main figure of the PiS, Jaroslaw Kaczyski, is based on old influences. The first one is Marshall Józef Pilsudski (1867–1935) and his idea of 'sanitation', that is the 'moral healing of the body politic' (2018, 294). The other is the Marxist teacher Stanislaw Ehrlich, an academic from Warsaw and a Communist Party member (1907–1997) who was critical of democracy and who developed in his writings the argument that politics should dominate law, not the other way around (2018, 295). In Ehrlich's view, law is not the source of legitimacy of power (Bunikowski 2018). The source of power, as explained by Bunikowski, is the political will (2018, 295). PiS' understanding of sovereignty also echoes Schmitt's conception of the political. For PiS, politics is about 'friends' and 'enemies', about 'normal people', and 'others.' Those who oppose PiS are 'elements hostile to the core interests of Poland and of 'real' Poles' (Bill and Stanley 2020), not only reminiscent of the communist era when those who were against the Party were 'enemies of the working people' but also of Schmitt's conception of the political opposing 'friend' and 'foes'.

In contrast, the opposition Civic Platform resorts less to the ideal of sovereignty, which is not central to its discourse but is rather invoked in reaction to PiS. Shared sovereignty at the EU level is only directly mentioned by the opposition (PO).



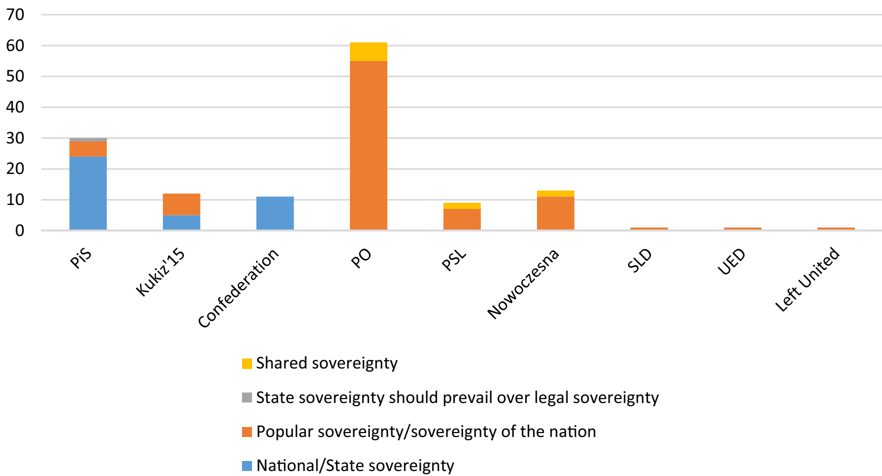


Fig. 1 The use of sovereignty and sovereign in the Polish Sejm (2015–2019; 2019–2020)

However, it is not referred to as such but rather to counteract PiS' discourse on the absolute internal and external sovereignty of 'who governs' and, by the same token, to reaffirm the compatibility between the national sovereignty and EU membership. The fact that PO representatives react to PiS' understanding of sovereignty explains the high number of occurrences of sovereignty in the declarations of PO members of the Sjem (Fig. 1).

The use of sovereignty first and foremost to establish a strong new state rooted in 'conservative modernisation'

PiS associates sovereignty with the old Polish ideals of independence, freedom, autonomy, self-determination (Beata Beata Szydło, PiS, 20-05-2016), in other words with the capacity of the government to decide. PiS members embrace morality claims and moral feelings and echo the language of Polish identity, dignity, pride, and emotions (Bunikoswski 2018). This is exemplified in the following declaration by Dominik Tarczyński (PiS) in December 2017, during the debates in the Sejm about the National Council of Magistracy: 'Let me remind you: Poland is a sovereign, free, and proud nation'. According to Stanley Bill & Ben Stanley (2020), 'the primary and overarching objective of PiS and the foundation on which the party's ideology stood' is to 'break apart the system [układ] which is directing Poland's political, economic, and, in a certain sense, social life'. As Kaczyński declared: '[we want] a new state. We don't want revolutionary tribunals, but we want new institutions.' In the same vein, PiS deputy Waldemar Andzel (Sejm, 07-07-2016) stated:

> Law and Justice is a responsible party which has set itself the objective of repairing the State (…), ensuring that Poland is a sovereign, united, and strong State'.

And to do so, as expressed by Dominik Tarczyński (PiS) in December 2017 'We have the right to create laws regulating legal solutions.

The strong modern state that PiS seeks to establish is rooted in tradition. The party promotes 'conservative modernization', which is opposed to the 'modernization by Europeanization', defended by the opposition. Prime Minister Mateusz Morawiecki proclaimed (Sejm, 12-12-2017) that fully implementing this project requires national sovereignty, understood as the ability of the sovereign to make decisions. Sovereignty is defined here in terms of the state's ability to control actors and activities within and beyond its borders, to make authoritative decisions, without any interference either from the EU, or from the opposition and independent institutions in Poland.

> We want to achieve a great modernization of Poland. I firmly believe that our national sovereignty and our tradition are an asset in these modernization efforts. (…) We see exactly such a struggle and we want to use this national sovereignty and tradition as an asset in the struggle for our national interests (Prime Minister Mateusz Morawiecki, Sejm, 12-12-2017).

Internal sovereignty: who should exercise it and who decides who decides?

PiS seeks to strengthen the 'sovereignty of the nation' both internally and externally, as illustrated in the declaration of Jacek Sasin (PiS, 21/12/2015) below:

> Sovereign Poland, according to President Lech Kaczyński's understanding, is not only a sovereign Poland in the international dimension - although it was extremely important for President Lech Kaczyński - but also in the internal dimension, that is - that is, the nation as sovereign - the nation, not various kinds of unclear interest groups, arrangements, cliques, which always results in a large part of the nation being deprived of any influence real about the way the country is ruled, about the way Poland is ruled.

The will of the nation is a powerful argument in the discourse of the PiS. Yet, its meaning is reduced to only one dimension: elections (Batory 2010: 43; Sadurski 2019: 8). In PiS' ideology, 'the individual does not have much room and instead the ideological vision focuses on two main components: the family and the nation' (Folvarčny and Kopeček 2020). PiS promotes a restrictive definition of a homogeneous nation (Batory 2010), echoing again Schmitt's views of the political, in favour of an ethnic/cultural understanding rather than a civic/political conception of nationhood (Batory 2010: 43). In contrast, PO representatives deplore that PiS' understanding of sovereignty is limited to its 38% share of the vote in the last parliamentary election, contending that the party 'confuses sovereignty with autocracy' in the words of Ryszard Wilczyński (PO, 2016).

To what extent PiS' views of the people reflect the people's actual wishes remains an open question. While PiS was elected to power by 38% of Poles, since 2015, hundreds of thousands have protested in more than 200 cities against the laws curbing the independence of the judiciary, chanting slogans such as 'Free courts', 'Freedom, equality, democracy', and 'konstytucja!' ('Constitution') (Economist 2017). Polish

society as well as its intellectual milieu is divided over these issues (Bunikowski 2018).

Parliamentary sovereignty

PiS invokes parliamentary sovereignty in parliamentary debates. As Beata Szydło (PiS) argued, when she served as Prime Minister, the Parliament has 'the duty' to defend sovereignty (20-05-2016). In saying this, she was targeting the opposition and its vote against the measures proposed by the PiS government in the field of judicial reform. In her view, when it comes to deciding on the organization of the judiciary, the Sejm, in which the PiS government has considerable support (as illustrated in the figure below), should be the ultimate locus of power. As stated by Sylwester Tułajew (PiS, 20-05-2016) in the debate on the draft resolution on the defense of sovereignty:

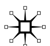
> Poland is a sovereign state. However, we must fight every day for this sovereignty, for this freedom (…) Poland is a sovereign state and the opposition forgets it. It is therefore useful to remind MPs that the fundamental duty of parliamentarians is to act in the name of the sovereignty of Poland. We want Europe to respect our sovereignty, our tradition and our choices.

Although parliamentary sovereignty is central to PiS discourses, power is in fact concentrated in the hands of the party's leader and located on *Nowogrodska,* the street on which the PiS headquarters stand in Warsaw (Sadurski 2019: 15; Ackerman 2019: 278). Beyond references to the legitimacy of the Parliament which it derives from elections and which stands above all else (Folvarčny and Kopeček 2020: 173), the first years of the PiS government have actually been marked by 'executive aggrandisement' or, in other words, an anti-pluralistic mono-power (Bill and Stanley 2020: 379). Rather than present parliament as a place where competing interests are represented via parliamentary disagreement and debate, PiS has put forward an anti-pluralist notion of parliamentary sovereignty that rests upon a unitary understanding of the interests being defended. In PiS' interpretation, the sovereign is the one 'who governs', as echoed by several members of the party in the Sejm (Włodzimierz Bernacki, PiS, 21-03-2018; Marek Kuchciński, PiS, 06-03-2018; Ireneusz Zyska, PiS, 18-07-2017; Stanisław Piotrowicz, PiS, 07-06-2017).

The Fig. 2 shows that on issues related to the organisation of the judiciary, the Sejm is divided into two main camps, one led by the PiS and the other by the PO in opposition, each of them supported by other parties.

The supremacy of the Constitution at stake

In the midst of the nomination process of new judges at the Constitutional Tribunal, PiS rejected the principle of legal sovereignty and the supremacy of the Constitution. Against the backdrop of the Constitutional Tribunal's paralysis, members of PiS argued that national sovereignty should take precedence over the independence



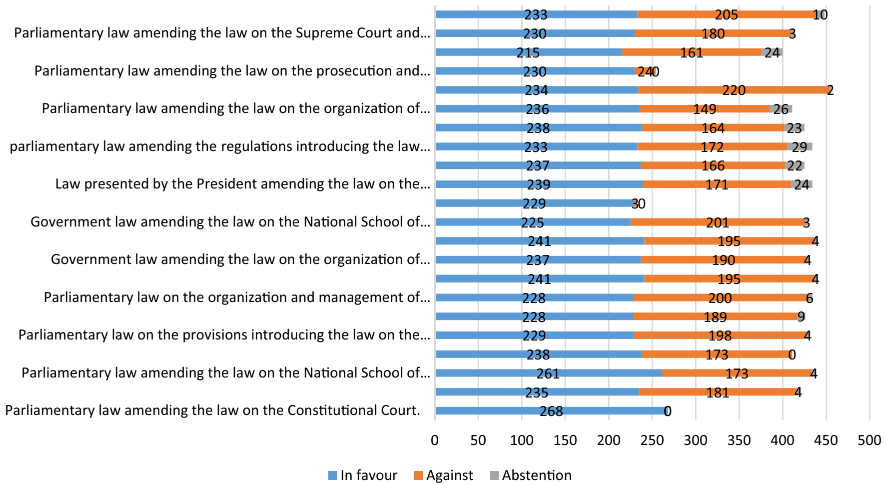


Fig. 2 Acts adopted by the Polish government (2016–2020): in favour, against, and abstentions

of judges and the supremacy of the Constitution (Śledzińska-Simon and Ziółkowski 2017, 20).

In the face of widespread international criticism condemning the erosion of Polish democracy, the speaker of the Sejm, Marek Kuchcinski (PiS), commissioned an expert report by a group of lawyers which was published in July 2017. To a great extent, the Report[4] legitimized the executive's understanding of sovereignty, contradicting the opinion of the Venice Commission on the constitutional crisis in Poland, itself far closer to a legal positivist interpretation of sovereignty. The group of Polish legal experts commissioned by the Sejm (dominated by PiS) argued that two visions of sovereignty are in conflict. The first one holds that the political community exercises the supreme power in the country while the other deems the legal order to be superior to the political community. According to the first conception, 'the sovereign power, in its role as a legislator, has the exclusive right to shape (…) the content of applicable laws and to legitimize all public authorities' (Report, 2016, 3). According to the second, 'the attribute of sovereignty is transferred to the law itself, in particular to the most important of normative acts—the Constitution'. In an attempt to support PiS' political discourse, the drafters of the report maintained that the Opinion of the Venice Commission draws on the 'the dominant language' of constitutional democracy, 'similar to the language which treats the constitution as the source of legitimization of every public authority, from the parliament (and its chambers) to the courts and tribunals' (Report, 2016, 5). The authors of the report contend that, in such an interpretation, sovereignty 'becomes the basis for arbitrary power' as it is embedded in the courts (Report, 2016, 8). Like PiS, the Report argues against

[4] Report of the Team of Experts on the Issues Related to the Constitutional Tribunal of 15 July 2016.

the power of judges and juristocracy, in which the law is a normative structure and 'cease[s] to be an expression of the will of the People' (Report, 2016, 23).

After the nomination of Julia Przyłębska as President of the Constitutional Tribunal in December 2016, the relationship between the Tribunal and the government changed. The court has become an ally of the PiS government, providing a definition of the separation of powers which challenges the principle of judicial independence. On 20/05/2018, Julia Przyłębska[5] declared that:

> The separation of the three powers means that, under the Polish Constitution, sovereignty is the very essence of the rule of law in Poland. The sovereign begins by electing his representatives to Parliament. Through Parliament, the government—the executive branch—is controlled. The judiciary must be integrated into the control of the sovereign. There will then be a violation of the triple division of power, when suddenly one of these elements of power will become independent, will become a legal person, will be responsible only to itself.

External sovereignty: rejecting shared sovereignty and asserting the primacy of the constitution

The PiS opposes supranational sovereignty, which is the idea of 'shared' or 'pooled' 'sovereignty'. While some PiS members have contended that 'the sovereignty of the State should decide how to interpret the relation of Poland with the EU' (Sebastian Kaleta, PiS/Solidarna Polska, 20.12/2019), others have argued that shared sovereignty would involve being subjected to 'the Germans, the Czech and other Europeans', which Marcin Warchoł called 'unacceptable' (PiS/Solidarna Polska). By laying claim to sovereignty, PiS' representatives seek to avoid any interference from Brussels to 'manage the affairs of Poland in our Polish house, we want to explain the problems of Poland here in Poland' (Maciej Małecki, PiS, 20-05-2016).

PiS' critical stance vis-à-vis the EU is not new. Since its creation, the party has promoted the ideal of a Europe of sovereign states as opposed to that of a federation. The relationship with the EU, according to former Prime Minister Beata Szydło (Declaration in the Sejm, 07-21-2016), should be guided by sovereignty and the EU should be defined as a 'community of sovereign states.' As Izabela Kloc (PiS) declared in the Sejm (23-03-2017):

> The foundation of coexistence and cooperation in Europe should be the sovereignty of nation states, solidarity, equality of all nations, respect for human rights, democracy.

PiS rejects the power of the European Commission as guardian of the treaties, accusing the institution of being too intrusive in domestic affairs and overstepping its role. In 2016, Jaroslaw Kaczynski declared that the authority of the Commission in dealing with issues around the rule of law in Poland was 'made up', casting doubt on

[5] https://oko.press/sedzia-przylebska-o-trojpodziale-wladzy-nie-rozumiem-o-co-chodzi/.

the institution's authority to carry out procedures dealing with the matter. PiS representatives often use the 'telephone metaphor' to denounce the EU's intrusion in domestic politics, an image that refers back to the relationship between Moscow and Warsaw during the communist era. As Beata Szydło said in the Sjem (20-05-2016):

> If you think that the Polish interest is defined by a phone call from Brussels which dictates what should be written in Polish law, then there are limits to compromise. And for me, this limit is the sovereignty of Poland.

There are countless declarations of this type. On 15 November 2017, the Polish General Court issued a press release 'to express its firm opposition' to the statements made to the EP (15.11.2017) by the Vice-President of the European Commission, Frans Timmermans, which, 'without any legal and factual basis, call into question the independence and role of a constitutional body of a sovereign state'. It stated further[6] that:

> The European Commission is not an entity empowered to shape the legal order of a sovereign state. It has no such authority in any legal act. Poland, as a member of the European Union, has not renounced its sovereignty, nor have the other EU countries […] which underlines that the Tribunal operates on the basis of the Constitution, which is the supreme law of the Republic of Poland.

More recently, the same sort of criticisms have been aimed at the Court of Justice of the EU. Poland's Deputy Justice Minister condemned the Court for 'violating Poland's sovereignty', arguing that it has no right to intervene in member states' domestic judicial affairs (Notes from Poland, 8 April 2020). Sebastian Kaleta, Deputy Justice Minister, tweeted: 'The CJEU has no competence to assess or suspend constitutional bodies of member states. Today's ruling is a usurpative act violating the sovereignty of Poland'. Finally, in October 2021, the Polish Constitutional Tribunal ruled against the primacy of EU law, stating that some provisions of the Treaty on European Union are incompatible with the Polish Constitution.

Conclusion

The 2015 Polish constitutional crisis is more than a fight over the nomination of judges. It is a conflict of antagonistic understandings of the intertwined concepts of democracy, sovereignty, and the rule of law. The Polish constitutional crisis epitomizes PiS's willingness to reassert its sovereignty by transforming the state, altering the foundations of the liberal order, rejecting the principles on which the EU is based, and reconfiguring Poland's relationship with the EU. Rooted in the reinvention of conservatism in Poland, this comprehensive process of transformation affects the very foundations of the polity and centers on crucial questions about who has the right to represent the people and who has the last word. Two conceptions of

[6] https://trybunal.gov.pl/wiadomosci/uroczystosci-spotkania-wyklady/art/9934-oswiadczenie-biura-trybunalu-konstytucyjnego-w-zwiazku-z-wypowiedzia-wiceprzewodniczacego-komis.

democracy, sovereignty, and the rule of law are in conflict in the Sejm. One, promoted by PiS, echoes the absolutist vision of sovereignty shaped centuries ago by Jean Bodin and Thomas Hobbes against the backdrop of bloody wars of religion. This vision also has much in common with the critique of liberal democracy developed by Carl Schmitt amidst the conflicts and struggles of interwar Weimar Germany as well as with Marxist thinker Stanislaw Ehrlich (Bunikowski 2018). The PiS frames internal and external sovereignty in its absolutist meaning, that of a ruler who holds absolute authority and is under no legal obligation to any higher power. In this understanding, the ruler prevails over popular sovereignty, parliamentary sovereignty, and the sovereignty of the Constitution. This vision is anchored in the revival of conservative ideas rejecting the principles of political pluralism, dialogue, and representation. The PO stands in opposition to this and invokes sovereignty solely as a reaction, defending the sovereignty of the Constitution which was challenged by PiS in 2015. Sovereignty is a social and political construct whose meaning is co-constructed, shaped through conflict between representatives of competing value choices. The Polish context, however, is less about co-construction than it is about imposing the view of the often-invoked people—which matches the electoral majority of PiS—against any other possible and legitimate claim to sovereignty.

References

Alter, K.J. 2021. When and How to Legally Challenge Economic Globalization: A Comment on the German Constitutional Court's False Promise. *International Journal of Constitutional Law* 19(1): 269–284.

Allan, T.R.S. 2001. *Constitutional Justice. A Liberal Theory of the Rule of Law*. Oxford: Oxford University Press.

Ackerman, B. 2019. *Revolutionary Constitutions: Charismatic Leadership and the Rule of Law*. Belknap Press: An Imprint of Harvard University Press.

Adler-Nissen, R., and T. Gammeltoft-Hansen. 2008. *Sovereignty Games: Instrumentalizing State Sovereignty in Europe and Beyond*. London: Palgrave Macmillan.

Armstrong, K. 2003. United Kingdom, Divided on Sovereignty. In *Sovereignty in Transition. Essays in European Law*, ed. N. Walker, 327–351. Oxford: Hart Publishing.

Baquero Cruz, J. 2016. Another Look at Constitutional Pluralism in the European Union. *European Law Journal* 22(3): 356–374.

Batory, A. 2010. Kin-State Identity in the European Context: Citizenship, Nationalism and Constitutionalism in Hungary. *Nations and Nationalism* 16(1): 31–48.

Behr, V. 2021. *Towards a Transnational and Social History of Anti-liberalism*. Insights from the trajectory of Ryszard Legutko: European Politics and Society.

Bellamy, R. 2003. Sovereignty, Post-sovereignty and Pre-Sovereignty: Reconceptualising the State, Rights and Democracy in the EU. In *Sovereignty in Transition*, ed. N. Walker, 167–190. Oxford: Hart Publishing.

Bill, S., and B. Stanley. 2020. Whose Poland is it to be? PiS and the Struggle Between Monism and Pluralism. *East European Politics* 36(3): 378–394.

Bluhm, K., and M. Varga. 2019. *New Conservatives in Russia and East Central Europe*. London: Palgrave.

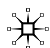
Blokker, P. 2020. Constitutional Resistance in Populist Times. *Federal Law Review*, 1–18.

Bodin, J. 1993. *Les Six Livres de la République*. Paris: Librairie Générale Française.

Brack, N., R. Coman, and C. Crespy. 2019. Unpacking Old and New Conflicts of Sovereignty in the European Polity. *Journal of European Integration* 41(7): 817–832.

Bradley, A. 2011. The Sovereignty of Parliament. Form or Substance? In *The Changing Constitution*, ed. J. Jowell and D. Oliver, 35–70. Oxford: Oxford University Press.

Brzezinski, M.F. 1991. Constitutional Heritage and Renewal: The Case of Poland. *Virginia Law Review* 77(1): 49–112.
Bunikowski, D. 2018. The Constitutional Crisis in Poland, Schmittian Questions and Kaczyński's Political and Legal Philosophy. *Journal of Contemporary European Studies* 26(3): 285–307.
Buzogány, A. and Varga, M. 2021. Illiberal Thought Collectives and Policy Networks in Hungary and Poland. European Politics and Society.
Cheneval, F. A. and Schimmelfennig, F. 2013. The Case for Demoicracy in the European Union. *JCMS: Journal of Common Market Studies* 51(2): 334–350.
Cole, D. H. 1998. Poland's 1997 Constitution in its Historical Context. *Saint Louis Warsaw Tran-Atlantic Law Journal* 1–43.
Craig, P. 2011. Britain in the EU. In *The changing Constitution*, 7th ed., ed. J. Jowell and D. Oliver, 102–132. Oxford: Oxford University Press.
Czarnota, A. (2017) The Constitutional Tribunal. Verfassungsblog. Consulted on: https://verfassungsblog.de/the-constitutional-tribunal
Davies, N. 2013. *God's Playground. A History of Poland II*. Oxford: Oxford University Press.
Davies, C. (2020) Judges join silent rally to defend Polish Justice. The Guardian, 12 January.
de Burca, G. (2003) Sovereignty and the Supremacy Doctrine of the European Court of Justice. In: N. Walker (ed.) Sovereignty in Transition. Essays in European law. Oxford: Hart Publishing, pp. 449–460.
de Witte, B. 2003. Do Not Mention the Word: Sovereignty in Two Europhile Countries–Belgium and The Netherlands. In *Sovereignty in Transition*, ed. N. Walker, 351–367. Oxford: Hart Publishing.
Economist (2017) A veto gives the rule of law in Poland a reprieve. 29 July.
Fabbrini, F. 2014. *Fundamental Rights in Europe. Challenges and Transformations in Comparative Perspectives*. Oxford: Oxford University Press.
Folvarčny, A., and L. Kopeček. 2020. Which Conservatism? The Identity of the Polish Law and Justice Party. *Politics in Central Europe* 16(1): 159–188.
Grimm, D. 2005. Integration by Constitution. *International Journal of Constitutional Law* 3(2–3): 193–208.
Grimm, D. 2015. *Sovereignty. The Origins and Future of a Political and Legal Concept*. New York: Columbia University Press.
Helsinki Foundation for Human Rights (2016) The Constitutional Crisis in Poland 2015–2016: 15. Consulted on: https://www.hfhr.pl/wp-content/uploads/2016/09/HFHR_The-constitutional-crisis-in-Poland-2015-2016.pdf
Koncewicz T.T. (2016) The Polish Constitutional Crisis and the Politics of Paranoia. Verfasssungsblog.
Koncewicz, T.T. 2018. The Capture of the Polish Constitutional Tribunal and Beyond: Of Institution(s), Fidelities and the Rule of Law in Flux. *Review of Central and East European Law* 43(2): 116–173.
Krasner, S.D. 1999. *Sovereignty: Organized Hypocrisy*. Princeton: Princeton University Press.
Lindhal, H. 2003. Sovereignty and Representation in the European Union. In *Sovereignty in Transition*, ed. N. Walker, Essays in European law, Portland, 87–115. Hart Publishing.
Loughlin, M. 2003. Ten Tenets of Sovereignty. In *Sovereignty in Transition*, ed. N. Walker, 55–86. Oxford: Hart Publishing.
Manko, R. 2014. War of Courts' as a Clash of Legal Cultures: Rethinking the Conflict Between the Polish Constitutional Tribunal and the Supreme Court Over 'Interpretive Judgments. In *Law, Politics, and the Constitution: New Perspectives from Legal and Political Theory*, ed. M. Hein, A. Geisler, and S. Hummel, 79–94. Frankfurt am Main: Peter Lang.
Matczak, M. 2017. Why the Announced Constitutional Referendum in Poland is not a Constitutional Referendum after all. Verfasssungsblog 5(13).
Matczak, M. 2018. *Poland's Constitutional Crisis: Facts and Interpretations*, 07. The Foundation for Law: Justice and Society Contemporary Issues Policy Brief.
Moravcsik, A. 1998. *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht*. Ithaca, NY: Cornell University Press.
Nicolaïdis, K. 2013. European Demoicracy and Its Crisis. *Journal of Common Market Studies* 51(2): 351–369.
Schmitt, C. 2005. Political Theology. Four Chapters on the Concept of Sovereignty. 2005. Vol. 1922. G. Schwab. Trans. by, Chicago: University of Chicago Press.
Scheuerman, W.E. 1994. *Between the Norm and the Exception. The Frankfurt School of the Rule of Law*. Cambridge, MA: MIT Press.
Sadurski, W. 2019. *Poland's Constitutional Breakdown*. Oxford: Oxford University Press.



Shaw, J. 1999. Postnational Constitutionalism in the European Union. *Journal of European Public Policy* 6(4): 579–597.

Śledzińska-Simon, A., and Ziółkowski, M. (2017) Constitutional Identity of Poland: Is the Emperor Putting on the Old Clothes of Sovereignty? Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2997407

Thiele, A. 2021. Whoever Equates Karlsruhe to Warsaw is Wildly Mistaken, VerfBlog, 2021/10/10.

Walker, N. 2003. *Sovereignty in Transition (Essays in European Law)*. Oxford: Hart Publishing.

Weiler, J.H.H. 1994. A Quiet Revolution: The European Court of Justice and Its Interlocutors. *Comparative Political Studies* 26(4): 510–534.

Zielonka, J. 2018. *Counter-Revolution. Liberal Europe in Retreat*. Cambridge: Cambridge University Press.

Publisher's Note Springer Nature remains neutral with regard to jurisdictional claims in published maps and institutional affiliations.

Ramona Coman is Professor of Political Science at the Université libre de Bruxelles (ULB), Belgium, where she is also President of the *Institut d'études européennes*. Her research examines dynamics of policy/institutional change induced by the process of European integration, with a focus on EU's rule of law policy tools and judicial reforms in Central and Eastern Europe. She has published *Réformer la justice dans un pays post communiste*. *Le cas de la Roumanie* (2009). She is the co-editor of books including *Governance and Politics in the Post-Crisis European Union* (Cambridge University Press, 2019), *Political Science in Motion* (Editions de l'Université, 2016), *The State of Democracy in Central and Eastern Europe: A Comparative Perspective* (Routledge, 2016), and *Europeanization and European Integration: From Incremental to Structural Change* (Palgrave, 2014).