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Sovereignty in Conflict
Political, Constitutional and Economic Dilemmas in the EU

Edited by
Julia Rone · Nathalie Brack · Ramona Coman · Amandine Crespy

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To Arthur, Carolina, Eloïse and Nina

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Finally, we would like to thank all the participants of the Conference "Conflicts of sovereignty in the European Union" and the "Early Career Scholars Workshop Conflicts of sovereignty in the European Union in Crisis" which were organised at the Université libre de Bruxelles in November 2020. This book is a direct product of the fruitful exchanges we had during those events.

Praise for *Sovereignty in Conflict*

"This edited collection provides a valuable addition to the literature on conflicts of sovereignty in Europe. The elaboration and exemplification of different types of sovereignty conflict, foundational, institutional and territorial, is illuminating. The book will be read with interest by scholars from a variety of disciplines relating to Europe and the EU."

—Paul Craig, *Emeritus Professor of English Law, St John's College, Cambridge University, UK*

"Politics has always been about allocation of power. As nation states struggle to perform their traditional functions, their authority is bound to be questioned. This book provides numerous insightful illustrations of sovereignty claims by a diverse set of actors, such as nationalist parties, irredentist movements, regions and the EU. In a multi-level polity such as the EU, which is based on the notion of shared sovereignty, conflicts can be very contentious; Brexit is a key manifestation of this. This book should be read by all students who wish to grasp the evolving nature of European politics."

—Jan Zielonka, *Professor of European Politics, University of Oxford and Venice, Ca Foscari, UK and Italy*

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Abbreviations

AfD	*Alternative für Deutschland*
CDU	*Christliche Demokratische Union*
CETA	Comprehensive Economic and Trade Agreement with Canada
CJEU	Court of Justice of the European Union
CoE	Council of Europe
DHA	Discourse-Historical Approach
ECJ	European Court of Justice
EEC	European Economic Community
EP	European Parliament
EU	European Union
FDP	*Freie Demokratische Partei*
FN	Front National
FPÖ	Freiheitliche Partei Österreichs
HoC	House of Commons
JEFTA	EU-Japan Trade Agreement
LFI	*La France Insumise*
MEP	Member of European Parliament
MP	Member of Parliament
NATO	North Atlantic Treaty Organization
PiS	*Prawo i Sprawiedliwość*
PRR	Populist Radical Right
PS	Parti Socialiste
RIC	Référendum d'initiative Citoyenne
RN	Rassemblement National
SNP	Scottish National Party
SPD	*Sozialdemokratische Partei Deustchlands*

TTIP	Transatlantic Trade and Investment Partnership
UK	United Kingdom
UP	Union Populaire

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CHAPTER 1

Sovereignty in Conflict: Political, Constitutional and Economic Dilemmas in the EU

Julia Rone, Nathalie Brack, Ramona Coman, and Amandine Crespy

1.1 Introduction

Being older than the discipline of political science itself, the concept of sovereignty was always in flux serving to organize and legitimize states, territories and institutions. In the last decades, there have been numerous debates on the relevance of this concept as consubstantial to the modern

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state and its transformations in the twentieth and twenty-first centuries. In this regard, many have argued that the world had moved into an era of "post-sovereignty" (Bellamy, 2003) while some have gone as far as to call sovereignty an "organized hypocrisy" (Krasner, 1999) given that the presupposed norm and its attributes—territorial integrity and autonomy to decide in particular—serve to conceal mainly coercive power relations among states.

A few years ago, we embarked on a research journey[1] aiming to shed a new light on what we perceived as a significant intensification of conflicts of sovereignty in Europe. In our view, contention lies not so much about whether sovereignty was still relevant as the prime organizing principle of political order in Europe. All actors of political and social life seem to agree that it is. But many disagreements appear that pit contrasted understandings of sovereignty against each other. Whether they oppose radical to mainstream political parties, nationalist forces to EU institutions or independentist movements to a centre of power, these conflicts crystallized around different *understandings* of sovereignty and different *strategies* as to how to preserve or reconfigure it. What we have witnessed, it seems, was conflicts among different *types* of sovereignty put forward by political and social actors (Brack et al., 2019). The purpose of our research project entitled Conflicts of Sovereignty in the European Union (SovEU) was therefore to identify consistent patterns when answering the following questions: What is actually reclaimed and what the conflict is about?

Our ontological and theoretical stance has been therefore neither essentialist—trying to offer one single and allegedly objective definition of what sovereignty *is* in today's Europe—nor normative—arguing what sovereignty *should be* and whether it is still a tangible reality in contemporary Europe. What interests us, rather, is the political construction of sovereignty through conflicts and the effects that this produces. In other words, in tune with Jabko and Luhman (2020), we understand sovereignty as a *situated constructed claim instrumentalized for the pursuit of political goals by specific actors*. At the same time, sovereignty claims do have positive effects since they can be institutionalized. More or less solid or partial agreements on a particular *meaning* of sovereignty then could serve as legal organizing principles ordering communities, territories and polities.

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The process of regional integration which transformed the European Union (EU) into a quasi-federal polity made the European continent especially prone to conflicts of sovereignty, often in paradoxical ways. On the one hand, the continuous centralization of powers in the European Union was celebrated by some as a relatively successful experiment of "sharing" or "pooling" of national sovereignty (Peterson, 1997; Walker, 2003). On the other hand, European politics has seen the resurrection of various forms of "reclaiming" sovereignty rhetoric. One key argument of this book is that a simplistic opposition between national sovereignty vs. the rise of a supranational centre of power was only the tip of the iceberg concealing much deeper and varied types of conflict. Going back full circle to the difficult task of defining sovereignty, the conflicts examined in this edited volume seem to deal with the most basic issue in politics, namely the *relationship* between the governed and those who govern (Bickerton et al., 2022; Loughlin, 2003). Because EU integration has transformed this relationship in sometimes overlooked yet dramatic ways, it has brought about multiple types of conflicts staging multiple ways to conceive of sovereignty.

This volume gathers the contributions from both senior and junior scholars[2] who had been exploring issues pertaining to sovereignty in their own research from diverse analytical and empirical angles. They have all engaged with the propositions we put forward and therefore enriched considerably our proposed research agenda. In this introduction, we first take stock of the research accumulated over the past few years over what we have sought to conceptualize, together with Christopher Bickerton in a series of joint publications, as new conflicts of sovereignty in Europe. Then, we present the book chapters and reflect on how they illustrate, relate to and expand the various lines of analysis put forward in the research agenda at stake. Finally, we look at the avenues that still lie ahead for scholars to explain how and why sovereignty is more than ever in flux in the European multilevel polity.

1.2 The Research Journey

When we started our project on sovereignty, it was clear to us that while being one of the oldest concepts in political science, it was also at the heart of European integration and by extension, of seminal work in EU studies. However, it was especially in the post-Maastricht era that one could see a clear resurgence of debates and fears around sovereignty.

With the transformation of the European Communities into a Union, and the transfer of powers which were traditionally seen as in the pure realm of national sovereignty, some segments of the public in EU member states started to express their fears when it came to their national identity, traditions and sovereignty. At the same time, political entrepreneurs could easily mobilize those voters through explicit nationalist narratives. With the various crises that followed over the past two decades (including the 2008 economic crisis, the so-called refugee crisis in 2015, Brexit in 2016 and the Covid-19 pandemic in 2020), these claims have been exacerbated and politicized, taking the form of conflicts of sovereignty. These conflicts were usually seen in their vertical dimension, namely as an opposition between national sovereignty and the EU. Whether we look at scholars focusing on theories of European integration, or research on public opinion or the literature on parties and the EU, the same dichotomy appears over and over again. We tried to go beyond this binary view to understand the conflicts of sovereignty.

In a first step, we argued that these conflicts are not necessarily binary but rather multidimensional. While previous works focused on the 'transition' of the concept of sovereignty from the Westphalian to the post-Westphalian era, we aimed at scrutinizing contemporary conflicts over sovereignty. The purpose was to understand how today's political conflicts are the expression of a variety of claims to sovereignty against the background of the dynamic and unstable process of EU integration. We argued that sovereignty conflicts have become more complex over time and more particularly during the last decade with the rise of contention over the *raison d'être* of European integration. Taking stock of the scholarly and political debates on sovereignty, we distinguished four dimensions of sovereignty which have emerged from the ongoing legitimacy crisis of the EU and the related discourses and confrontations among political actors (Brack et al., 2019): national, supranational, parliamentary and popular sovereignty. Through several case studies (in our special issue of the *Journal of European Integration*, vol. 41, no. 7), we could demonstrate that these various dimensions interact and that conflicts of sovereignty are not only vertical (between national and supranational actors) but also horizontal (between domestic actors within member states). In other words, conflicts could also be triggered *within* member states and involve various patterns of conflicts.

In a second step, we further defined the various types of conflicts and their dimensions but also wanted to go a step further and understand why

there is a proliferation of conflicts of sovereignty recently (Bickerton et al., 2022). We distinguished three types of conflicts: foundational (about who is the sovereign); institutional (how sovereignty is institutionalized) and territorial conflicts (about the boundaries). Foundational conflicts can be very destabilizing but are rather rare. Not many actors question the central role of popular sovereignty in European democracies and most conflicts are institutional ones: about who should represent the people, or territorial ones—how does one define the people. This distinction between these three dimensions helps identify the contemporary conflicts of sovereignty and understand them.

We identified two drivers of these conflicts. First, we argued that the pooling of sovereignty is a source of conflict not just between but also within national democracies. Indeed, shared sovereignty in the EU has flattened hierarchies in sovereignty and has created institutional indeterminacy in the political systems of the member states. It acts therefore as one of the drivers of contemporary conflicts of sovereignty. Second, another driver is the failure of political parties to channel societal conflicts into party competition in many member states. Over the last two decades, against the background of the crisis of representation, the national party systems struggle to institutionalize societal conflicts through party competition, which gives rise to conflicts of sovereignty.

Drawing on the insights of these two steps, this edited volume has invited authors to reflect on the theoretical framework outlined and to enter in a dialogue with it. The contributions to the volume thus articulate, expand and challenge our framework in exploring how it relates to concrete case studies from both Western and Central Eastern Europe. Indeed, it has been our ambition to analyse not only different types of conflicts of sovereignty and how they relate to each other, but also how they reverberate in a broad range of EU member states with very different constitutional and political party traditions. The authors in the volume examine the nature of the conflicts—foundational, institutional, territorial, the actors and their narratives, the drivers of these conflicts and the impact they could have for the respective member states under study and the EU as a whole.

1.3 Sovereignty Conflicts Under Scrutiny: The Book's Contribution

This edited volume offers an interdisciplinary, comprehensive and multi-faceted analysis of both vertical conflicts, that is conflicts between nation states and the supranational EU, as well as horizontal conflicts of sovereignty, that is conflicts within nation states. As the contested case of Brexit has shown particularly clearly, vertical (between national and supranational institutions) and horizontal (between national institutions within member states) conflicts of sovereignty often overlap and exacerbate each other. Thus, the two parts of this book do not address fundamentally different empirical realities and types of conflict but rather approach often overlapping conflicts of sovereignty with a different analytical focus and from different disciplinary angles, including political science, history, legal and political theory. The volume consists of two parts. The first part focuses on how sovereignty claims have been mobilized in constitutional and procedural challenges to existing constitutional settlements. The authors here focus on the heated debates around Brexit, the Catalonian Independence Referendum, the rule of law in Poland and Hungary, as well as on the rise of technopopulism in EU's Southern and Eastern member states such as Greece, Slovenia, Bulgaria and Italy, and accompanying demands for constitutional reforms. The second part of the volume focuses on sovereignty claims over time in the context of inter-party competition. Authors analyse how political parties have invoked sovereignty and changed their discourse depending on changing historic circumstances and inter-party competition in Germany and France, but also on the remarkable similarities between the ways in which sovereignty has been instrumentalized by radical right populist parties in Western and Central Eastern European countries such as France and Poland.

To begin with, the first part of the volume shows that sovereignty conflicts are increasingly occurring within member states and they can take different forms: institutional, foundational or territorial (Bickerton et al., 2022), with or without reverberations at the EU level. The chapters brought together here focus on the ways in which various actors (including bottom-up movements, parties, civic campaigns, etc.) within states have politicized constitutional indeterminacy and procedural rules to trigger conflicts of sovereignty that in turn led or could lead to changes in the constitutional settlements of these states.

The first two chapters in the section both explore institutional conflicts of sovereignty in relation to Brexit albeit from different perspectives. In his contribution (Chapter 2), Christopher Lord introduces the notion of a "Brexit State" to characterize the transition of the UK "from being a state organised for membership of the European Union to a state organised for leaving the EU". Considering that the UK used its EU membership to "rethink and adapt its own concepts and practices of sovereignty", leaving the EU and attempting to reassert British parliamentary sovereignty have led to multiple and overlapping domestic conflicts of sovereignty: first, between parliamentary and constitutional sovereignty as forms of rights protections; second, between the sovereignty of the UK parliament and the sovereignty of the parliaments and peoples of the UK; third, between parliamentary and popular sovereignty; and finally, between ways of pooling sovereignty other than through the EU.

The crucial question for Christopher Lord is how easily the Brexit state can resolve these multiple sovereignty conflicts within the "procedures of the British political system for resolving fundamental disagreements", elections being probably the most crucial of these procedures. Lord notes that the British "first-past-the-post" system worked well while the UK had a "simple one-dimensional structure of political competition without polarisation and without smothering other forms of political choice". In contrast, Brexit Britain has shown to be a deeply "divided society with multidimensional cleavages". Thus, it remains far from certain to what extent democratic mechanisms for resolving sovereignty conflicts will be able to work and how democratic they will ultimately be considering the serious danger of neglecting the opinions of citizens in the devolved regions and of pluralities of citizens disagreeing over issues such as immigration and the market.

The question of procedures and procedural battles also looms large in the contribution by Edoardo Bressanelli (Chapter 3), who focuses on one particular institution—Parliament—and draws attention to the politics of the institution itself—an issue that often remains overlooked in political science. Bressanelli explores the ways in which Brexit debates tested the robustness and consensuality of British parliamentary procedures "based on ancient traditions, and only partly written in the form of Standing Orders". His contribution shows more specifically how conflicts of sovereignty—for example, between visions of parliamentary and popular sovereignty—overlapped with other pre-existing tensions related to the functioning of the Parliament itself—for example, between

traditionalists and modernizers of Parliament. MPs interpreted strategically procedural rules to further their own visions of sovereignty, by selecting amendments but also by controlling the agenda. Not only did the Speaker at the time, John Bercow, select amendments proposed by backbenchers against the Government, but Parliament itself managed to act on occasions as agenda-setters. Furthermore, conflicts around emergency debates in the Parliament raised substantial questions about the role of Parliament itself with MPs debating whether they should be treated as "trustees" or "delegates" of the People. In short, sovereignty conflicts around Brexit gave rise to numerous procedural manoeuvres and dilemmas, which however went beyond the purely strategic and posed important questions about the very constitution of British politics.

Moving from the profound crisis of the British polity to the long-standing Spanish tensions regarding sovereignty, Joan-Pau Rubiés (Chapter 4) explores the highly contested case of the Catalan independence movement as a clear example or territorial conflict of sovereignty, which however raises important foundational questions about who the *demos* is and how it is defined in the context of co-existing historical nationalities within a single nation state. Through the lens of a careful historical analysis, Rubiés stresses that rather than simply rejecting the Spanish liberal project of constructing a "Spanish nation", political Catalanism in the nineteenth century "constituted a revision from the industrial periphery on the basis of what historians have defined as "double patriotism", Spanish and Catalan". It was in line with this vision that the Catalan Autonomous Statute of 1979 was created supporting the emergence of democratic institutions in Madrid and forging an alliance with the more progressive wings of Spanish nationalism. The Spanish Constitution of 1978 contained a profound contradiction, proclaiming "both a single sovereign will of an indivisible Spanish nation, and the right to self-government of its pre-existing "nationalities" as well as regions (the word nationality was intensively debated)".

This fragile compromise was shaken by the political fiasco surrounding the approval of the new Statute of Catalan Autonomy, which was approved by the Catalan parliament in 2005 but never materialized: After a strongly politicized process in the Spanish Constitutional Court, the text was amended in ways that, in fact, further reduced the powers of Catalan self-government going against the will of the Catalan people and going against their sense of democratic sovereignty. Rubiés emphasizes that the reason for the collapse of the fragile compromise lies not simply

in the Constitution itself nor in the transition process, but rather in the very precarious and contentious political dynamic that emerged in the decades of actual democratic practice. This political dynamic—the politicization of the Constitutional Court, the rise of Spanish nationalism and its counterpart—Catalan independentism—has led to a clash "between the will of the majority in Catalonia" and the will of the majority in Spain in general. What we see at play here is a conflict between democratic sovereignty conceived at two different levels—sub-national and national—that challenges the very democratic legitimacy of the state.

Both the institutional conflicts around Brexit and the territorial conflicts around Catalonian independentism are conflicts within nation states about their constitutional settlements. At the same time, Brexit conflicts have a key European dimension, being triggered by the UK's decision to exit the EU. And while Rubiés emphasizes that "the European dimension of the Catalan crisis has proved to be secondary to the political process within Spain", he still reminds that the "overall direction of European institutional interventions has been to favour, in an increasingly overt manner, the interests of the existing sovereign nation-states and to discourage any change of the status quo".

The role of the EU as a player in defining how to think about sovereignty domestically comes to the fore in the analysis offered by Hugo Canihac of constitutional idioms in Hungary and Poland (Chapter 5). Concepts of national sovereignty in these countries have been increasingly articulated not only in opposition to but also in dialogue with European institutions. To be sure, recent developments in Poland and Hungary have been often presented as examples of the decline of democracy and a corresponding de-Europeanization or even autocratization (Ágh, 2018; Tomini & Gürkan, 2021). Yet, responding to research by Kelemen and Pech (2019), Canihac explores the rather paradoxical example of Europeanization, in which constitutional courts from Hungary and Poland have referred to debates around constitutional pluralism in the EU to attack the EU itself.

From a legal and political theory perspective, Canihac investigates constitutional democracy as "a language, whose grammar can be declined in different - liberal or illiberal - ways". Clashes between national and supranational institutions in EU legal debates have unfolded increasingly as an opposition between these two declinations that differ from each other in the answers to four basic questions: (1) Who is the sovereign? That is, how to define "we, the people" (the subject of sovereignty);

(2) how is the sovereign constituted? That is, by whom and by which rules (the constitution of sovereignty); (3) how the sovereign can change the constitution (the internal reach of sovereignty); (4) how do these arrangements interact with other legal norms, not produced (only) by the sovereign? Political and legal actors in Poland and Hungary have pointed to a doctrine of the constitution as the expression of a pre-existing collective with a closed identity determined by history, on a cultural and ethnic basis, which can be re-expressed in line with the model of monist democracy. At the same time, "this very identity sets strict limits to validity of EU, and more generally international, rules: The relation between national and external rules is one of strict equality (external boundaries)". Ultimately, in the conflicts of sovereignty over the rule of law between the EU and Poland and Hungary, the two sides have been in a dialogue in which they share the same language but in appearance only since they "decline" the constitutional idiom differently and mean opposing things despite using the same notions.

The radical contested constitutional change in Hungary under the Fidesz's government and the violation of the Constitution in Poland by the PiS government have attracted considerable academic attention as open challenges to democracy and by the same token to EU's values. At the same time, the last chapter in Part I of this edited volume raises important questions about the sources and effects of constitutional tensions in other CEE countries such as Slovenia and Bulgaria, which have been much less explored, but also about possible parallels between conflicts of sovereignty in EU's Eastern and Southern member states. While not comparable to Brexit, the Catalan independence movement or Orbán' s concentration of power in terms of the intensity of the conflicts described or their potential for disruption of the constitutional order, the cases explored by Emilia Tudzarovska and Julia Rone (Chapter 6) all point to situations of a deep domestic political crisis with potential ramifications for constitutional change.

Tudzarovska and Rone's analysis starts from an apparent paradox: There has been an increasing expectation that national parliaments can scrutinize and provide democratic legitimacy to supranational technocratic governance mechanisms such as the European Semester. At the same time, however, a protracted and profound crisis in party politics has led to a dramatic weakening of the very same national parliaments that are supposed to provide scrutiny and oversight. Tudzarovska and Rone analyse two paired comparisons—Greece and Slovenia, Italy

and Bulgaria—to draw attention to horizontal conflicts of sovereignty between different institutions representing popular sovereignty. The Greek and Slovenian comparison involves cases where parliaments ignored demands for a referendum (Slovenia) or ignored the demands already voiced by a popular referendum (Greece) to pass legislation sanctioned by supranational technocratic bodies. The cases of Italy and Bulgaria, to the contrary, both shed light to cases where constitutional referenda aimed to reform national constitutions and further weakened parliaments in the name of popular sovereignty, while promoting the interests of technocratic elites. The same tensions between popular and parliamentary sovereignty seen in the context of Brexit thus played out in a different way in Southern and Eastern European countries, with tensions between popular and parliamentary sovereignty resulting from but also feeding into the rise of technopopulism as a leading logic of doing politics.

The second part of the volume explores also sovereignty conflicts which are increasingly occurring within member states, but focuses rather on how, over the past decades, political parties have articulated sovereignty discourses as an important element in inter-party competition. To begin with, looking at the context of Germany, Manès Weisskircher (Chapter 7) argues that demands for more direct democratic mechanisms in Germany for a long time came from left-wing parties who wanted to "democratise democracy". This is not surprising considering that the Federal Republic of Germany is "among the few European states that have not held a single state-wide referendum since 1945", despite the presence of some direct democratic instruments at the sub-national level. Even though clear majorities of the German population and "a majority of sympathisers of every Bundestag party" favour the expansion of direct democracy at the national level, there have been only limited institutional outcomes in this respect. The topic remained marginal in the national political agenda while carrying a lot of potential for latent conflict. More recently, with the rise of populism, the far-right party *AfD* had become a main proponent of direct democracy, turning the topic "toxic" and making previous proponents of referenda and more direct democratic mechanisms to nuance their positions and distance themselves from the far right, further diminishing prospects for democratic reform.

The connection between populism, nationalism and the embrace of direct democratic mechanisms is explored further by Marta Lorimer (Chapter 8) in a historically informed analysis of discourses on sovereignty of the French Front National, currently renamed to *Rassemblement*

National (RN). Lorimer traces how the same party has embraced very different conceptions of sovereignty over time depending on "internal party composition and knowledge of the EU, domestic political competition, and transnational factors pertaining to the evolution in the shape of the EU and the international political context". Lorimer draws attention to the shift in RN's discourse "from supporting 'European autonomy in the 1970s and early 1980s to opposing the EU on grounds of national and popular sovereignty from the end of the 1980s onwards". She observes this was a relatively straight-forward development from minimal discussion on national and supranational sovereignty to "sustained attacks against the EU in the name of national and, increasingly, popular sovereignty". The empirical analysis is all the more important since RN has been one of the earliest and most successful European radical right parties setting the example for a number of more recent radical right actors across the EU. What is more, the analysis highlights the "dynamic character of the contestation of sovereignty and the need to study it in a manner that captures such discursive evolutions".

While Lorimer focuses on radical right actors, Laura Chazel (Chapter 9) analyses left-wing discourses of sovereignty in France, allowing us to better grasp how the issue has been politicized across the political spectrum. Chazel traces the articulation of left-wing visions of sovereignty back to the 2008 economic crisis and the rise of new left-wing populist movements and parties, including Jean-Luc Mélenchon's *La France Insoumise*. Left-wing parties have been studied above all in relation to popular sovereignty, but Chazel aims to broaden the analysis and explore how other types of sovereignty have featured in Mélenchon's discourse. Constructing his party explicitly as a left-wing alternative, in opposition to Rassemblement National, Mélenchon strategically "distances himself from the far right regarding popular sovereignty and national sovereignty". Chazel deconstructs through a lexicometric analysis the main discourses of Mélenchon seeking to shed light on his articulation of popular sovereignty with (an inclusive) national sovereignty but also with parliamentary sovereignty and representative democracy.

Finally, the analysis of Alexander Alekseev (Chapter 10) sheds further light on the subversive and instrumental ways of articulating national sovereignty by radical right populist parties, this time in a cross-country comparative perspective. Alexeev compares two European right-wing populist parties: the French Rassemblement National (RN) and the Polish Prawo i Sprawiedliwość (Law and Justice, PiS), and explores how, despite

multiple differences in terms of party history, ideology and crucially, experience in governance, both parties have increasingly articulated a discourse of rights with a discourse of sovereignty, presenting "sovereignty" as a collective right of the people. Constructing sovereignty (both national and popular) as a right attributed to the people has gone hand in hand with promoting an exclusionary view of "the people", conceived as the majority and excluding migrants and other types of minorities. Thus, radical right parties in Poland and France have instrumentalized the language of liberal human rights to construct a narrative of sovereignty as a *collective democratic right*, grounding opposition to the supranational EU through its own language of rights and putting forward instead a vision of "Europe of nations". These findings enter in direct dialogue with the chapter by Hugo Canihac in the first part of the volume. Radical right parties have been very strategic in picking up the rhetoric of constitutional pluralism and liberal rights to articulate exclusionary visions of "the right to" national sovereignty, with the "nation" being the "ethnos". But as we see, radical left actors have also increasingly entered the debate on sovereignty itself, strategically reformulating visions of sovereignty, to chart a democratic and inclusive vision of who the people are.

In all the cases explored in this volume, vertical and horizontal conflicts of sovereignty often overlap and attitudes to supranational bodies such as the EU are intensely politicized in domestic politics. An important difference is that while political parties in Germany and France (the two key cases in the second part of the volume) have made strong claims to sovereignty, conflict there has remained latent. It has not erupted on the domestic and international scene, leading to constitutional challenges in any way comparable to those observed in Brexit, in the debates around Catalonian independence or in conflicts around the rule of law between Poland and Hungary and the EU (key cases in the second part of the volume). In this sense, Alexeev's comparison of sovereignty discourses of PiS in Poland and RN in France bridges these two groups of cases and is indicative about the role of national political context, especially whether sovereignty challenges come from a party in governance or in opposition.

Crucially, the conflicts of sovereignty analysed in both the first and second parts of this edited volume have not unfolded independently from each other. First, political parties in EU member states have often articulated their sovereignty discourses in the light of not only EU's official discourses on constitutional democracy and (pooled or shared) sovereignty, but also the political party discourses in other member states.

Second, the unfolding of sovereignty conflicts in one country has influenced the unfolding of similar conflicts in other countries. Conflicts of sovereignty around Brexit have paradoxically led to less appetite among radical right parties in Europe to exit the Union (van Kessel et al., 2020), as confirmed by Lorimer's analysis of the case of the discourse of RN. And comparisons with the Scottish independence referendum have loomed large in thinking about the Catalan case.

So if we have to sum up, what have we learned about the causes, manifestations and effects of sovereignty conflicts through this empirical journey across Europe?

1.4 The Causes, Manifestations and Effects of Sovereignty Conflicts in the EU

Regarding the **causes of sovereignty conflicts**, the cases explored in this volume all point to European integration as a deeply disruptive process of restructuring (Bartolini, 2005) the way in which territories, communities and authority have been organized in Europe in the post-World War II era. This only confirms Mair's insights (2013) about the crisis of representation in Europe and the way in which EU integration has aggravated it. In particular, Mair pointed to the increasing inability of political parties to manage the tension between technocratic policy-making and democratic participation. "Shared sovereignty", while having crystallized as a much acknowledged doctrine in scholars and arguably mainstream political elites, seems to backlash in numerous ways. Beyond the dispersal of political authority, the weakening of party systems has also been accompanied by a major reconfiguration—and perhaps weakening—of the state in its capacity to steer and regulate the economy. The transnationalization of capital and the major centralization of monetary, macro-economic and, to a lesser extent, social policy are perceived as especially disempowering among peripheral groups and territories which are commonly described as "peripheral".

On this background, qualitative research, relying on highly contextualized analysis and the exploration of national idiosyncrasies, can show how EU integration played the role of a catalyser for mostly pre-existing lines of conflict among social groups (class conflict), institutional actors or regional communities aspiring to more autonomy (as illustrated in Lord's or Pau's chapters). In many ways, then, European integration appears

both as a driving force of sovereignty conflicts and as a relatively new opportunity structure for those mobilizing in the name of sovereignty.

At the same time, domestic political dynamics and the ways in which they have exacerbated domestic constitutional indeterminacies with long historical roots should not be underestimated. The intensification of political party conflict, the politicization of constitutional courts and the rise of technopopulism as the result of a broader crisis of representation—both domestically and at the supranational level—have triggered demands for constitutional change and exacerbated sovereignty conflicts that could have otherwise remained latent (see the chapters by Pau, Weisskircher, Rone and Tudzarovska).

Regarding **the manifestations of sovereignty conflicts**, the various chapters confirm our initial argument that none of them can be really depicted as "foundational" (Bickerton et al., 2022) in the sense that all contemporary actors agree that the ultimate *locus* of authority and legitimacy should be "the people". In that sense, all actors seem to speak the same "idiom" (as Canihac suggests). In fact, most conflicts focus on the centrality of popular sovereignty and the way in which it is neglected in contemporary politics. This fuels a discourse opposing the supposedly genuine people to technocratic elites, calling for the rehabilitation of direct democracy, especially referenda, at the national level (see the chapters by Weisskircher as well as Rone and Tudzarovska). Technopopulism, then, emerges as an attempt to alleviate, at least discursively, this tension. Major disagreements, in turn, arise as to how to define who the people (i.e. the sovereign) is, with contrasted references to contentious ethnic or territorial boundaries. Many of these conflicts, then, entail a territorial dimension in that they pertain to the (re)definition of the community constitutive of "the people".

In countries without regional nationalism, inclusive or exclusive conceptions defended by various political parties rely on ethnic, civic, but also increasingly religious dimensions (see Lorimer and Chazel's chapters). Strikingly, the French government has passed, in 2021, a law on "separatism" which does not pertain to territorial conflicts but to how radical Islamic organizations or states seek influence on French society, threatening to dismantle the unity of the Republic. Unsurprisingly, a commonality across countries is that the very definition of who is the sovereign people is constantly in flux, reflecting the changing nature of political identities and the way they are instrumentally shaped in political struggles.

Ultimately, and beyond discursive confrontations, many of these conflicts manifest themselves as institutional conflicts of sovereignty which can lead to alter institutional equilibria or even constitutional settlements within states. Brexit has offered various illustrations about the fragility, but also the reinterpretation, of long-standing procedures surrounding the doctrine of parliamentary sovereignty in the Westminster model (as shown by Bressanelli's chapter). On the other side, the existing rules have so far not allowed to settle the independentist demands stemming from Scotland. Here, again, the Scottish assertive belonging to the EU in a leaving UK shows how EU integration catalyses older conflicts of sovereignty. Contentious debates about how and when to use referenda and direct democracy in many EU countries (see the chapters by Wessikircher, as well as Rone and Tuzarovska) relate also to (dis)agreement on when and how to call on "the people" to intervene in decision making.

Finally turning to **the effects of sovereignty conflicts**, they have varied greatly across the cases explored in this volume. At the level of claims making, claims to popular sovereignty have been mobilized by populist and technocratic leaders in demands for the introduction of referenda as a democratic instrument in Germany, but also in actual referenda demanding constitutional reforms held in Italy and Bulgaria. Importantly, the constitutional reforms demanded in Italy and Bulgaria would have led to less popular representation and to a considerable weakening of parliaments. Second, claims to national state sovereignty have been increasingly mobilized by radical right populist parties, both in government and in opposition, which have instrumentalized sovereignty conflicts to put forward anti-liberal ideas and values (Coman et al., 2021). Sovereignist discourses have become a key part of domestic inter-party competition in multiple EU member states and are increasingly mobilized to promote versions of differentiated integration in the EU (Fabbrini & Zgaga, 2022). Throughout the 2010s, the populist left has also started to make state sovereignty claims, articulating it as popular democratic sovereignty of the people conceived in an open and inclusionary way (as opposed to more closed-identity ethnos-based exclusionary conceptions, offered by the radical right). Left-wing populists in France (see Chazel in this volume) but also in other European contexts such as Italy, Germany and Belgium (see Crespy & Rone, 2022; Gerbaudo, 2021) have seen direct democratic instruments and representative democracy not as opposed but as reinforcing and strengthening each other. Thus, they have been also strong proponents of parliamentary sovereignty. Third,

the last decade has seen also a rise in sovereignty claims made by historic nationalities within single states, a sort of sub-state sovereignty claims that have manifested themselves through the 2014 Scottish Independence Referendum but also through the political tensions around the Catalan independence movement and the Catalan 2017 Independence Referendum, not sanctioned by the central government. Fourth and most recently, claims to supranational sovereignty have become increasingly prominent: Both national politicians, such as Emmanuel Macron, and the European Commission have put forward clear ambitions for European sovereignty in terms of trade and industrial policy.

In all of the cases mentioned, we see a considerable rise in the use of sovereignist rhetoric and claims making. Still, when it comes to actual changes in the constitutional settlements of individual EU member states, or for that matter, the EU, the effects of sovereignty conflicts have been scarce. With the dramatic exceptions of the UK's exit from the EU and Hungary's contested constitutional change, the mobilization of sovereignty claims has so far failed to challenge considerably the status quo. The introduction of more direct democratic mechanisms in Germany is still about to happen. In Spain, there has been a political impasse around Catalan independence with the central government refusing to make any concessions. In Italy and Bulgaria, the ambitious proposed constitutional changes have not been introduced, with the exception of reducing the size of the Italian parliament. When we look at change at the EU level, the rise of claims to state sovereignty in each individual EU member state and a push towards more differentiated integration are bound to create difficulties for any proponent of "European sovereignty".

Ultimately, the question of effects of sovereignty conflicts boils down to the perennial question about the influence of discourse and culture change on policy and polity change. The limited policy and constitutional effects of sovereignty conflicts we see so far could become bigger and more dramatic in the coming decades, yet the multiple crises facing the EU—the war in Ukraine as part of a broader change in geopolitical alignments, as well as the current energy crisis coupled with a long-term global ecological crisis—make predictions difficult.

1.5 Looking Ahead

As progressive actors opposed free trade agreements such as TTIP and CETA in the early 2010s, it was still possible for mainstream newspapers to call them "protectionists and scaremongerers" (*The Economist*, 2016). This attitude has dramatically changed in the second half of the 2010s when conflicts of sovereignty entered the centre-stage of politics. Everyone seems to talk about "sovereignty" currently as the term has exited political theory books and entered political speeches and everyday public discourse. Crucially, "sovereignty" is not only associated with nationalism anymore.

To begin with, in recent years, sovereignty has been increasingly invoked by European politicians from the centre-right and centre-left. Shortly after his election in 2017, French President Emmanuel Macron held a speech at La Sorbonne University in which he outlined a grand vision for a greater European sovereignty. Then, the focus lied to a large extent on culture and education, but also on the democratization of the Euro area, including a strengthening of parliamentary accountability, the creation of an accountable Finance Minister along with a Eurozone budget. When France came to hold the rotating presidency of the Council of the European Union in January 2022, little was left of such democratic ambitions. The rhetoric of European sovereignty was more present than ever, but the French presidency's programme was articulated around the triptych "recovery, power, belonging". Under this motto, there has been no attempt at re-articulating—neither theoretically nor practically—the boundaries of popular sovereignty at European scale. Ironically, this seems to remain an absolute intellectual impossibility, especially in relation to the traditional French doctrine of the nation and the indivisibility of the Republic uniting "the people". Instead, the emphasis for France has been based on three main priorities: the integration of a European defence more autonomous from NATO (something that seems to have been completely impeded by the war in Ukraine and the ensuing developments); the securitization of both internal and external borders and the management of migrations; and the coming of age of a genuine European industrial policy implying more protective mechanisms and the emergence of European "champions" to catch up in the digital field.

While the French discourse of European sovereignty had long been considered void at best, dangerous at worst by its European partners, it progressively gained traction as current events shed an acute light on

how Europe's multiple dependencies had made it vulnerable in a world no longer responsive to its "normative power". Over the past few years, there has been a conspicuous and significant change in the discourse of the European Commission itself and a pivot towards sovereignty and "strategic autonomy", well documented when it comes to trade and digital policy, for example (Schmitz & Seidl, 2022b). This new embrace of sovereignty discourses at the supranational level has to do to a certain extent with the Covid-19 pandemic, which exposed globalization's fragility and in particular, EU's vulnerability to external shocks in global supply chains (Jacobs et al., 2023). Furthermore, a changing and much tenser geopolitical situation, including US trade wars with China, the Russian invasion of Ukraine and tensions around the South China Sea, has further contributed to a renewed interest in sovereignty, often used as a synonym with strategic autonomy. Both of these terms have to some extent pointed to the resolve within the EU to foster European "champions" and produce key technologies such as semi-conductor chips and quantum computing that could help it stand on equal footing with other global powers in a multi-polar world. Such new visions of sovereignty depart from former conceptions of "shared" and "pooled" sovereignty and point more in the direction of an increasingly federated and coordinated industrial policy at the European level. While some authors have seriously considered EU's bid to rise as one of the world's super-states (Roberts, 2022), for others the economic shock of the War in Ukraine and the influence it has had on European, and especially German industry, have dealt an unprecedented blow to EU's ambitions, opening possibilities for further reconfigurations of power in Europe (Streeck, 2022). Regardless of the feasibility of EU's new trade and digital policy ambitions, however, it has been clearly shown that in outlining the way forward sovereignty has become a key term, a "coalition magnet" that has allowed different interests—a neoliberal fraction, a neomercantilist fraction and a socially-oriented fraction—to converge behind an idea of "open strategic autonomy" (Schmitz & Seidl, 2022a).

At the same time, these new conceptions or usages of sovereignty are not articulated in vacuum and it remains to be seen how the players explored in this volume—radical right populists, progressive left-wing actors, sub-national regions and "nationalities" such as the Catalans, as well as member states themselves—will react to such developments. Independentist movements in Catalonia and Scotland could pose unpalatable political problems to the European establishment. When independentists

were gaining ground in Catalonia and organized an illegal referendum back in 2017, calls on the EU to endorse the movement were numerous. The EU was seen to provide a broader geopolitical framework for small regions to belong to, once emancipated from the nation state. However, in accordance with article 4 of the Treaty on European Union, the EU institutions could only remain silent and remind that the Union is committed to "ensuring the territorial integrity of the State". The Scottish case, in contrast, presents a radically different consideration (at least from a legal standpoint) since the UK is no longer a member of the EU. Should the proposed referendum in 2023 result in a declaration of independence on the part of Scotland, it would be difficult for the EU not to accept a Scottish application to (re)access the Union, as a fully-fledged member. This, of course, would be a crucial precedent in political practice and pose extreme political difficulties in relationships with London. Rather than resolving existing conflicts of sovereignty once and for all, the new centrality of sovereignty and its various declinations across Europe seems more likely to trigger new transversal conflicts between domestic actors within nation states as well as new diagonal conflicts (between domestic actors at the national and sub-national level, nation states and supranational institutions), exacerbating a sense of crisis of representation.

Notes

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2. The contributions collected in this volume were presented at an online high-level conference as well as on a workshop for young scholars which both took place in November 2020 in the framework of the project SOVEU coordinated at Université libre de Bruxelles and the University of Cambridge.

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CHAPTER 2

Conflicting Sovereignties and the Sustainability of the Brexit State

Christopher Lord

2.1 Introduction

The Brexit referendum was famously decided on what it is for the British public to be a self-governing people with control of its own laws, money and borders. For sure, Brexit often seems to be the product of an inconsistent coalition. Many of its donors and policy entrepreneurs saw it as an opportunity to turn the UK into a radically deregulated and globalised economy. Yet, for many of its voters, Brexit was a protest of left-behind communities or threatened identities against Europeanisation, let alone globalisation. Some arguments implied a soft Brexit, defined as continued access either to the EU's single market or to its customs union. Others favoured a hard Brexit. Albeit, for some, that meant a hard break from EU regulations and standards needed for more open and competitive markets, whilst, for others, it meant hard boundaries and controlling the very

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immigration a globalised UK might need to compete at the top of world value chains. Then, somewhere in the mix was a Lexit (or 'left' Brexit) that doubted the UK could choose social justice, social transformation or even a new social compromise within the current form of European Union. State, society and economy would plainly be very different in Brexitland depending on choices between its versions.

Yet, whatever their other contradictions, most who voted for Brexit agreed with some part of the idea that the UK had insufficient 'control' of its laws, money and borders. In a huge survey (Ashcroft, 2016) of 12,639 voters on referendum day itself, the idea of 'regaining control' dominated any other reason for voting to leave the EU. 49% of those who voted leave said their main reason for doing so was 'the principle that decisions about the UK should be taken by the UK', and an overlapping group of 33% said their main reason was that the UK should 'regain control of immigration and its own borders'. When a YouGov poll asked respondents to pick 'two or three of the most important issues when deciding on Britain's future relationship with the EU', 54% of all leave voters chose 'ensuring Britain has control over its own laws' as an answer. In contrast, that response was chosen by only 17% of remain voters. Hobolt et al. (2020), accordingly, classify the campaign and the vote as a 'sovereignty referendum'.

All that, however, creates a problem. The UK must now agree a concept of sovereignty and develop a form of statehood that are different enough to its membership of the EU to deliver on the outcome of the referendum. That cannot just involve subtracting the UK from the EU. It also requires reconstructing the UK's internal political and legal order in ways that are likely to provoke sovereignty conflicts within the UK itself. Brexiters may make history. But they do not do that from a position of their choosing. They start from a British political and legal order that has itself been fundamentally changed by the UK's membership of the EU (Bickerton, 2019; Bogdanor, 2019). The UK used its membership of the EU to rethink and adapt its own concepts and practices of sovereignty and of those things that relate to sovereignty. Assumptions about rights, territoriality, government and sovereignty itself—or, in other words, several of the fundamentals of political order—came to depend on the UK's membership of the European Union.

So, leaving the European Union will require revisiting and altering aspects of the UK's political and legal order that assume membership of the EU. Attempting that alteration by simply reasserting UK parliamentary sovereignty as the basic norm and the organising principle of

the British political and legal order risks multiple, acute, overlapping sovereignty conflicts within the UK itself. First between parliamentary and constitutional sovereignty as forms of rights protections. Second between the sovereignty of the UK parliament and the sovereignty of the parliaments and peoples of the UK. Third, between different forms of sovereignty—parliamentary and popular—favoured by different varieties of Brexit. Fourth, as I will argue, between ways of pooling sovereignty other than through the EU.

Others (Bickerton, 2019; Bogdanor, 2019; Keating, 2021; Weale, 2017, 2018) have discussed those furies and how Brexit has released them from their Pandora's box. Whilst briefly mentioning sovereignty conflicts identified by others, I want to raise two further questions. First, are there sovereignty conflicts between what I call the Brexit state—or what is required of the UK's internal political order to deliver on Brexit—and important reasons for some pooling of sovereignty between democracies? Second, how far are sovereignty conflicts created by Brexit manageable through the normal operation of the UK's political system? An agreed democratic process should, in principle, be able to settle even the most acute of disagreements. Even sovereignty conflicts may not be explosive on their own, but only in conjunction with a political system that is unable to resolve or manage them.

Of course, these are huge questions. My aim is merely to suggest some ways of thinking about them. I define the 'Brexit state' by identifying what must follow from ceasing to be a member state and becoming a non-member that is also an ex-member: from being a state organised for membership of the European Union to a state organised for leaving the EU (Sect. 2.1). I then identify conflicts over who or what should be sovereign within the Brexit state (Sect. 2.2). I then discuss potential conflicts over how the Brexit state should pool any sovereignty externally with other democracies (Sect. 2.3). I then question how easily the Brexit state can resolve its sovereignty conflicts within the procedures of the British political system for resolving fundamental disagreements (Sect. 2.4).

As discussed in the introduction of the volume, sovereignty is most tightly defined as the power of final authoritative say (Philpott, 2020. Cf. Hinsley, 1986) or, in other words, the right of final decision, especially in the making of laws. However, in its everyday usage, sovereignty is an umbrella concept for different—and not altogether consistent—factors that contribute to how far a state or a democracy is self-governing. That

includes autonomy or an ability to make and define choices (see also Lorimer in this book). It is possible to 'take back control' by regaining the legal right of final decision, whilst losing control in the sense of an ability to make and define some choices that may also be important to what it is to be a self-governing people. As Chris Patten (2000), a former chair of the Conservative Party and European Commissioner, has put it, 'A man, naked hungry and alone in the middle of the Sahara is free in the sense that no one can tell him what to do. He is sovereign then. But he is also doomed'. It is precisely because it allows us to identify such sovereignty conflicts that this chapter understands sovereignty in its everyday sense as the multiple, sometimes conflicting, components of self-rule. I, accordingly, understand sovereignty conflicts as disagreements over rule and who should rule (Bickerton & Brack, 2022, p. 295) that are often normative or conceptual and not just empirical disagreements about the forms of government and politics needed to achieve a given idea of rule.

2.2 From Member State to Brexit State

The European Communities and the UK of the 1950s are quite different to their equivalents of the 2020s. But there has been one continuity. Throughout, ideas of parliamentary sovereignty were fundamental to opposition to the UK's participation in any European integration (Lord, 1996, 2020). Even, after it joined the European Communities in 1973, the UK remained, constitutionally speaking, the most improbable and least compatible member state. For sure, there were many on the British side who tried to reframe the problem as one of autonomy-gained rather than sovereignty-lost.[1] Associating together with others through the European Communities would enlarge the UK's ability to make choices and reduce its need to follow the choices of others. What was the use of the UK having the final say if, on its own, it had little say? As elsewhere a measure of constitutional tolerance allowed sovereignty questions to be avoided or deferred. Conflicting hierarchical claims to the supremacy of the EU's law or the sovereignty of the UK's parliament could coexist in a heterarchical relationship for those who were prepared to treat neither as final under all circumstances (Cohen, 2012).

Yet, the sovereignty of the UK parliament and the primacy of European Union laws always had potential to become a tale of two colliding absolutisms. Joe Weiler (1997) once described the supremacy of EU law as the MS Dos of the EU. Sacha Garben (2019) has more recently

added: 'The CJEU has persistently refused to recognise any "nucleus of national sovereignty" that can be invoked against the EU'. However, national parliamentary sovereignty is closer to being the only question answered by some conceptions of the UK's political order than a question everyone can agree not to answer. The tying of assumptions about justified political authority so closely and so absolutely to the sovereignty of the UK's parliament meant that the Union was more likely to be understood as an alien and imposed political order, rather than a form of joint decision-making in which the UK itself participated.

If the 2016 vote was a sovereignty referendum that somehow requires reclaiming control, if parliamentary sovereignty is the core principle of the UK's political and legal order, and if parliamentary sovereignty was a fundamental objection throughout to joining in a form of European integration with supranational institutions and a commitment to 'ever closer union', it might seem obvious that Westminster parliamentary sovereignty is the form of sovereignty to which the UK should default on leaving the Union. But not so fast.

Precisely because it started off from such a strong conception of parliamentary sovereignty, the UK went further than most in using membership to transform its own internal political order. EU membership helped solve problems inherent to parliamentary sovereignty itself: notably, the difficulty of securing rights or a territorial settlement except through partisan majorities in just one parliament of the UK. UK courts were able to use EU law to develop rights. A political system that had already qualified parliamentary sovereignty in relation to the EU could more credibly commit to not using parliamentary sovereignty to alter devolutions of power to Northern Ireland, Scotland and Wales at the whim of changing majorities in the Westminster Parliament (Bogdanor, 2019, pp. 248–249). Since the UK used EU membership to escape the problems and limitations of national parliamentary sovereignty, it now risks conflicts in reasserting parliamentary sovereignty.

However, there is a further reason why returning sovereignty to the UK can be expected to create sovereignty conflicts. EU membership not only became an important part of the UK's internal constitutional order. It also became a means by which the UK pooled some sovereignty externally. Here, to grasp what the UK gave up on leaving the EU, we need to understand the concept of sovereignty pooling; how the EU operates as a form of sovereignty pooling; and the idiosyncratic ways in which the UK participated in that pooling before 2016.

Pooling sovereignty is a form of reciprocation. Democracies have collective action problems they cannot solve individually, so they reciprocally commit to using their sovereignty together and in ways that change how each uses its own sovereignty (Keohane, 2002; Keohane & Hoffmann, 1991). Reciprocal commitment between sovereigns substitutes for the absence of a common sovereign. Different ways of pooling sovereignty are then distinguished by how states bind themselves and by how they participate in powers they have agreed to exercise together.

In the case of the EU, each member state agrees the powers of the Union. Yet, as long as it remains a member, it binds itself by pre-empting its own powers to make decisions that conflict with EU laws (Scharpf, 2009). Nor can it subsequently alter the Union's powers on its own (Garben, 2019). We can understand how the EU operates as a form of sovereignty pooling through reciprocal commitment by considering who has the final say over EU laws. The EU in so far as its Court has established the primacy of EU laws and a monopoly final interpretation of Union law. Member states in so far as they can reclaim their final say by leaving the Union. To labour the point, the EU has the final say as long as member states choose to remain inside the 'game', the rules and the form of political association created by membership. The member states have the final say in so far as they can leave the game, the rules and form of association created by membership. The Union has ultimate powers of decision within its EU order. Member states have ultimate power to decide whether to remain a member of the Union's political order.

The Union is also organised for the close participation of member states in the exercise of the powers they have themselves pooled. Much is under their 'collective supervision' (Lindseth, 2010) and even individual control. A system that depends on the willing implementation of members needs to aim at the highest level of individual agreement compatible with joint action. Yet, if the Union needs to be organised for the co-operation of its member states, its member states need, conversely, to be organised for their participation in the Union.

Sovereignty pooling requires fundamental change to member states themselves. A member state is a form of state organised for the pooling of sovereignty through the European Union (Bickerton, 2012). All members participate in the use of Union powers to co-author Union laws. All co-ordinate at least some of their own core state powers (Genschel & Jachtenfuchs, 2014) through the Union. All are bound by Union law.

All enforce Union law on their own citizens. All have pre-defined decisions rights. All participate closely in Union decisions from conception to implementation through the executive branches of their own elected governments. All have to adjust their own law, administration, executive-legislative relations, politics and political competition, to what is needed to pool their sovereignty in the foregoing ways through the Union.

Of course, it matters to an understanding of what it is leaving, that the UK only participated in the EU's sovereignty pooling in a distinctive way. Whilst pooling some of its sovereignty through the EU, the UK also used differentiated integration to limit and sometimes even retain discretion over the scope of its own membership. It famously had opt-outs from Monetary Union, Schengen and aspects of the application of the EU's Charter of Fundamental rights. So extraordinary was its ability to pick and mix, that the UK was even able to opt out of large areas of Justice and Home Affairs, whilst securing rights to opt back in to 130 specific measures. Limits on how far the UK was involved as a member may now limit the difficulties in withdrawing it from the EU. However, another feature of the UK's membership will have the opposite effect.

The UK was not always a supporter of flexible and permissive concepts of membership. In one crucial respect, it was firmly on the side of constraint and uniformity. It sought neither exception nor differentiation from the single market and insisted none should be given to others. The UK's former Permanent Representative, Sir Ivan Rogers (2017), would call this a 'single market only' form of membership. For sure, the UK had other commitments. But the single market was plainly what it valued most about EU membership. The single market became a key part of the political economy of the British state. The financial single market contributed massively to the UK's tax base (Armstrong, 2016) in ways that helped the UK sustain a financial sector that was five times GNP, not to mention the remnants of the UK's welfare state and social compromise.

So, if the UK was able to avoid much of what it did not want from the Union, whilst getting so much of what it wanted from the single market, what was the difficulty with its membership of the EU? In a word: sovereignty. Since it removes behind-border and non-tariff barriers, a single market is necessarily a massive undertaking in shared law-making. It was largely on account of the single market that the European Union and its law became a significant component of how the UK and its public were governed. Moreover, it was precisely the sovereignty claims of the EU that made it uniquely suited to constructing a multi-state internal

market. The priority of EU law and the monopoly final interpretation of EU law by its Court facilitated certainty and coherence in the creation of a single market through a mixture of politics, law, economic competition and cross-border transactions. This was a pooling of sovereignty to which British governments bound themselves at least as enthusiastically as other members. Even when the Cameron Government (2010–2016) made a point of voting more frequently against proposals, it only opposed 12% of measures (UK in a Changing Europe, 2015). Otherwise, the UK was just like any other member state in hardly voting against proposals at all (Mattila & Lane, 2001). Yet initial agreement did not mean absence of subsequent constraint. Once passed, single market laws could not be changed by the UK on its own. Hence, single market measures constitutionalised particular economic and social models and removed them from the scope of political competition within the UK. That was plainly problematic for anyone who believed that democratic self-rule should be delivered from within the UK's political order and not by means of some sovereignty pooled with the EU. Given the volume of law-making it required—and its creation from 'four freedoms' that included the free movement of persons—sovereignty pooling through the single market made it plausible to win a referendum to leave the EU on a commitment to regain control of the UK's laws and borders.

But where does all that leave the UK now? Whether sovereignty is lost in being a member of the Union has been much discussed. But could sovereignty also be lost in ceasing to be a member? After all, leaving means withdrawing from distinctive arrangements for pooling sovereignty that could themselves have important justifications. Might that, in turn, help us understand why leaving the EU may even amplify, rather than resolve, sovereignty conflicts within the UK?

Of course, prediction is hazardous. But, if member states are organised for membership of the EU, there are ways in which the UK will now need to be organised for *not* being a member of the EU. What might be termed the 'Brexit state' will need to do at least the following.

i. Do enough to recover control of the UK's laws, borders and money to count as delivering on the 2016 referendum. Here reasons for leaving the Union may themselves constrain the assumptions about sovereignty and sovereignty pooling that are now available to the UK. If, exiting was, in part, a rejection of forms of sovereignty pooling practised by the EU, either the UK will need to avoid

similar practices in seeking alternatives to membership, or it will have to change its mind about sovereignty pooling.

ii. Review those parts of UK political and legal order that depend on EU membership either discarding them or giving them some other foundation.

iii. Decide between conflicting versions and ideologies of Brexit. Should Brexit be based on a minimal state and a maximally deregulated economy or on a developmental state and a social compromise that includes responsibilities for levelling up left-behind communities?

iv. Decide between different forms of non-membership (Eriksen & Fossum, 2015). Non-members can aim at convergence with EU laws in exchange for some participation in shaping those laws. They can even, as the European Economic Area countries have done, construct something of a shared political and legal order with the Union with some sovereignty pooling, albeit in different and more limited ways than EU membership itself. In contrast, non-members can choose little relationship with the EU beyond common membership of third bodies such as the World Trade Organisation.[2]

However, in deciding (i)–(iv), the 'Brexit state' can be expected to experience sovereignty conflicts, some already obvious and others potential. The next two sections explain which ones.

2.3 Known Sovereignty Conflicts

Brexit has already opened up sovereignty conflicts within the UK. One conflict is between parliamentary and popular sovereignty. In the referendum taking back control often meant 'people' and 'communities' taking back control from elites, including even elected representatives supposedly made unrepresentative and unaccountable by the process of representation itself. That is not self-evidently a mandate for parliamentary, as opposed to popular, sovereignty as the legatee of any sovereignty pooled through the Union. Yet popular sovereignty is indeterminate. There are many ways of defining the people and multiple ways of defining what would count as a majority of the people (Weale, 2018). Those things need to be specified through rules if popular sovereignty is not itself to be a domination of the people by power-holders who claim the will of the

people is whatever they take it to be. Hence, popular sovereignty itself presupposes constitutional and parliamentary democracy. Constitutional democracy because it too requires rules. Representative democracy since representatives are needed to make the rules (Plotke, 1997; Weale, 2017). But that only means that people, constitution and representation will all need to be brought into a mutually sustainable relationship within a Brexit state that starts out co-sponsored by those with strong—but not obviously compatible—understandings of parliamentary and popular sovereignty.

Indeed, a second conflict in the Brexit state is between parliamentary and popular sovereignty on the one hand and constitutionalism on the other. Sovereignty is a well-known puzzle. Neither absolute nor constrained or constitutionalised sovereignty seems to be coherent ideas (Philpott, 2020). How can a sovereign bind itself? The moment after it bound itself it would still be as sovereign as before to unbind itself. So, does that mean 'sovereignty creates a power which is above the rules' (De Jouvenel, 1955)? And, if so, why would anyone prudentially or morally accept such a power (Locke (1924 [1690], p. 163)? Perhaps all we can say is that the inhabitants of any political order have to find their own way of dealing with those paradoxes. Here, Giovanni Sartori (1962, 853–857) cautioned against being fooled into believing that the British are so different from anyone else in how they deal with the puzzles and predicaments of sovereignty. As he put it well before the UK became a member of the EU, there is 'an element of polemical coquetry in the principle of the sovereignty of parliament'. What the British mean by the sovereignty of parliament is not really so different to what others mean by constitutionalism: namely, 'a fundamental set of principles and a correlative institutional arrangement which would restrict power and ensure a limited government'. Historically, this is a point of fundamental importance: what justified the idea that parliament could not be bound was the belief that the English had very clear ideas of their rights—including their rights to limited and non-arbitrary rule—and parliament was the representation of many local communities that best understood those rights. Sartori concluded, 'One must be very careful about British constitutional textbooks. They have been written for a happy people whose constitutional system is likely to work well anyhow'. Of course, that raises the question of what if the British are no longer a happy people but, rather, a divided one in which many would be uncomfortable with trusting particular parliamentary or popular majorities with their rights? Hence, Vernon Bogdanor's (2019) conclusion that—however it resolves the competing

claims of parliamentary or popular sovereignty to power and supremacy in its new order—the next struggle in the definition of the Brexit state will be over a codified constitution to protect rights against either of those sovereignties. Otherwise, 'Brexit will leave us with an unprotected constitution' (273).

A third conflict in Brexit is between the sovereignty of the parliament or people of the UK and the sovereignty of its parliaments or peoples. As Michael Keating (2021) has put it, the Brexit state assumes that the UK is exiting the EU as a single *demos*. That it must assume. Its legitimating moment in the 2016 referendum only created a majority for leaving at the level of the whole of the UK. Northern Ireland and Scotland voted to remain. Yet, withdrawing from the UK as a single *demos* threatens to displace an external sovereignty conflict into internal sovereignty conflicts within the UK. The same constraints on the sovereignty of the British state that convinced some that the European Union was a form of rule by others came—during the course of the UK's membership—to be understood by some in Northern Ireland and Scotland as necessary protections if they were to be guaranteed roles in governing themselves within their parts of the UK. In Brendan O'Leary's view (2018, p. 234), 'the inability of the English to establish entrenched constitutional arrangements with others – arrangements that are entrenched beyond discretion of a simple governing majority in the House of Commons - has been brutally re-advertised'.

In Northern Ireland, it unsettles the Good Friday agreement (GFA) (1998). The GFA is not just a peace process. It is also the basis for the consent of one of its communities and of the Republic of Ireland to Northern Ireland itself (McCrudden & Halberstam, 2017, 15). As O'Leary continues, Brexit 'damages the settled expectations' that accompanied the Agreement: 'namely joint membership of the EU by the two sovereign governments, joint commitments to the European Convention on Human Rights, and an invisible border across Ireland'. The last difficulty is especially acute. For many Brexiters, the popular sovereignty expressed through the 2016 referendum requires withdrawing the whole of the UK from the EU's legal order. That, in turn, requires withdrawing from the EU's single market and customs union. That, in turn, requires a border between Northern Ireland and the Republic of Ireland. Yet, the GFA secures the consent of one of its communities to Northern Ireland through a commitment—that would be less credible with a hard border—to a possible future referendum on Irish reunification. So, there is a need

for a clear reclaim of sovereignty to deliver Brexit. Yet, to preserve the GFA, there is an equal need for an obfuscation of just who has ultimate sovereignty in and over Northern Ireland. That sovereignty conflict has only been managed in the withdrawal agreement by turning Northern Ireland into a still more post-sovereign part of the UK that will remain aligned to the EU's single market and customs Union behind an internal customs border between Northern Ireland and the rest of the UK.

Michael Keating (2021) has likewise argued that only a post-sovereign UK can work for Scotland. An understanding of the sovereignty of the UK parliament as unconstrained cannot work for those who believe that the Scots are a democratic people with a right to self-government within or without the UK. On that understanding, the two *demoi* are co-sovereign. The Union of Scotland and England (1707) was one of equals, and the relationship is, once again, understood as one in which the Westminster parliament has limited rights to change things unilaterally.

2.4 Potential Sovereignty Conflicts

I now turn to a potential sovereignty conflict that has more to do with sovereignty pooling after Brexit. I argue that certain kinds of externality mean that democracies such as the UK need some means of pooling sovereignty if they are to meet core obligations to their own publics to secure rights, justice, welfare and democracy. For sure, the EU is not a unique solution to that challenge. Indeed, member state democracies might even be required to leave the Union if they can identify better means of managing externalities in ways needed to meet their core obligations to their own publics. Yet, if my argument is correct, they will need *some* means of pooling sovereignty with other democracies. That raises the question whether a Brexit based on strong conceptions and expectations of regaining sovereignty can do enough to pool sovereignty with other democratic states to meet obligations the Brexit state plausibly has to its own public. If not, might sovereignty pooling—how and with whom it should be pooled—be a continuing sovereignty conflict within the Brexit state?

The problem of externalities is familiar. Externalities are uncompensated harms or benefits that are not reflected in rewards to those who produce them (Laffont, 2008). Simply summarised, externalities are negative where actors do not pay the full cost of harms they impose on others. They are positive where actors do not receive the full benefits of their

own actions. Negative externalities will be over-produced. Public goods—which function as 'very strong' positive 'externalities' (Begg et al., 1984, p. 352)—will be under-produced. So, too little will be done to clean up climate change (a positive externality) and too much to create climate change (a negative externality). Too little will be done to provide stable systems of human security and economic exchange (positive externalities) and too much to create financial risks that put entire economic systems at risk (negative externalities).

The key point, however, is that managing externalities is not just of functional importance. Democracies may need to manage externalities between themselves if they are to meet their most basic obligations to their own publics to secure rights, justice, freedom from arbitrary domination and standards of democracy themselves. Closely interconnected democracies may struggle to provide their own publics with rights against polluters, monopolists, tax-evaders, terrorists, traffickers, discriminators or spreaders of slanders and hate if the sources of those forms of arbitrary domination (Pettit, 1997) are located in other states. Those inter-state and inter-democracy externalities may then make it hard to provide justice in the Rawlsian (2003, pp. 8–10) sense of how well 'political and social' institutions, laws and practices all 'hang together as one' more or less 'fair system of co-operation'. As Laura Valentini (2011, p. 208) puts it: 'We can no longer assume that each state is uniquely responsible for securing domestic social justice. States ability to do so depends on what happens beyond their borders'. If externalities mean that some 'goods' and 'bads' are systematically under or over-produced between democracies, it will be hard for actors within any one democracy to co-ordinate on any concept of justice that involves those 'goods' and 'bads'. If, finally, it is an ideal of democracy that citizens should be able to 'define the terms of their living together as equals' (Bohman, 2007, p. 2), democracies may need means of managing inter-state externalities if their citizens are to have much chance of influencing choices in matters as vital to the 'terms of their living together' as protection against pandemics; as providing security without arms racing; as providing financial systems without systemic risks; or as fighting climate change (Mansbridge, 2014).

Externalities and sovereignty relate in important ways. One thing sovereignty cannot easily mean is choosing alone if externalities mean that choosing jointly is a condition for choosing at all in matters that are important to sovereigns' own obligations to their own publics. Sovereigns may not be sovereign at all unless they can credibly bind (Elster, 1979)

and even coerce themselves (Hardin, 1968; Mansbridge, 2014) into managing externalities in ways needed for each sovereign people to use its own democracy to agree rights, obligations, justice and democracy.

It is precisely inter-state and inter-democracy externalities that raise the question of how and with whom closely interconnected democracies may need to pool sovereignty. Politics, democracy, institutions and law are increasingly misaligned with the externalities they are supposed to manage. Political authority to provide positive externalities and eliminate negative externalities has historically been accumulated by states. However, with interdependence, the democratic state may even become a part of the problem. Interdependence creates risks of democracy-on-democracy domination. It increases the ability of democracies to impose negative externalities on other democracies and decreases their ability to provide their own citizens with public goods (Collignon, 2003, p. 88). Democracy may itself make things worse. If, any one national democracy has an interest in imposing harms on its neighbours or in free-riding on the efforts of others to maintain economic, ecological or security systems, then its own electorate and parliament will also have an interest in behaving in those ways (Lord, 2015). If voters are purely self-regarding, electoral competition within any one democratic state may only be in 'equilibrium' (where those competing for power have done everything possible to win votes) at precisely the point that maximises negative externalities and free-riding between democracies (Grant & Keohane, 2005).

Promises and justifications for Brexit may require special attention to inter-state and inter-democracy externalities. Fairness was as important as taking back control to one crucial component the Brexit vote. For those voters, there is a social contract implicit in Brexit. Brexit Britain is committed to doing something about left-behind communities and to ensure a society in which the 'overall structure' (Rawls, 2003, pp. 6–8) of life chances, public policies and laws all 'hang together' to form a 'fair scheme of co-operation' (ibid.). That will require attention to how international externalities interface with conditions for social justice and economic opportunity within the UK itself.

For sure, it would be wrong to suggest Brexit has no answers to the management of inter-state and inter-democracy externalities. Yet its international co-operations must be consistent with its expectations of taking back control. In so far as they believed the UK was insufficiently sovereign as a member of the EU, Brexiters can only undermine their

own justifications for leaving the Union by agreeing to alternative forms of international co-operation, or even sovereignty pooling, with the characteristics that motivated their objections to EU membership. For many Brexiters, that must limit how far international co-operation over the management of externalities can be based on shared laws other than those the UK can control and interpret for itself. However, without shared political or legal authority, the management of externalities has to be based on bargaining between governments and self-enforcement of agreements through reciprocation or retaliation.

That may even be appealing. Since providing certain kinds of collective good and removing externalities is pareto-improving, democracies may often be able to co-ordinate on solutions each can justify in their own way and enforce on themselves. The conditions where that is possible—low transaction costs in monitoring and enforcing agreements (Coase, 1960)—are also more likely to hold where externalities are between states rather than individuals. Whilst managing diffuse externalities between millions of individuals may require strong norms and stringent laws, groups of states may be sufficiently few to monitor one another without that requiring much by way of a shared institutional authority. Contrary to the view that bargaining is purely strategic and without normative value, bargaining together without agreeing shared norms, laws or institutions over the management of inter-democracy externalities can itself have the special normative quality of allowing each democracy to co-operate for its own reasons of value (Buchanan & Tullock, 1962). Acting together, whilst deciding norms and values apart, may be especially appealing in the case of co-operation between democracies, given that conditions for democracy seem easier to achieve within states than beyond them.

So where might things go wrong? One difficulty is that bargaining and compliance are likely to follow power in the absence of shared making, interpretation or enforcement of laws. Remember that democracies may need to manage externalities between themselves if they are to secure their own obligations to their own publics to secure rights, justice and democracy. Can bargaining based on some distribution of power between democratic have much resemblance—either as process or as outcome—to what is required for democracies to meet their obligations to their own publics to secure rights, justice and democracy itself? Publics may feel that some collective goods and externalities are of such fundamental importance that they should be provided or avoided as a matter of right and not a matter of what can be bargained with other democratic states. They

will not expect to have to bargain for compensation, to split differences, to divide remedies between victim and perpetrator or even to negotiate over who should be understood as the victim and perpetrator. Rather, democracies might expect a clearly defined right—and a right to be able to live with the certainty of having clearly defined rights—not to have certain negative externalities imposed upon them and not to have others frustrate their own efforts to provide positive externalities they believe are essential to their rights or well-being.

A second difficulty is that the conditions for managing externalities just through bargaining and self-enforcement easily breakdown (Coase, 1960). What if the costs of reaching and monitoring agreements are too high for democracies to achieve very much by just bargaining between themselves over the provision of collective goods and the management of externalities? Democracies will then have to choose: do they leave collective goods under-provided and externalities under-managed? Or do they agree institutions that might help them construct, monitor and enforce on themselves the means of providing collective goods and managing externalities? Democracies might get far closer to meeting their obligations to their own publics by constructing shared obligations in the management of inter-democracy externalities out of their individual obligations, rather than leaving things to inter-state bargaining and self-enforcement alone. Any prospect of achieving a 'rule of right' within democracies may require some rule of law in the management of externalities between democracies (Joerges, 2006, p. 791).

Note, though, that this argument for some shared law-making beyond the state does not depend on cosmopolitan ideals or ideals of European integration. Rather, it depends on assumptions about the obligations the UK might owe its own public to secure rights, justice, non-domination and standards of democracy under conditions of externalities. If some shared law-making beyond the state is needed to deliver those obligations, then Brexit may only lead straight back to similar sovereignty conflicts within British politics to those that afflicted the UK's membership of the EU, not least because any one democracy is limited in how far it can unilaterally determine any arrangements for pooling sovereignty in shared law-making and enforcement.

2.5 Resolving Sovereignty Disagreements

We have discussed four legitimacy conflicts within the Brexit state: between parliamentary and popular sovereignty; between constitutional and other forms of sovereignty; between the sovereignty of the people and the sovereignty of the peoples of the UK; and between pooled and unpooled sovereignty. Yet, even sovereignty conflicts can, in principle, be resolved within agreed democratic procedures. Sovereignty conflicts will only call the sustainability of the Brexit state into question if its democratic procedures for handling disagreements are themselves excessively vulnerable to disagreement. Could that be a problem for the Brexit state?

Some might argue that the damage has already been done: any prospect of agreement on the exact nature of Brexit was fatally undermined by the referendum itself. The referendum only determined that the UK should leave the EU, not the manner of its leaving; nor anything that might replace EU membership. We know that leave was preferred to remain in the 2016 referendum. But we do not know whether the choice to leave in some unspecified way was a Condorcet winner; that is to say, a choice that would have been preferred to all other possible choices had those also been put to the public (Weale, 2017, p. 8). Hence, the referendum sowed division. Leavers see a clear mandate to leave. Remainers see an unspecified mandate and a whole load of other choices that might have defeated Leave. Choices should perhaps have been more thoroughly deliberated in relation to one another before being narrowed to just those most likely to produce a majority that could beat all other possible majorities (Miller, 1996).

Yet, it might be replied, the Brexit state can still resolve its indeterminacies and even its procedural disputes through successive elections. Where Brexit ends up on a continuum from Singapore-on-Thames to Lexit, how far the UK exits as one or several territorial units, and how far it repools some sovereignty through a Brexit of varying softness or other international co-operations are all questions that can be determined through future elections. Even disagreements on how decisions have been made so far can be arbitrated through future elections. Note too that any future referendums would need to be authorised by prior elections (Lord, 2021). So, the key question for the Brexit state is how far it can resolve its sovereignty and other conflicts through elections.

The UK has a famously 'winner-takes-most things' electoral system. A single winning party usually gets to control both government and

parliament for up to five years at a time. Although often described as majoritarian, a majority of the votes is one thing very few British governments have. So, is the UK a plurality system? Does it at least confer a monopoly of power on the party with the most votes even if that is not a majority? Not even that cannot be guaranteed. The party that comes first in the votes can come second in the seats. That, in turn, is part of a wider difficulty that there is no one relationship in how aggregate votes translate into aggregate representation.[3] To its critics, then, the system is worse than a form of majority domination. It is a form of plurality domination by arbitrarily established pluralities. In their Democratic Audit of the UK, David Beetham and Stuart Weir (1999, pp. 45, 55) describe the British electoral system as 'the other national lottery': this 'does not mean there is no relationship between votes and seats'…but the 'voting system is exceedingly unpredictable in its operations'.

Many have asked how a system that gives one party a monopoly of power for up to five years—often with much less than 50% of the vote—has been largely accepted by losers as well as winners? Important answers—given in the decades when the UK sought or adapted to EU membership—included the following. First, the UK was an unusually homogenous society (Finer, 1970, p. 131). Second, British parties competed for the centre with the result that even those who voted for losing parties could often expect similar policies from the winning party of government to those their own preferred party would have enacted (Lijphart, 1984, p. 22). Third, although a state of four nations, territorial cleavages within the UK were (with the partial exception of Northern Ireland) largely subsumed into a single left–right dimension of political competition (Harrison, 1996, p. 99). Yet, fourth, that single left–right dimension was as weak as it was unifying. Left–right dominated in the absence of much else to argue about (Butler & Stokes, 1969).

So, the UK once had a simple one-dimensional structure of political competition without polarisation and without smothering other forms of political choice. In contrast, Brexit Britain is a deeply divided society with multi-dimensional cleavages. As well as territorial cleavages, it also has two distinct left–right cleavages: one preoccupied with markets and the other with immigration and identity. Brexit was a switch between those cleavages. As Maria Sobolewska and Robert Ford (2020, p. 220) observe, 'the dividing lines of class, income and economic ideology which still structured choices between Conservative and Labour in 2015 played virtually no role in the referendum a year later'. Instead, the authors describe

the referendum as a 'closely fought, high stakes national poll on a question where identity politics were central'. Yet preferences for Brexit and between varieties of Brexit produce are salient and often toxic along all the multiple cleavages of the UK's new politics: on questions of economics, identity and territory. That makes it extremely hard to identify stable and determinate majorities for choices entailed by Brexit.

John Curtice (2016) identified the problem immediately after the referendum: 'Voters cannot be divided into those who want a soft and those who want a hard Brexit. Both approaches are supported by a majority of voters…On the one hand, there is near universal support for maintaining free trade between the UK and the EU…On the other hand, about seven in ten voters believe that the UK should be able to control immigration from the EU'. Once, however, voters are asked which they would support if a choice really had to be made between those options, opinion remains every bit as divided as it was in the referendum itself. As Curtice continues, 'if people are asked whether the UK should allow EU migrants to come here if this were the only way UK firms could trade freely with the EU, 49% say that the UK should allow free movement, 51% that it should not'. So, the predicament seemed something like this: only by offering choices that explicitly trade off the two left–right cleavages—the identity cleavage and the open market cleavages—could even English opinion decide what it wanted from Brexit. Yet, feasible trade-offs between the cleavages still split English opinion 50:50. And, beyond England, there may, in any case, be few forms of Brexit that will work for all parts of the UK. At least until the end of 2019, there seemed to be no stable equilibrium in UK politics for anyone approach to Brexit. Just as we would expect under conditions of multi-dimensional political conflict, it seemed hard to identify any majority for any one understanding of Brexit that was stable, determinate and unambiguous enough to defeat all other possible majorities.

Yet, its defenders might reply that—even with deep division and multiple unstable majorities along the way—the system eventually delivered exactly what the British public value in it: a clear outcome. There is a clear sovereign somewhere out there after all and—helpfully from a point of view of resolving one tension in Brexit—it is a popular sovereign working through rules for electing parliamentary majorities. Whether that answer will quite do for Scotland and at least one community in Northern Ireland I am not sure. Nor may it work all that well for those who enquire more closely into standards of non-arbitrariness and political equality in

the UK's arrangements for establishing decisive outcomes. The argument that only simple majorities secure political equality (May, 1952) hardly holds for rather arbitrarily established pluralities. So, does that imply that further key decisions about Brexit should be taken by referendum after all? Finally, there are limits to how far anything can be a decisive outcome in democratic politics. Democracy never really gives anyone the final say.

2.6 Conclusion

Taking back control has created conflicts between parliamentary sovereignty and popular sovereignty; between constitutional sovereignty and the sovereignty of particular parliamentary or popular majorities; between the sovereignty of the people and parliament of the UK and of the peoples and parliaments of the parts of the UK. Sovereignty conflicts can also be expected on how, if at all, the UK should pool sovereignty with other democracies after Brexit. Before Brexit, pooling sovereignty allowed the UK to make choices it would not otherwise have been able to make over rights and its own territorial settlement. And, regardless of whether the current EU is the best way of doing it, some pooling of sovereignty through shared law-making may be needed if democracies are to manage externalities between themselves in ways needed to deliver their own obligations to their own publics to secure rights, justice, freedom from arbitrary domination and democracy itself. Aligning interstate co-operation over the management of externalities with its own obligations to its own public is not a loss of control. It is a sign of a democracy that is in control. But a democracy can only be in control where its procedures and politics can manage sovereignty conflicts and other fundamental disagreements. The core question is not whether there are sovereignty conflicts in Brexit, but how well the UK's political system can manage them.

Notes

1. UK Government White Paper, The United Kingdom and the European Communities, Command 4715 of 1971. Also, various speeches by the Minister in charge of the Negotiations, Geoffrey Rippon, in the RIIA (Chatham House press collection).
2. UK Government (2016) *Alternatives to Membership. Possible Models for the United Kingdom Outside the European Union*, London, UK Government.

3. The relative consolidation of the vote by the main parties is the main but not only factor.

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CHAPTER 3

Procedural Battles on Sovereignty: Interpreting the Rules in the UK House of Commons

Edoardo Bressanelli

3.1 Introduction

The story of British membership in the then European Economic Community (EEC), later European Union (EU), which began in January 1973 and ended in January 2020, was marked from its very beginning

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by bitter conflicts over the meaning of sovereignty. The nature of such conflicts, however, changed considerably.

In the run-up to the accession of the UK—the first application for membership was submitted in 1961—the political and parliamentary debates centred on the diminished sovereignty of the UK—or, in a narrower and more formalistic sense—of Parliament following membership in a supranational community. The primacy of EU law and its direct effect clashed with the foundational constitutional principle of parliamentary sovereignty. The key conflict—taking place mainly at the level of political elites—was that between national and supranational sovereignty. Such conflict was to re-emerge with dramatic effects in the late 1980s and particularly with the ratification of the Treaty of Maastricht in the early 1990s. More recently, however, in the UK as well as—or, perhaps, more forcefully than—in other member states of EU, the conflict—or conflicts—on sovereignty has played out internally, setting "People" vs "Parliament", "Whitehall" vs "Westminster", "London" vs "Holyrood" and creating very significant tensions for its institutions (Bickerton et al., 2020; Brack et al., 2019).

Against this background, this chapter aims to analytically map how the different "conflicts on sovereignty" have unfolded during the Brexit period, focusing empirically on the procedural rules of the House of Commons (HoC). How did different visions of sovereignty clash in procedural debates? The analytical focus is, therefore, strictly placed on procedural politics—that is, "the everyday conduct of politics not within, but with respect to, institutions" (Jupille, 2004, p. 1). In so doing, this chapter investigates an aspect of what is, rather surprisingly, still regarded an "understudied area of political science" (Meakin & Geddes, 2020; Wheeler-Booth, 2001, p. 77), notwithstanding a recent surge of interest for parliamentary rules and procedures (e.g., Goet et al., 2020; Kelso, 2017; Palonen, 2016).

Two main conflicts sequentially stood out. First, the Brexit referendum on 23 June 2016 laid bare the conflict between "People" and "Parliament". While a majority of voters chose to leave the EU, both Houses of Parliament were clearly supporting EU membership. Three-quarters of Members of Parliament (MPs) voted Remain in 2016, including a majority in the Conservative party. In 2017, 44% of MPs who voted Remain had to face a Leave majority in their constituencies (Blick & Salter, 2020). Such divisions were reproduced *within* the parties, especially in the governing Conservative party.

Following the 2017 general elections, with the formation of a Conservative minority government, the fate of Brexit appeared to hinge on the votes of a few MPs. This situation further exacerbated tensions. From late 2017 until November 2019—when the HoC was dissolved in view of another general election—another conflict between "Government" and "Parliament"—which had been latent for some time—unveiled. It is in this period that the "limits of parliamentary procedure" were tested (Marshall et al., 2020, pp. 12–13). Arcane procedural tricks and heated discussion on the interpretation of parliamentary rules made the headlines of the papers and parliamentary proceedings attracted sustained attention well beyond the UK (e.g., Kantchev & Colchester, 2019).

Given its nature—based on ancient traditions, and only partly written in the form of Standing Orders—and its contentiousness during the Brexit years, parliamentary procedure represents an ideal playground for conflicts on sovereignty to take place. At the same time, such conflicts uneasily overlap with other, pre-existing tensions—such as that between traditionalists and modernisers of Parliament (Taylor, 2019)—revealing a richer constellation of attitudes towards parliamentary procedure and, more broadly, the role of Parliament.

The clashes over the interpretation of the parliamentary rules are part and parcel of a broader constitutional debate. By analysing them here—for the HoC only, although heated procedural debates took also place in the House of Lords—much broader questions on sovereignty and the nature of the British constitution can be addressed. Who has the ultimate right to take decisions? Is it Parliament or is it the People? To what extent should Government be constrained by Parliament? It is worth stressing that this chapter does not engage with the substance of the Brexit debate, but only with the procedural rules which, eventually, led Parliament to debate and vote on Brexit-related decisions.

Methodologically, the chapter presents an in-depth, qualitative analysis of the parliamentary debates in the HoC preceding key votes on Brexit-related decisions (i.e., the referendum on membership and the legislation on withdrawal). Two pairs of debates, where clashes of interpretation on procedural matters particularly stood out, have been selected. The first one includes two cases where the Speaker selected an amendment in contrast to established tradition; the second pair is about the power of Parliament to take control of its agenda.

3.2 Brexit and the Debate on Sovereignty

The conflicts on sovereignty—both when the UK joined the EEC and when the UK left the EU—called into question the principle (and meaning) of parliamentary sovereignty, or "the omnipotence […] of Parliament" (Dicey, 1886).

The challenge was immediately represented by the transfer of policy competences to Brussels. In a discrete set of policy areas, it was no longer Parliament to make laws, but rather the Council of Ministers of the EEC. In a formal, technical sense, this voluntary transfer of powers—which was made possible through the European Communities Act of 1972—did not affect its sovereignty. Parliament could always take its powers back (as Brexit later demonstrated) repealing the 1972 Act. More broadly, however, this transfer of policy competences to Brussels was widely regarded as a "surrender" (by its critics) or as a "pooling" (by its supporters) of sovereignty (cf. Bogdanor, 2019; Gee & Young, 2016).

In 1975, the transfer of policy competences to the EEC was to be confirmed by a referendum, the first ever country-wide referendum in the UK. The Labour Prime Minister Harold Wilson asked "the people" to express their support for the membership agreement renegotiated with Brussels. This first (successful) referendum on membership was also an exercise of party management, as the Labour party was split on EU integration, with its left-wing opposing membership. In a (legally) non-binding referendum, what was later going to be known as "the will of the people" gave the government a mandate to remain in the EEC.

The issue of membership was thus put to rest for the next decade or so. From Maastricht onward, a growing political pressure started to mount on the right of the Conservative party, and within the Conservative party itself, for a referendum on EU membership. When the Conservative party was back in power, although in coalition with the Liberal Democrats, it passed the European Union Act (2011), establishing that it would be illegitimate for Parliament to transfer powers to the EU without first seeking the consent of the people, through a referendum. By voting it, Parliament chose to be bound by a people's mandate.

Although no new treaties were ratified, the issue of EU membership remained very prominent. Prime Minister David Cameron finally promised a referendum on membership in January 2013, which became almost inevitable when he won the 2015 elections and was (unexpectedly,

according to most polls) able to form a single-party, Conservative government. In the Brexit referendum campaign, "Let's take back control" and "we want our country back" were key slogans of the "Leave" camp. Indeed, the (back then) prominent Brexit campaigner Boris Johnson explained the necessity to choose to leave the EU as follows: "[Remain means] the steady and miserable erosion of parliamentary democracy in this country" (Johnson, 2016).

A paradoxical implication of Brexit is that the reinstatement of parliamentary sovereignty was fundamentally undermined by the very same institution used to "take back control", i.e., the referendum (Bogdanor, 2016). The referendum—an institution not normally associated with the majoritarian type of parliamentary democracy (Lijphart, 2012)—was used to provide a mandate that, albeit not legally binding, became so politically. Through the referendum, the people (i.e., the relative majority on the winning side)—rather than Parliament—became de facto sovereign.

The use of referendums can be associated with "plebiscitary democracy" (Weale, 2017, p. 175). In this perspective, the function of Government—and, by implication, of Parliament—is to implement the will of the people. Plebiscitary democracy has populist features, rejecting the "mediation" of political institutions, such as Parliament. Each intermediate layer between the sovereign people and policy outcomes is seen as unnecessary, if not damaging. It may also display features of "extreme majoritarianism", as the will of a majority should prevail over other aspects such as the protection of minorities and the rule of law (cf. Delledonne et al., 2020). A populist sovereigntist discourse targets traditional political elite, described as unresponsive and uninterested to the "ordinary citizens", and embraces the "will of the people" as the ultimate and sole source of democratic legitimacy (Baldini et al., 2020). MPs should act—adopting the famous distinction proposed by Edmund Burke—as "delegates" implementing the people's mandate, rather than "trustees" pursuing what they regard as the "national interest". It also challenges the lack of democratic legitimacy of technocratic elites—i.e., central bankers, senior civil servants, judges—who may be portrayed as "enemies of the people" (as the *Daily Mail* famously did in November 2016).

Thus, the UK appears to provide an extremely good illustration of the more recent types of "multidimensional" conflicts over sovereignty (Brack et al., 2019), where parliamentary sovereignty clashes with popular sovereignty, and where conflicts develop within and across

levels of government (i.e., horizontally between Government and Parliament; vertically, between Government and the devolved administrations). Because of their salience, such conflicts are strategically used "as the terrain for political mobilization both within and between parties" (Bickerton, 2019, p. 888).

3.3 Parliamentary Procedure and Its Contentiousness

This chapter analyses parliamentary procedure, which can be defined as "the collection of rules and conventions which determine how and what the House debates, and how it reconciles disagreements and reaches decisions, delegates and mandates" (Evans, 2017). As the most authoritative reference on procedure, Erskine May, puts it: "The present constitution of parliament is the work of many centuries". In their long history, parliamentary rules have been the subject of continuous change and reinterpretation. Overall, however, post-World War II, the rules have been moulded to allow the smooth functioning of single majority government based on cohesive parliamentary parties—i.e., the institutional configuration known as "Westminster model" (cf. Baldini et al., 2022).

The parliamentary rules are only partly written in the form of Standing Orders. This is very different from other legislatures—e.g., the European Parliament (Brack & Costa, 2018)—where all rules tend to be written down quite minutiously. Otherwise, parliamentary procedure is made up of "customs and practice", which is the shared, established understanding of how business is conducted; "rulings from the Chair", which are decisions on interpretation taken by the Speaker as "the ultimate arbiter" (Institute for Government 2019) and Acts of Parliament.

With the start of the EU withdrawal process, procedure became the object of strong contestation. As the Institute for Government documents:

> During the 2017–19 session alone, over 1,000 points of order were raised by MPs in the Commons […] roughly 44 hours of the Commons' time were spent on points of order – more time than was spent debating several pieces of legislation that were passed during the session. This illustrates that the increased salience of concerns over process came to dominate debates more than concerns over policy. (Marshall et al., 2020, p. 34)

This development unambiguously shows that "procedure matters" (Norton, 2001, p. 24). Procedures have consequences, they can be constraints as well as create opportunities for political action, and notwithstanding the difficult institutional context for opposition parties, backbenchers can use procedure as a weapon in agenda-setting and to exert influence over the policy-process. In the heydays of the "Westminster model", Anthony King aptly noted that the only tools available to the parliamentary opposition were "good reasons, and time" (cited in Russell & Cowley, 2018, p. 19). In unusual times of minority government, and when the governing party is itself split on the key issue on the agenda, procedure may be a far more useful tool for dissenting backbenchers and the Opposition. Indeed, when Hansard is searched for specific references to "Erskine May"—a very stringent indicator to map debates on procedure, rather than the substance of legislation—the evidence clearly points to a high frequency of explicit mentions in the 2017–2019 Session (Fig. 3.1).

Several scholars have recently placed their attention on procedure (Fleming, 2020; Goet et al., 2020; Meakin & Geddes, 2020). However, the main analytical focus of this chapter is not placed on procedural *change*—the outcome of a process of reform of the rules of procedure—but rather on their interpretation. It has been generally argued that respect for procedure can be seen as "an essential component in securing the People's assent to Parliament's exercise of its authority" (Evans, 2017). What if parliamentary procedure becomes itself the object of contestation? In extraordinary circumstances, as in the period following the Brexit referendum, there has been an attempt to torn procedure to serve different political objectives. The principle of the sovereignty of Parliament has been variously interpreted to mean its "autonomy" from other institutions—distinctively the executive—or, rather, its effectively subordinate role *vis-à-vis* the People and/or the Government.

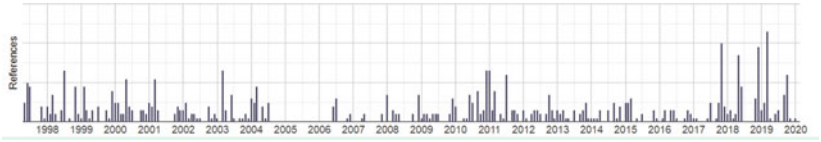

Fig. 3.1 References to "Erskine May" in debates in the House of Commons

This conflict was added on and ignited other, pre-existing tensions. A prominent one set "modernisers" and "traditionalists" apart (cf. Taylor, 2019, pp. 721–723). The former type believes that Parliament should protect the rights of minorities and backbenchers, even if this clashes with the agenda of the executive. The latter embraces, instead, a majoritarian view in which Parliament should simply facilitate the implementation of the policy manifesto of the governing party. As the ensuing empirical analysis shows, their overlap has occasionally been uneasy and produced unexpected positions by MPs.[1]

Clashes on the interpretation of procedure have been particularly harsh within the Conservative party, where the traditional respect for democratic institutions, and Parliament particularly, have struggled to co-exist with the populist, sovereigntist positions that came to be shared by a larger section of the parliamentary party. As Stuart Ball noted, conservatives traditionally "venerated [Parliament] for its age and customs [and] its ability to absorb the forces of economic and social change". He also significantly added, however, that "public acceptance of the legitimacy of parliamentary government was recognised by Conservatives to be one of the most significant factors in the cohesion and stability of British society" (2003, pp. 25–26). For several conservative MPs, Brexit was proof of a "disconnect" between people and Parliament and, if the latter were to maintain its legitimacy, the superior "will of the people" had to be followed. The clash between Boris Johnson and Parliament in the late summer of 2019, leading to the latter's prorogation (then annulled by the Supreme Court), epitomises the frustration of most Conservative MPs and their leader against Parliament, seen as betraying the people's will as expressed through the referendum and acting on the elites' side—embracing therefore a traditionally populist argument (Alexander-Collier, 2022, p. 12).

3.4 Selecting Amendments

In what follows, the empirical focus is first placed on two cases where Speaker John Bercow selected an amendment which, based on a literal interpretation of procedure, would not have been chosen. In both cases, an amendment against the Government—its policy programme as presented in the 2013 Queen's Speech and its business motion on the Brexit agreement in 2019—was tabled by a Conservative backbencher.

However, the radically changed political context shaped in a very different way the conflict between "People" and "Parliament".

3.4.1 The 2013 Queen's Speech

The Queen's (or King's) speech is the presentation of the policy programme of the executive, made by the monarch to Parliament (see Kelso, 2017). It is a highly ceremonial moment, but what it lists, or does not include, bears important political implications. In 2013, Bercow unusually allowed an extra-amendment to the Queen's speech moved by a Tory Eurosceptic backbencher (MP John Baron). The point of contention on the Speaker's decision centred on the interpretation of Standing Order no. 33 which, in its original formulation, reads as follows:

> If on the last day on which the motion for an address in answer to Her Majesty's Speech is debated in the House an amendment proposed to the said motion shall have been disposed of at or after the expiration of the time for opposed business, a further amendment selected by the Speaker may thereupon be moved, and the question thereon shall be put forthwith.

The Queen's Speech is therefore debatable on a motion, which is itself emendable. From 1979 up to May 2013, a maximum of two amendments had been moved on the final day of debate. The first amendment was normally moved by the official Opposition, while the rules were used until 2009 to enable a second amendment by the Liberal Democrats. In 2010, the second amendment was tabled by the SNP; in 2012, jointly by the Plaid Cymru and the SNP (Kelly, 2015, p. 4).

On 15 May 2013, three amendments were moved. First, as usual, the official Opposition amendment; second, an amendment by a Conservative backbencher; finally, an amendment by Plaid Cymru. What was unusual was not only the number of amendments selected—three rather than two—but, most importantly, the fact that one of the amendments came from the Conservative benches. Substantively, the Conservative amendment expressed regret about the fact that a referendum bill had not been mentioned in the Queen's Speech.

Clearly, this was an amendment on a very contentious issue—i.e., introducing legislation on an EU referendum—and a "hot potato" for the government which, consequently, allowed a free vote and made concessions—supporting a Private Members Bill on the matter—to circumscribe

support. Leaving aside the substantive discussion which ensued, what is of interest here is the rationale behind the selection of this amendment. In the Speaker's words:

> I believe that there is a need to interpret the Standing Orders in a way that facilitates the business of the House in a developing parliamentary context. Conditions and expectations today are very different from those in October 1979, when that Standing Order was made [...] My interpretation is that the words "a further amendment" in the fifth line of the Standing Order may be read as applying to more than one amendment successively. (HC Hansard, 15 May 2013)

What are the "very different" conditions and expectations that the Speaker is referring to? The Conservative party and Prime Minister Cameron were under mounting pressure from UKIP and, within the party, from the Eurosceptic wing. The Coalition with the Liberal Democrats did not allow any more radical move on the EU issue—like a referendum on membership—which Cameron, in his "Bloomberg speech" of January 2013, had promised. With the governing party divided on the EU referendum, and backbenchers heavily subscribing the amendment, the Speaker felt that such voices should be heard. The ensuing debate in the Commons cast further light on the "very different" conditions. The Eurosceptic Conservative MP Bernard Jenkins expressed his bemusement:

> I confess I was somewhat astonished. I think it a mark of the enormous shift in opinion that is taking place on what has for decades been a matter of fundamental consensus in British politics, that we find ourselves straining the conventions and normal behaviour, and even the Standing Orders of the House, to accommodate this debate. (HC Hansard, 15 May 2013)

Acknowledging that they were "straining" the Standing Orders—a point confirmed, years later, by the same proponent of the amendment, noting the "particularly generous" interpretation of the Speaker (Baron, 2020)—Jenkins refers to the "enormous shift in opinion" which had to be accommodated by the rules. The early seeds of the clash between the "People" and "Parliament" are here to be seen. Another Eurosceptic MP, Peter Bone, added that the amendment signalled to the junior coalition partners: "How dare you block the will of this House and the will of the nation?" (HC Hansard, 15 May 2013). While the Liberal Democrats

are the target here, this role will be played, in a not-so-distant future, by Parliament itself.

In a subsequent meeting of the Political and Constitutional Reform Committee, discussing the reform of Standing Order 33, the Conservative leader of the House—i.e., the MP responsible for organising government business in the Commons—endorsed a traditionalist view: being "old fashioned about this […] If we want something to be different in terms of the management of business that is governed by standing orders, we should review that particular standing order". However, his party colleague Christopher Chope defended the Speaker's decision, because it reflected "the concerns of the House" and was appealing to both minority parties and "the interests of backbenchers" (Minutes of Evidence – HC 82, 16 May 2013).

Back then, the interpretation of Standing Order 33 was welcomed by the Eurosceptic (minority) wing of the Conservative parliamentary party to protect the(ir) right to dissent, while a majority of the party embraced a traditionalist position. The former also suggested that a flexible interpretation of the rules could give expression to the "will of the people", as the pressure for a Brexit referendum was mounting.

3.4.2 The 2019 Business Motion[2]

In January 2019, the Speaker selected an amendment to a motion on the business of the House, proposed by the Conservative backbencher Dominic Grieve, which eventually changed the "Brexit timetable". The EU Withdrawal Act compelled the Prime Minister, in case of a parliamentary rejection of the negotiated deal with the EU, to make a statement within 21 calendar days and then to allow a vote within seven sitting days. The Grieve amendment, instead, compelled the government to table a motion outlining a "Plan B" within three sitting days.

In early December 2018, the HoC approved the Business of the House motion put forth by the government to update the Brexit debate, stating:

> No motion to vary or supplement the provisions of this Order shall be made except by a Minister of the Crown; and the question on any such motion shall be put forthwith.

Erskine May explains that "forthwith" means "without debate and usually without the possibility of amendment" (Erskine May, 2019; Part 3,

par 20.45). Yet, about a month later, Bercow selected the Grieve's amendment, thus prioritising "what he perceived to be the 'will of the Commons' over the existing rules as they stood at the time" (Simson Caird, 2019).

The Speaker's decision was strongly contested within the ranks of the Conservative party. On the one hand, several MPs vocally condemned his decision to select the amendment. Mark Francois, a prominent Brexiteer, expressed incredulity about the subversion of tradition: "I have been here for 18 years and I have never known any Speaker to overrule a motion of the House of Commons" while another Eurosceptic, Andrew Percy, warned that the public would be encouraged "to believe that there is a conspiracy and a procedural stitch-up taking place by a House of Commons which is grossly out of touch with the referendum result" (HC Hansard, 9 January 2019).

However, not all critics went down that route. Despite the highly contentious matter—the highly problematic vote on the withdrawal agreement was looming on the HoC—other MPs (with Eurosceptic leanings) still expressed their respect for Parliament and/or the prerogatives of the Speaker (while remaining critical of his decision). For instance, the former Conservative leader Ian Duncan Smith, while disagreeing with the decision and observing that it had no recent precedent, clearly stated that it was Bercow's "right to make it from the Chair". Another Conservative MP, Christopher Chope, reminded his colleagues that it was "because of [Bercow's] courage in allowing an amendment to a Loyal Address, which enabled a referendum test to be applied in this House, that we had the referendum in due course" (HC Hansard, 9 January 2019).

Bercow defended the Speaker's role. He acknowledged the importance of precedent, but strongly underlined that "precedent does not completely bind […] If we were guided only by precedent, manifestly nothing in our procedures would ever change. Things do change". It was ultimately for Parliament to take a decision, voting for or against the amendment. He further added that he believed that there is a responsibility for the Speaker "to stand up for the rights of the House of Commons, including the views of dissenters on the Government Benches […] and to defend the rights of Opposition parties" concluding that his job was "not to be a cheerleader for the Executive branch" (HC Hansard, 9 January 2019).

In 2019 as well as in 2013, Bercow's decision was therefore shaped by the "changing circumstances" in which the HoC (and himself) operated.

The circumstances had so much changed that, in the space of six years, the Eurosceptic position was no longer a minority but, rather, had *de facto* become government's policy. Yet, neither the Conservative parliamentary party, nor even its pro-Brexit wing, fully endorsed a populist position attacking (yet) the institution of Parliament itself.

3.5 Controlling the Agenda

The empirical focus moves here onto two cases where Conservative backbenchers and the Opposition managed—with the support of the Speaker—to control the parliamentary agenda. Conflicts on sovereignty unfolded dramatically and triggered fundamental questions on the nature of the British constitution. The conflict became even more heated as Parliament was prorogued, and Brexit day loomed.

3.5.1 Parliament as Agenda-Setter

In early 2019, after the massive defeat of the Government on the vote on the withdrawal agreement,[3] Conservative backbenchers and the Opposition attempted to take control of the parliamentary agenda by suspending Standing Order 14, which reads:

> Save as provided in this order, government business shall have precedence at every sitting.

Barring some specific and limited cases (e.g., Fridays dedicated to Private Members Bills), it is always the Government to decide what is debated and when. On 25 March 2019, however, a successful amendment to a government motion, tabled by the Conservative backbencher Oliver Letwin, set aside time for the HoC to hold a series of "indicative votes" (non-binding) on different Brexit options. Standing Order 14 was therefore suspended, and Parliament took control of its own agenda.

In the ensuing debate, several points of order were made. The conflicts between "Government" and/or the "People" and "Parliament"—or about the "true" meaning of parliamentary sovereignty—dramatically played out. Two different institutional models were also presented: the classic "Westminster model", in which the executive plays a leading function as the agenda-setter, and an alternative institutional set-up, where Parliament does not shy away from taking control of its own business.

The suspension of Standing Order 14—variously labelled as a "constitutional revolution" (by MP Bill Cash) or as a "parliamentary insurgency" (by MP Bob Seely)—was defended by the proponent of the amendment, Oliver Letwin, with reference to the history of parliamentary procedure. In particular, he re-asserted the principle—directly derived from the superior principle of parliamentary sovereignty—of "exclusive cognisance" (Evans, 2017), according to which it is Parliament, and Parliament alone, which interprets, judges, and determines its own procedure. As Letwin put it:

> the Order Paper of the House of Commons—this is the most ancient principle of our constitution as a matter of fact—is governed by the Standing Orders of the House of Commons, and those are the property of the House of Commons and nobody else. They are the property not of the Executive but of the House of Commons. […] That principle goes back not to 1906 when the Government—in my view, improperly—instituted Standing Order 14 in its current form, but way back into the origins of Parliament. From the very beginning, Parliament sought to establish its right, through the Speaker and otherwise, to control its own proceedings, which is a very proper thing for Parliament to do. (HC Hansard, 27 March 2019)

Whatever the veracity of this historical account—challenging the above statement, Jacob Rees-Mogg claimed that "it is a principle of the greatest antiquity that the business of the House is guided by those representing the sovereign in Parliament" (HC Hansard, 27 March 2019)—it is a matter of fact that Standing Order 14 gives the edge to the executive on determining the parliamentary agenda in the way executive-legislative relationships have developed post-World War 2.

The suspension of this widely accepted norm is therefore a huge procedural innovation which, for its critics, should have been avoided. In this view, parliamentary sovereignty is a derivative of popular sovereignty; the referendum mandates, and MPs follow suit. The key rationale was spelt out by Rees-Mogg:

> the sovereignty of Parliament is not the sovereignty of us, however brilliant we may be, or of the Mace; it is the sovereignty of the British people. They have told us what to do, and we must do it. (HC Hansard, 27 March 2019)

It is interesting to observe that Letwin was wary not to push his amendment too far. Its necessity was linked to the "extreme emergency" that Parliament was facing—with the "no-deal" outcome closer—stressing that the suspension of the Standing Orders should "not be taken as a precedent" (HC Hansard, 27 March 2019). There was therefore an effort to "constitutionalise" the move, legitimising it with the "crisis" and, therefore, making it compatible with a traditional interpretation of the rules in "normal" times.

3.5.2 The Use of Emergency Debates

On 3 September 2019, the HoC scheduled an emergency debate based on Standing Order 24 which was, in turn, followed the day after by a new suspension of Standing Order 14 with the HoC taking control of the agenda. These moves were triggered by the prorogation of Parliament and the need to compel the government to request an extension of art. 50 to avoid a "no-deal" scenario (which was later effectively ruled out by the "Benn" Act).[4]

Standing Order 24 reads as follows:

> […] a Member rising in his place at the commencement of public business may propose, in an application lasting not more than three minutes, that the House should debate a specific and important matter that should have urgent consideration.

The procedural controversy centred around the fact that the emergency debate was used to table a substantive motion. Once again and, perhaps, more dramatically than ever, a conflict on sovereignty unveiled. Jacob Rees-Mogg—then leader of the House—bashed the House for its "failure" to respect "the voice of the people" (HC Hansard, 3 September 2019).

In his speech, Rees-Mogg argued that, by allowing an emergency debate on a substantive motion, the Speaker authorised something "constitutionally irregular". In particular, he criticised the Speaker to held inconsistent views on Standing Order 24—on 19 April 2018, in the light of two emergency debates on the UK's decision to take military action in Syria, Bercow had ruled that, to allow for the tabling of a substantive motion in a situation of emergency, the Standing Orders would need to be amended—and to misunderstand the nature of parliamentary

sovereignty. Rees-Mogg's statements on sovereignty are worth reviewing in more detail:

> Sovereignty in this House comes from the British people. The idea that we can overrule 17.4 million people is preposterous, and the idea that our rules do not exist to protect the people from arrogant power grabs is mistaken […] The motion would allow a designated Member—or a few of the Illuminati who are taking the powers to themselves—to give notice of the presentation of this Bill on the first day of a new Session. (HC Hansard, 3 September 2019)

The point is, once again, that people's sovereignty trumps parliamentary sovereignty or, differently put, that the former is superior to the latter. The sarcastic depiction of the supporters of motion as "the Illuminati" is consistent with a populist use of language, chastising experts and detached elites. According to Rees-Mogg—speaking for the Government in his capacity as the leader of the House—the disregard for the will of the people, through the disregard of procedural rules—means "stretch[ing] the elastic of our constitution near to breaking point". It is a right and a duty of the executive to control the parliamentary agenda, precisely in view of implementing the people's mandate. MPs should

> recognise that the people are our masters and show ourselves to be their lieges and servants, not place ourselves in the position of their overlords. (HC Hansard, 3 September 2019)

On the opposite side, although still seating on the Conservative benches for the very last few hours before losing the party whip, the then father of the House (that is, the MP with the longest record of continuous service) Kenneth Clarke made a plea for a different role of Parliament. He applauded at the Speaker's decision on Standing Order 24 as it gave Parliament the possibility to "assert itself". In his view, what should guide members is the pursuit of the "national interest" which, in the specific circumstances, meant avoiding a no-deal Brexit. The onus to act is on Parliament (and its MPs across benches) who, in order to minimise damage and avoid an outcome not supported by any majority, "must seize its own agenda" (HC Hansard, 3 September 2019). In his view, MPs should act as "trustees" rather than as "delegates" of the people.

There is an irony in these positions, as the "representative" institution—Parliament—is set against the people, while people's sovereignty

de facto overlaps with executive-dominance. For those MPs endorsing a "subordinate" view on parliamentary sovereignty—often with populist underpinnings—Parliament's legitimacy ultimately depends on bowing to the instructions it receives from the outside, be it the people or, effectively, the Government.

3.6 Conclusions: Looking Back and Ahead

The conflicts on sovereignty in the tumultuous years in preparation of Brexit were clearly—and often dramatically—on display in the HoC. Clashes on the interpretation of procedural norms possibly featured in the debates of the House as never before. The rules of procedure of the HoC—which had developed under very different conditions of single-party government—became the object of an intense conflict between different (re-)interpretations of the constitution and understandings of sovereignty.

While the dominant conflict between popular and parliamentary sovereignty shaped the debate on the interpretation of the rules, it overlapped with other pre-existing tensions, such as that on parliamentary reform (i.e., modernists vs traditionalists), providing a more variegated map of positions. The management of such conflicts was particularly difficult for the governing Conservative party, where the traditional veneration for the institutions of British parliamentary democracy (and Parliament specifically) had to uneasily co-exist with the implications of the Brexit referendum and the populist tendency within the party, championed by Prime Minister Johnson.

Looking ahead, the Brexit years have brought to the fore the importance of parliamentary procedure and the need for a more effective system to resolve controversies. At the start of 2020, the newly elected Speaker, Lindsey Hoyle, promised to put in place a new system for handling situations where the Chair chooses to make a ruling departing from the rules or the established traditions of the House.

The new system would be modelled on the power of accounting officers in government departments to "seek ministerial direction" when they believe they are being told to do something that is against the rules or outside normal policy—i.e., looking for written instruction. Hence, in the future, cases where, in the opinion of the Clerk, a ruling amounts to a substantial breach of convention, the Clerk will be able to place a statement of their view in the Commons library. Incidentally, on the

interpretation of "forthwith" (cf. Sect. 3.4.1 above), Hoyle expressed his disagreement with the former Speaker (cf. Marshall et al., 2020, p. 13).

In conclusion, it is worth asking what remains of those clashes of interpretation and conflicts on sovereignty in a post-Brexit Britain. For the time being, in reality, it may even be difficult to speak of a post-Brexit Britain, as there are still policy areas where the post-Brexit arrangements need to be defined. Crucially, several divisive issues remain firmly in the agenda of UK politics—e.g., the independence of Scotland, the future of Northern Ireland, and, perhaps in the longer term, Brexit itself—and are likely to bring "conflicts on sovereignty" regularly back to centre stage.

Notes

1. For instance, there are a few cases where leading supporters of Brexit defended (out of principle or instrumentally) decisions of the Speaker clashing with their key political goal.
2. The analysis of this case and the two cases that follow draws largely on Baldini et al. (2022, Chapter 4).
3. On 15 January 2019, the Government lost the 'meaningful vote' on the withdrawal agreement negotiated by Prime Minister May with the EU by an unprecedented margin of 230 votes.
4. The European Union (Withdrawal) (No. 2) Act—introduced by Labour MP and Chair of Exiting the European Union Committee Hilary Benn—required the Prime Minister to ask for an extension of Article 50 to prevent a no deal Brexit on 31 October 2019.

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CHAPTER 4

Sovereignty and Democratic Legitimacy in Spain: The Case of Catalonia

Joan-Pau Rubiés

4.1 Introduction

Is there a Catalan lesson for re-thinking conflicts of sovereignty in the EU? I shall here argue that the Catalan case study can indeed illuminate serious difficulties with the concept of national sovereignty, and in particular the problem of defining the legitimate *demos* when the conflict is precisely about potential regional secession within a democracy that aspires (at least on paper) to the highest international standards. Defining the mechanisms of consent in such a case directly affects the issue of democratic legitimacy. In order to draw any lessons from the Catalan case, however, we must previously identify the peculiar historical circumstances and constitutional constraints that define the parameters of the political discussion in Spain.

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The recent Catalan crisis is, I will argue, a crisis of the Spanish constitutional order after the largely successful transition to democracy between 1975 and 1982, following the death of the long-lived dictator Francisco Franco. This new constitutional order among many other things sought to provide a solution to what I will call the Catalan problem, that is, the persistent demand for self-government—not necessarily independence—in Catalonia. This demand, it is important to note, is recurrent in the various attempts to construct of a modern liberal state in Spain throughout the nineteenth and twentieth centuries; the problem, therefore, precedes the creation of the new democratic Constitution in 1978.

My perspective will therefore be primarily historical (for a preliminary historical analysis of the Catalan crisis, see Domènech et al., 2020). I will begin with a brief analysis of how the crisis that exploded in the period between 2010 and 2017 (as yet unresolved) developed, that is to say, when and why the possible political solution given in 1978 failed in Catalonia, precisely the region which, together with the Basque country, had driven the demand for regional devolution. This historical summary should help disentangle the deeper issues of democratic sovereignty from the more particular question of defining the political motivations and historical responsibility of the various actors in the conflict, a distinction which sadly much of the political debate in Spain has sought to muddle in order to avoid confronting the problem of sovereignty in a sober fashion (in other words, many have replaced the question of "which are the mechanisms for solving a constitutional crisis that affects the fundamental issue of sovereignty in a liberal democracy" for "who can we blame for the mess we are in"). At a second stage, I will turn to the deeper issues of political sovereignty that the demand of a referendum of independence has raised, in relation to both the Spanish constitutional system and those other aspects that may be defined as para-constitutional, that is, which in part transcend, and therefore cannot be solved, exclusively within the legal parameters defined by the text of the existing Constitution. I will do so by analysing the conceptual tension between constitutional legality and more abstract ideas of democracy that have shaped the debate surrounding the demand for independence, and in particular the issue of defining the *demos* that is, or should be, the subject of sovereignty, especially in the context of the demand of a referendum of independence. Here, I will take account of those cases which admit of possible parallels, namely Quebec in Canada and Scotland in the UK.

A fuller analysis could include a discussion of the role of EU institutions in the Catalan crisis (this is controversial: compare Closa, 2016; Kochenov & van den Brink, 2016; Caplan & Vermeer, 2018). Here, I will limit myself to note that the European dimension of the Catalan crisis has proved to be secondary to the political process within Spain, notwithstanding the importance of the threat of the loss of EU membership in Spanish and Catalan debates in the period 2012–2017. Although there was some pressure to encourage democratic and non-violent solutions to an internal political crisis that involved important minority rights, and while it is also the case that some of the abuses of the Spanish judiciary during its prosecution of Catalan political dissidents after the events of October 2017 have been subjected to external pressure (the jury is out how this will end at the European Court of Human Rights), the overall direction of European institutional interventions has been to favour, in an increasingly overt manner, the interests of the existing sovereign nation-states and to discourage any change of the *status quo*. In particular, the EU has used the argument that secession from a member state implies secession from the EU in order to discourage any movement towards regional independence that is not formally supported within the constitutional culture of an existing nation state (hence Scotland and Catalonia, initially quite comparable, increasingly received a very different press). This not only responds to a rational calculation of interests (any secession would be highly disruptive), but also illuminates the nature of the European Union as primarily a permanent structure of cooperation of largely democratic sovereign nation-states, and only secondarily involved in defining and protecting rights across frontiers.

4.2 A Brief History of Spain's Catalan Problem

Although analysing the historical background to Spain's Catalan problem could take us very far back, for the purposes of my argument here the main issue is not to look for medieval and early modern precedents of the idea of Catalan sovereignty, which would require many additional explanations and qualifications, but rather to assess the historical significance of the current crisis.[1] In this respect, it is important to emphasize is that the demand for independence has never been the central component of the tradition of "political Catalanism" (as the movement has been termed by historians) after it emerged as a major force in the last decades of the

nineteenth century. Rather, the key demand was, until 2010, for recognition and self-government within a liberal, democratic Spain. Obviously, since the Constitutional pact of 1978 was meant to enshrine precisely this aspiration through an apparently generous form of devolution, something has gone terribly wrong.

Let me quickly review the point that the focus on independence is a very recent development and can be seen as the outcome of the frustration of a previous project with a much longer history. Modern political Catalanism emerged within the political culture of Spanish constitutional liberalism throughout the nineteenth century primarily as a counterpoint to a simple idea of the Spanish nation. Although romantic liberals—such as the prominent writer and politician Víctor Balaguer—often appealed to the memory of the representative institutions and legal traditions of the Crown of Aragon before their forceful dissolution during the War of Spanish Succession at the turn of the eighteenth century, which saw the imposition of a uniform legislation in the context of royal absolutism, these writers did not seek a return to the past. Rather they reclaimed Catalan liberty and self-government as part of the progress of Spanish democratic liberty against reactionary absolutism, within a pluralistic vision of Spain as a nation of nations. In that respect, political Catalanism did not imply a rejection of the Spanish liberal project, but rather constituted a revision from the industrial periphery on the basis of what historians have defined as "double patriotism", Spanish and Catalan, which predominated until the end of the nineteenth century (Fradera, 1992). This double patriotism, however, acquired a new hierarchy with the emergence of a more conservative form of Catalan nationalism at the turn of the twentieth century. According to its most important exponent, Enric Prat de la Riba, Catalonia became the natural nation, and Spain was simply an artificial state. The declared aim of Catalan self-government was not to isolate Catalonia, but rather to lead the transformation of Spain into a more modern and powerful state by giving a more dynamic role to the periphery.

In basic continuity with this vision, both the Catalan autonomous statute of 1932 during the Second Spanish Republic, and the second statute of 1979, were created in the context of also supporting the emergence of democratic institutions in the Spanish capital Madrid.[2] We could even say that both statues represented a historical compromise with the more progressive elements of Spanish nationalism, by which the more radical aspirations of those who defended Catalan independence were

quickly sacrificed and marginalized in order to secure a more limited practical autonomy, within a more democratic Spanish state. In some ways fulfilling the old federalist model, Catalan self-determination was perceived by its proponents as implicit in the construction of a new democratic state for the whole of Spain, and the desire for a compromise was enshrined in the apparent contradictions of the Constitution of 1978, which proclaimed both a single sovereign will of an indivisible Spanish nation, and the right to self-government of its pre-existing "nationalities" as well as regions (the word nationality was intensively debated).[3] This vision attracted an ample consensus in Catalonia during the transition, notwithstanding the existence of a very numerous population of immigrants from other parts of Spain who, having arrived in massive waves during the Francoist period, did not normally speak Catalan and did not easily identify with the region's traditions. A key ideal articulated during the transition was that origin was not important, and everybody who lived and worked in Catalonia and wished to be part of the community was a Catalan. For this reason, Catalan nationalism emphasized its more democratic and civic, rather than ethnic, aspects, and could manifest itself in both conservative (more nationalist) and left-wing (more republican or socialist) political parties.[4]

The most urgent question for historians is why the compromise that emerged during the transition to democracy has to a very significant extent been fractured, both in Spain and within Catalonia. One argument could be that it was always a mirage, because the transition was overly conditioned by continuity with Francoism and therefore flawed. More convincing, in my view, is the argument that the fundamental problem lies not in the transition to democracy, nor in the Constitution of 1978, but rather in the political dynamic that emerged throughout four decades of actual democratic practice. Rather than a federal political culture of clearly differentiated responsibilities and regular cooperation, what we find is an almost permanent tension between Madrid and Barcelona, accompanied by the emergence of a highly differentiated party system in Catalonia, virtually incompatible political discourses in the media, and also a great deal of competition for resources, rivalry, and mistrust between the various autonomous regions. In this respect, it is necessary to emphasize two recurrent Catalan grievances, almost from the start of the democratic regime: that the financial settlements to support the autonomous government have been chronically unfair and insufficient, creating an exaggerated "fiscal deficit", and that the legislative capacity of the Catalan

parliament has been systematically limited or even sabotaged by interventions from the central government, usually by appealing to an increasingly politicized Constitutional Court (*Tribunal Constitucional*), or by means of invasive legislation. The sense of erosion of the Catalan autonomy became especially acute after the conservative leader José Maria Aznar, a Spanish nationalist, was able to form a government with absolute majority in 2000. His policies led to the idea in Catalonia that a new statute might be needed in order to salvage the *status quo*—that is to say, to protect what the statue of 1979 was meant, but in the end had failed, to guarantee, in the face of an aggressive government in Madrid that was able to shape the membership of the Constitutional Court.

It is important in this respect to clarify two questions: what was the nature of the constitutional compromise of 1978, and why the decisions of the Constitutional Court have acquired such political significance.

The restoration of the Catalan government or *Generalitat* in 1977, with the return of its republican President Josep Tarradellas from exile, symbolically connected the new statute of regional autonomy that would eventually be voted via referendum in 1979 with the regional autonomy that had existed under the second Spanish Republic, in 1932–1939. This restoration, albeit provisional, conditioned the elaboration of the democratic Constitution in 1978, which had to articulate a solution for the "historical nationalities" of Spain, as they were called.[5] On the other hand, how the will of the sovereign people would be expressed was also conditioned by the existence of the new monarch, Juan Carlos I, the legal heir of Franco as Head of State and of the armed forces. This meant it was not possible to aspire to a federal republic, for example—the Monarchy as a form of State was taken for granted during the constitutional debates.[6] The Constitution of 1978, the cornerstone of the peaceful transition to democracy, was a historic compromise that, despite the fiction of a pure expression of the will of the Spanish people, in reality provided some legal and institutional continuity with the Francoist state while, at the same time, seeking to recoup some of the democratic legitimacy of the Second Republic, especially relevant in the case of Catalonia.[7]

During the transition to democracy, the Catalan demand for self-government was given a possible solution in the form of a limited devolution, in a system that in effect defined two separate spheres of legislative sovereignty, national and regional, without abandoning the theoretical principle of an indivisible Spanish-wide popular sovereignty. However, this was not done by means of a specific constitutional provision

for Catalonia, but rather under the guise of a broad and often ill-defined system of regional autonomies which was not exclusive to Catalonia, but also encompassed all other regions, with extremely varied degrees of previous demand for self-government. Exceptionally, some specific constitutional provision in relation to the power to collect taxes did exist for the Basque country, the other key region in the process of devolution; the fact that this model was never made available to Catalans has been the source of recurrent complaints and remains an issue. The system of autonomous regions was generalized, including many historical ones such as Navarra, Galicia, Aragon and Valencia, but also with the creation of new small entities such as Cantabria, Madrid or La Rioja that altered historical precedent (these provinces used to belong to the Crown of Castile, broadly understood). However, only in Catalonia and the Basque country was the political system that emerged in successive elections decisively conditioned by the existence of specific regional parties with nationalist ideologies, with both left-wing and conservative expressions. These parties quickly captured the regional governments, creating a political dynamic which was markedly different, but potentially complementary with, the two-party system that emerged at the national level.

While the Basque and Catalan parties during decades cooperated in approving national budgets and facilitating parliamentary majorities to form governments in Madrid, the institutional and ideological tension between the central government and these two peripheries with strong identities was pervasive, and the question of sovereignty was never fully addressed in a manner that created a shared understanding. The potential for a clash of nationalist populisms based on alternative sources of democratic legitimacy was, therefore, not properly neutralized. Instead, over the years the Spanish Constitutional Court emerged as the key institution in the process of solving institutional conflicts. These conflicts disproportionally focused on the laws approved by the Catalan parliament: 49% of all jurisdictional conflicts seen by the Court between the central government and any of the 13 autonomous communities in the period 1980–1996 had to do with Catalonia. Continuous appeal to the Court as interpreter of the constitution led to its gradual politicization, until it almost became a non-elected third chamber which, when interpreting the Constitution and creating new jurisprudence, made crucial decisions in relation to the balance of powers between the central government and the regions. Deciding the membership of the Court increasingly became an exercise in backdoor negotiations in order to secure ideological

majorities—although the terms "conservative" and "progressive" can be very misleading when the issue at stake is the balance of power between the central government and the regions. The majority of the members of the Court are chosen by the two main parties in the Spanish parliament and Senate, or by the government directly, and its decisions, generally balanced in the first two decades of democracy, became increasingly biased towards the theses that favoured the central government.[8] Arguably in the last twenty years, many of its members have lost any semblance of political neutrality, a situation which lies at the heart of the Catalan crisis of 2010–2017, most clearly when curtailing a new statue of autonomy for Catalonia in 2010 despite the fact that it had already approved by the region's citizens in a legal referendum.[9] This extreme politicization has meant that in recent years the very renewal of the membership of the Court has been repeatedly blocked by the conservative opposition. By contrast the Spanish Senate, which in the constitutional design was meant to act as a territorial chamber, lacks effective legislative power and has never been of any use in resolving such issues.[10]

Before we come to a brief discussion of the more recent events, one obvious question is why no effort has been made to reform the Constitution in order to address this problem. The answer is that there has never been a Spanish consensus about what such a reform would entail. Proposals to reform the Constitution in order to reach a more satisfactory and potentially stable territorial settlement have traditionally oscillated between two options: first, to enhance the particularity of the desire for self-government in Catalonia and those other regions with a distinct language and strong, unfulfilled aspirations for self-government (notably the Basque country and Galicia), in some ways returning to the original design during the transition to democracy, which differentiated between historical nationalities and other regions with more limited administrative devolution. Or second: to accept the consequences of what has been metaphorically described as *café para todos* (autonomy for every region), and work towards the transformation of the general system of autonomous governments into a more coherent federal state, albeit allowing for some special linguistic needs and institutional traditions for those historical regions with a stronger national identity, what has been often defined as asymmetrical federalism. From a theoretical perspective the second seems preferable, given that it would be difficult to separate all the regions in two neat categories of "historical nationalities with unfulfilled potential for self-government" and simple "administrative regions",

and many cases would fall somewhere in the middle (consider Aragon, Andalusia and Valencia). It is however the case that the many recurrent proposals to advance towards a more federal organization, despite some overt support from the radical left and some sectors of the socialist party, have never found the political space to be taken seriously in a context of chronic polarization about the issue of national identities. There is in this respect a permanent divorce between the literature produced by the experts and the dominant political discourse, very much geared towards fuelling a clash of nationalisms.[11]

4.3 The Fiasco of the New Statute of 2006–2010

All this tension came together in the attempt to renew the Catalan Statute of Autonomy, a proposal that, interestingly, did not come from the conservative party that had dominated the Catalan government under the leadership of Jordi Pujol between 1980 and 2002, but rather from a left-wing triple alliance of socialists, pro-independence republicans and eco-socialists that finally managed to replace him, with the explicit support of the socialist leader and president of the Spanish government José Luis Rodríguez Zapatero. To cut a long story short, an ambitious text was approved by the Catalan Parliament in 2005 with a remarkable support of 90% of the deputies (120 out of 135)—that is all parties other than the conservative *Partido Popular*. Its ambitions were subsequently severely diminished by the Constitutional Commission of the Spanish *Cortes*, led by a socialist notoriously critical of Catalan self-government, Alfonso Guerra, to the extent that the pro-independence left republican party, then in government in Catalonia (ERC), decided not to support the revised text—and the Spanish Conservative Party (PP) also continued to campaign against it, albeit for the opposite reasons. The new statute was nonetheless approved by a substantial majority of Catalan voters (73,9%), albeit with a reduced participation of the electorate of just below 50%, suggesting a lack of popular enthusiasm.[12] The new statute had followed all the complex constitutional procedures to become law. However, the climate in Spain was extremely hostile to it, and the Conservative Party campaigned particularly vigorously—even collecting signatures in the streets of Spain—to overturn it. By appealing to the Constitutional Court, it eventually succeeded in having the agreed text significantly revised by annulling some articles and interpreting others, with the effect of reducing further the powers of Catalan self-government.

This unprecedented decision was made public in 2010 after an extraordinarily long period of deliberation by a visibly politicized Court that saw a majority hostile to the statute fabricated through various backroom manoeuvres, including the removal from the proceedings of a key jurist perceived as too "progressive" and sympathetic to devolution, and the refusal to replace others whose mandate had ended.[13] As a result, since 2010, Catalonia has not had a statute approved by its citizens, but rather one imposed by the Constitutional Court which is clearly contrary to the aspirations of the regional parliament who had made the original proposal.

What few then predicted was how much more important that very act of revision would become than the actual provisions of text that had been questioned.[14] If sovereignty is about having the last word, on the only important issue where the Spanish Constitution grants the citizens of Catalonia the last word the will of the people had now been thwarted (incidentally, it is almost impossible to imagine this could have happened when the previous statute was approved in 1979). Symbolically, therefore, the Catalan sentiment of democratic sovereignty when it came to their own self-government had been formally challenged and downtrodden.[15] Although this might have been perceived as a triumph by many Spanish nationalists, in reality it opened up a fundamental question of democratic legitimacy, because it crystallized the idea that the principle of a double majority, Spanish and Catalan that sustained the constitutional pact of the transition to democracy no longer existed in Catalonia. It was only after 2010 that the desire for independence stopped being the dream of a minority of about 15% of the electorate to become the majority position within political Catalanism, approaching (but apparently never reaching) 50% of the active electorate.

4.4 The Fiasco of the Referendum of 2017

The demand for a referendum to decide Catalonia's national future clearly originated from below, with mass mobilizations that crystallized in September 2012—more than a million in Barcelona alone—and took both the Catalan and Spanish political elites by surprise.[16] It is a common misconception that the process had been orchestrated by the then president of the Catalan government Artur Mas: rather, Mas decided to ride the wave, originally in the hope of obtaining a fiscal pact that would place Catalan self-government on an equal footing with the Basques, and eventually, after that idea was refused point blank by Mariano Rajoy and

he found that he had to rely on the radical pro-Independence left to secure a majority in Catalonia, as a born again believer in the cause of independence.[17] Nor is it the case that the Catalan economic elites led the movement, rather the opposite.[18] In retrospect, the crucial turning point that led many Catalan citizens to despair of the possibility of genuine self-government and embrace the cause of independence had been the significant curtailment in 2010 of the new statute approved via referendum in 2006.

I cannot review here the twists and turns of the "process" that, after various futile attempts to secure an agreed and therefore legally valid referendum from the Spanish state, eventually led to an illegal but still massively supported referendum on 1 October 2017, with all the deplorable and unnecessary police violence that accompanied it.[19] The referendum was organized through grassroots support without any juridical validity and without any hope of being recognized internationally, and its results could not realistically commit the opponents of independence in Catalonia to acknowledge the outcome as legitimate, a fundamental flaw for the organizers which few of the promoters sought to acknowledge. However, politically this may not have been the important point, but rather the aim to symbolically assert a claim to sovereignty in the face of the Spanish government's refusal to negotiate the very possibility of a legal referendum.[20] Details of the subsequent failed negotiations and possible mediations that culminated in the half-hearted and vacuous declaration of independence by the Catalan parliament later in the same month are slowly coming to light, especially from the Catalan side—we know far less about the decision-making process in Madrid, which is a problem for historians.[21] It seems in any case clear that the events were both traumatic and politically sterile. The Spanish temporary intervention of the Catalan autonomy did not prevent the victory of the pro-independence parties a few months later, although former President Puigdemont could not be installed as president because he was in Brussels, avoiding a direct confrontation with the Spanish judicial system for the charges of rebellion and sedition. The present situation may be described as a chronic deadlock that erodes faith in democratic politics on all sides of the political spectrum. The unilateral actions of 2017 have been met with a strong affirmation of the authority of the state and of the constitutional order, but not even one of the underlying issues has so far been addressed in a constructive manner. The judicial process and eventual condemnation for "sedition" (a vaguely defined

concept in the Spanish penal code) of those political and civic leaders who led the movement in 2017—that is, those who did not leave the country and instead trusted the impartiality and fairness of the Spanish judicial system—was not exempt of irregularities and has been perceived by many observers as exaggerated in its emphasis on a violence that the pro-independence movement has always decried, with remarkable consistency.[22] The very long sentences for sedition only helped consolidate a climate of mutual hostility, making it extremely difficult to move forward towards a new constitutional pact, that is, one that might again recreate majorities both in Spain as a whole, and in Catalonia in particular. The pardons finally granted by the left coalition government in June 2021 for the sake of "public utility" (using a government prerogative) eased some of the tensions and were welcomed in Catalonia, but they lacked the support of the right in Spain and have not ended the political deadlock on any of the substantial issues. In fact, the polarization of Spanish politics has continued to focus disproportionally on the Catalan issue and has fuelled the rise to prominence of extreme right-wing nationalist parties such as VOX. On the other hand, the divisions within Catalonia between supporters and defenders of independence have deepened, eroding the broad consensus that existed for many decades around the pursuit of the Catalan common good through limited autonomy. Delicate issues such as the use of Catalan as the default language in Catalan schools have become poisoned by politically motivated judicial interventions and are far from resolved despite efforts to restore a broad consensus in the Catalan parliament. Last but not least, the fundamental issue of whose sovereignty is at stake in the Catalan decision to remain or not part of Spain in the hypothetical scenario of a legal referendum has been buried under the carpet, together with the very possibility of such a referendum, at least for the foreseeable future. To this limited extent, the Spanish government seems to have succeeded.

4.5 Dual Sovereignty? Re-Reading the Spanish Constitution

The Catalan demand for a referendum of national self-determination has been widely supported in Catalonia, but does not find a legitimate space within the current legal system, because the Constitution proclaims in its second article as its very condition of possibility "the indissoluble unity of the Spanish nation, common and indivisible fatherland of all the Spanish

people". It does however recognize, remarkably within the same sentence, "the right to autonomy of the nationalities and regions that compose it". For its political significance, this is probably the most important article in the whole Constitution. Let us quickly consider how this article was interpreted by Jordi Solé Tura, one of the two Catalan participants in the small committee that redacted the constitution. Solé Tura became one of the "fathers of the Constitution" as a representative of the Catalan communist party, the PSUC, although some years later he joined the socialists:

> The second article of the constitution (…) is a genuine synthesis of all the existing contradictions of the constituent period (…) From a political perspective it is represents an authentic draw between different conceptions of the Spanish nation (…) the conceptualization of Spain as a single and indivisible nation, and the conceptualization of Spain as an articulated union of diverse peoples, of historically formed nationalities, and of regions. The two concepts are fused in order to sustain not any more the centralist State traditionally associated to the notion of a single nation, but rather a State of Autonomous Entities that must overcome the old and stagnant centralist structures. These Autonomous Entities moreover do not emerge of any arbitrary decision, but instead express a right previous to the same constitution, because this constitution 'recognizes' this right and 'guarantees' it. (Solé Tura, 1985)

However, this optimistic interpretation of the Constitution along federal lines, which was used by Solé Tura to propose further moves towards a more genuine federal organization (but not independence) during the early years of Spanish democracy, cannot truly evade the problematic nature of the constitutional compromise. By demanding that the will of the people be bound by a metaphysical and ultimately ahistorical concept of unity, the Constitution also creates a potential problem of democratic legitimacy, because it proclaims that the right to self-government of its "nationalities" (a euphemism for cultural nations without full political sovereignty) can never be a right to independence, disregarding what the people in the territories concerned might actually want. The Constitution assumes that the consent of the people will exist, something that can be presumed to be the case in most democratic states. What it does not do is to allow for the possibility that this consent might be withdrawn within a recognized autonomous region, forestalling the question of which *demos* is relevant to the question of popular consent in that region. Thus, any consistent evidence that this consent no longer exists

(e.g. by means of the electoral victories of pro-independence parties) creates a constitutional conundrum, or what I have otherwise defined as a para-constitutional problem: it cannot be solved legally by ignoring the Constitution, but it cannot be solved democratically within the Constitution either. In effect, if the principle of double majority underpinning the regional autonomy were to fail empirically, by default the majority in Spain squashes the majority in Catalonia, without any means of appeal given that the supremacy of the "indissoluble unity of the indivisible nation" is systematically enforced by the Constitutional Court. I believe that "dual sovereignty" (albeit not equal) is more adequate than "shared sovereignty" to describe this situation. It implies that the supreme power resides in the will of the Spanish people as a whole, but that fundamental decisions affecting the autonomous powers of the historical nationalities (as well as any other territories with devolved powers and representative institutions) require their formal participation and democratic consent.

Defining legality is relatively simple, albeit subject to interpretation. Defining democratic legitimacy is far more complex. In a simplistic understanding of democracy, this is determined by the expression of the will of the majority of citizens, either directly via a referendum or, more usually, as the rule of the majority within a system of elected representation. Obviously, majority rule cannot be arbitrary and needs to take account of the existence of individual human rights and citizen rights, of the rights of cultural or territorially defined minorities, and of the provisions of the existing legal system and its institutional procedures. These, in a liberal system, seek to ensure a separation of functions between the legislative (the power most directly concerned with the expression of the will of the people) and the executive and judicial branches. The demand for Catalan sovereignty has taken different forms in different epochs—a right to political liberty in the nineteenth century, a defence of national self-determination for much of the twentieth century, or a populist claim to the "right to decide" a community's political future by means of a referendum in the twenty-first century. In most cases, the demand was articulated within the parameters of a liberal political culture which could encompass left-wing and right-wing alternatives, the former usually in the form of democratic republican federalism, the latter through more eclectic conservative nationalist ideologies.[23] In particular, the "right to decide" was originally proposed in Catalonia as a radical response from the grassroots to the frustration caused by the failure of the parliamentary procedures of legislative reform that led to the diminished statute

of 2006, and it was conceptualized as a strategy to reclaim national sovereignty by means of a "plan B", which entailed a referendum for secession inspired by the example of Quebec.[24] However, this second plan was emphatically meant to lead to a legally valid referendum, necessarily agreed with (or perhaps, more realistically, extracted from) the Spanish state, not a unilateral referendum of limited practical value.[25] I will not therefore here seriously consider the later appeal to a revolutionary or unilateral expression of the will of the people, although this is the position adopted by some of the more radical pro-Independence actors in Catalonia—namely those who in 2017 believed that there was no alternative way within Spain of expressing and making effective the view of the majority of the citizens of Catalonia on this fundamental issue, and who, therefore, sought to create a parallel legality in the Catalan parliament in order to hold a unilateral referendum of independence of dubious validity (usually with a very muddled understanding of what would happen afterwards). There is ample evidence that the leaders of this controversial process, including President Carles Puigdemont, were hoping to use the results of the de facto referendum to force a negotiation with the Spanish government and to attract international mediation for such a negotiation, presumably in order to extract a subsequent legally binding referendum.[26] It is my view that the more serious challenge that affects the analysis of the Catalan crisis needs to look beyond the particular vicissitudes of those events of 2017 and focus on what the very demand of a referendum on such a scale means for Spanish democracy.

What I see as an unresolved issue that involves the concept of sovereignty is the potential clash between the will of the majority in Catalonia, as expressed through its elective representatives and institutions, and the majority of Spanish citizens. The question concerns the legitimacy of the constitutional order when there is abundant empirical evidence that one of its most fundamental provisions, the indissoluble unity of the Spanish nation, may contradict the will of the majority of citizens in a culturally distinct region, one in fact implicitly recognized by the same constitution as a historical nationality. It is of course today impossible to ascertain what the will of the citizens of Catalonia actually is on this issue, when the Constitution is more than 40 years old, unless there is the possibility of a referendum. Polls are of course completely inadequate, and although popular demonstrations have been many and very massive, gathering as many as a million people in some cases, they can at best ascertain that there is a widely supported demand to reclaim

and exercise sovereignty. The numerous resolutions of the Catalan parliament are perhaps more indicative, but voting to elect a legislative chamber and government involves a wide range of issues, and therefore, no parliamentary election can be properly understood as a plebiscite about one single issue. This is one of the reasons why support for a referendum of independence in Catalonia has always been significantly higher than the support for independence itself. In that respect, the demand for a recognition of Catalan sovereignty is more widely shared than the demand for independence, and is probably the tipping point that may lead to a clear majority above 50%. In Spanish idiom, there are many more *sobiranistas* than *independentistas*.

Let me be clear that the point I am making is not that a majority for independence exists in Catalonia. All the evidence suggests that it would be a close call, but of course the circumstances of a legal referendum itself, one that has been negotiated with the Spanish state, would affect the outcome. Nor am I saying that, in the current circumstances, a referendum is possible. It is, to begin with, only legally feasible through special legislation, by means of a reform of the Constitution, or at least as part of a proposal to reform the Constitution. In addition, considering the majority view in Spain, such a referendum is today politically impossible—and this political impossibility is, in the light of the events of last few years, more decisive than any legal impossibility. I am not suggesting either that a referendum would be the best way forward for solving this particular political crisis democratically—considering that the division in Catalan society might split around 50/50 I can think of easier alternatives, less risky for the Spanish state, which arguably would struggle to economically survive without Catalonia or perhaps even prevent a domino effect on other regions. As an example of such an alternative we may consider a federal reform of the Constitution that might be acceptable to all the regions of Spain, already formulated in great detail in the studies of constitutional specialists like Eliseo Aja.[27] What I am arguing here is that the refusal to address the demands for a referendum, or even to seek to solve the underlying causes for such a demand, has generated a crisis of legitimacy in Spanish democracy, because it has exposed the fundamental contradiction between two overlapping sovereignties: that which corresponds to the will of the majority of the citizens of Catalonia, and that which corresponds to the will of majority of the citizens of Spain as a whole. The problem exists even if we accept that the constitution only recognizes the sovereignty of the Spanish nation as a whole, because at

least in Catalonia the legitimacy of the constitution is also at stake (elsewhere in Spain, the fact that in practice it seems impossible to reform the constitution also raises fundamental issues).[28] It is extremely unlikely that today in Catalonia a majority would approve the current constitution. This is in contrast with the massive support that it received in 1978, higher than in Spain as a whole. The letter of the constitution is the same, but after all the controversial jurisprudence and all the conflicts about self-government of the last few decades, its political significance as an expression of the will of the people has been completely transformed. It may be symptomatic that unionist parties in Catalonia often seek to present themselves as "constitutionalists", understanding the constitution primarily as a denial of Catalan sovereignty, and often paying very little attention to the other provisions that it contains.[29]

4.6 Some Possible Comparisons

It has often been asserted that the right to self-determination in international law is primarily concerned with the process of decolonization. This is not strictly true—the right was originally formulated for European national minorities in the context of the dissolution of the Austro-Hungarian empire—but this is certainly how the international jurisprudence has evolved in more recent decades. It is nonetheless the case that, for the purposes of valid comparisons, colonial societies are not adequate for Catalonia. Although each case is in some respects different, the two that do invite meaningful comparison (because they correspond to national minorities within modern liberal democracies) are Scotland in the UK and Quebec in Canada. The legal status of a province in a federal state, a former kingdom with devolved powers in a union of Crowns, and a historical nationality with regional autonomy, may not be identical, but in all cases, we are considering well defined territories with deep historical roots and obvious cultural peculiarities (such a distinct language) which have consistently expressed a desire for democratic self-government. A comparative exercise, however brief, reveals how significant the differences in the formulation of the constitutional order are in making it particularly difficult to hold a referendum in Catalonia.[30]

The UK has no written constitution and, unlike Spain, has recognized its most distinctive historical nationalities without attempting to create a homogeneous system of regional assemblies. Hence in 2012, David Cameron was able to negotiate a referendum for Scotland directly

with the Sottish government, mobilizing parliamentary majorities in Edinburgh and London in order to do so. The fact that legally the sovereign decision belongs to the parliament and government in London (hence, a second referendum is far from guaranteed) is no obstacle to *de facto* granting a sovereign decision on the future of Scotland to the British citizens of Scotland.[31] There was of course never a discussion that the referendum only made sense if held exclusively in Scotland. Thus, by a political agreement, negotiated in 2012 and implemented in 2014, the British Government transferred temporarily to the Scottish parliament the authority to organize a legal referendum, one of the matters reserved to Westminster, using section 30 of the Scotland Act of 1998 (by which Westminster had created the Scottish parliament in the first place).[32] The formal requirement for the transfer of a reserved matter required the support of the Scottish parliament and (crucially) both chambers in Westminster. It is not therefore an intrinsic right of the Scottish parliament to hold a referendum, as the Supreme Court clarified on 23 November 2022 (Supreme Court, 2022). We could say that while acknowledging the superiority of British sovereignty (hence, actualizing the idea that the unwritten constitution of the Union does nonetheless have clear principles of hierarchy), Scottish sovereignty for a particular decision that transcended the recognized powers of the Scottish parliament was nonetheless enabled on occasion by an act of political will at Westminster, realizing the principle of dual sovereignty that I have defined as the crux of the problem in a democratic society with historical nationalities.[33] This analysis stops short of suggesting the Scottish and British *demoi* are effectively co-sovereign, as argued by some.[34] It simply recognizes that the democratic principle requires that the larger *demos* of the Union find a mechanism to formally give a voice to the smaller demos of the recognized national minority. By contrast, there was never in Madrid any political willingness to accept that an equivalent provision could be found for Catalonia, using for example the legislative capacity of the Spanish *Cortes* to organize a non-binding referendum in order to ascertain the popular will in Catalonia.[35] The written constitution was not simply a formal obstacle, it also offered a perfect excuse.[36]

In turn, the Canadian Supreme Court is imbued with a genuine federal culture and has established its own doctrine, one which does not recognize a province's right to secede unilaterally but offers a possible avenue for recognizing the need to hold a referendum in some circumstances

and honour its results. The Court's ruling in 1998 concerning "clarity" for any future referendum, which has been widely praised, did not actually precede, but instead followed a referendum held in Quebec in 1995, one which had failed to produce a provincial secession but also split the vote very evenly (50.58% for remaining in the Canadian federation against 49.42% for an independent Quebec). Political scientist Stéphane Dion, acting on behalf of the federal government, had asked the Court whether Quebec's provincial parliament and government had the right to declare independence unilaterally following a referendum, either under the constitution or under international law. The Supreme Court concluded that no such right existed, but also that "the continued existence and operation of the Canadian constitutional order could not be indifferent to a clear expression of a clear majority of Quebecers that they no longer wish to remain in Canada". Hence, if it could be ascertained that there was a clear will to secede—and it was a matter for politicians to decide what question and what majority would offer such clarity in any future referendum—then formal negotiations should take place addressing "the interests of the other provinces, the federal government and Quebec and indeed the rights of all Canadians both within and outside Quebec, and specifically the rights of minorities".[37] De facto, the Canadian Court set limits as to how such referendums for independence should be held and its consequences negotiated, at the same time conceptualizing its democratic legitimacy in certain circumstances. There was no sovereign Quebec, but there was a recognized *demos* of Quebec citizens (potentially sovereign, I would argue) with a democratic right to be consulted, and whose collective will had to be respected by the federal government. In particular, if the expression of the will of this demos was clear, proper negotiations could follow that led to an internationally recognized sovereign Quebec.

What truly separates the British and Canadian cases from the Spanish one is this willingness to concede a referendum and accept its consequences in some circumstances, rather than simply declaring its legal impossibility, and the acknowledgement that in such a referendum the legitimate *demos* is the province most directly concerned, not the union or federation as a whole. On both counts, the dominant understanding of national sovereignty in Spanish political culture seems remarkably rigid and essentialist, albeit this is not necessarily unique in Europe.[38]

4.7 Conclusions

The Catalan case offers a valuable case study of the difficulties of solving the problem presented by territorially defined national minorities with a potential will to secede in a liberal democracy by resorting to a simple concept of sovereignty. The specificities of the constitutional culture of Spain that evolved after the death of Franco and the transition to democracy make the issue manageable within a successful system of limited autonomy, but very difficult to resolve when such system is eroded, as has clearly happened in Catalonia throughout the last two decades, and in particular after the failure of the reform of the statute of autonomy of 2006, whose key novel provisions were overturned four years later by a highly politicized Constitutional Court. It has been my argument that this constitutional deadlock has left Catalan citizens without a legitimate form of limited self-government and has provoked a massive (albeit not necessarily irreversible) increase in pro-independence sentiment. Further, the refusal to recognize the existence of a legitimate *demos* in Catalonia—one that could be consulted by means of a legal referendum enabled by the Spanish *Cortes* and government—has made the problem very difficult to solve within the parameters of a liberal democracy. The existence of a provincial *demos* is widely recognized in comparable (but of course not identical) cases in Scotland and Quebec. However, Spanish political culture is clearly not generally oriented towards this kind of possibility. It is important to clarify that the recognition of such a provincial or regional *demos* does not actually involve the previous recognition of a sovereign Scotland, Quebec or Catalonia with unilateral rights to secede. However, it does imply that the emergence of such a sovereign entity by means of a negotiation is a historical possibility, and that this negotiation would be prompted—this is crucial—by the democratic decision of this regional *demos*, if clearly and legally expressed. This, in my view, implies the existence a kind of dual sovereignty; however, hierarchically we define all the formal processes that might lead to the creation of a new sovereign state.

Notes

1. This is not to deny the value of a longue-durée perspective. For a comparative analysis of the Catalan and Scottish cases over many centuries, see Elliott (2018) and my review of the book in *Historia y Política* (2021).
2. At those two moments of constitutional definition, the movement for Catalan self-government was largely driven by the left, with ERC

(*Esquerra Republicana de Catalunya*) the dominant party in the 1931–32 period when the modern Generalitat was created, and the PSUC and PSC (Catalan communist and socialist parties) the dominant electoral parties in Catalonia from 1977 until 1980. It was only subsequently, in the Catalan elections of 1980 and especially in 1984, that the more conservative nationalist leader Jordi Pujol (eclectically mixing liberal, Christian democrat and social democratic principles) emerged as a dominant figure in the Catalan regional government.

3. For a detailed analysis of the centrality of the Catalan demands for recognition as a cultural nation with political rights for the elaboration of the more controversial articles of the constitution, see Molinero and Ysàs (2014).
4. This civic values were apparent in the linguistic policies developed in Catalan schools after the restoration of the Generalitat, initially with a very wide political consensus. Following the proposals of the left, in particular the socialist party which attracted much Castilian-speaking immigrant vote, the aim was to guarantee that all children would reach a high level of competence in both official languages, Catalan and Spanish, within the same school system, avoiding the segregation by language that the more conservative parties had originally proposed. The method adopted was immersion in Catalan—the language largely absent from the media—in primary schools, with notable success considering the extremely high levels of immigration, although the dominance of Castilian in mixed social situations has continued and consolidated. On the connection between language and national identity in a bilingual context, see Woolard (2016).
5. The term "nationalities" as distinct from "regions" was hotly debated during the constitutional debates, and its significance cannot be underestimated. The key issue was whether it could be used to express a national idea that did not equate the full political sovereignty reserved for the Spanish nation, providing some room for the idea that Spain was best understood as a "nation of nations", or whether (as the post-Francoist right argued) its inclusion posed a threat to the unity of Spain.
6. According to the constitutional thinker Javier Pérez Royo, this lack of any formal debate about the monarchy is the fundamental flaw in the Spanish Constitution and a key obstacle to its future reform, see Losada and Pérez Royo (2018).
7. The revival of some old republican parties that had maintained a formal existence in exile or in a clandestine opposition was also significant of this sense of democratic restoration.
8. More precisely, the constitution provides that the 12 members be elected in the following proportions: 4 by the *Cortes* or legislative chamber, 4 by the senate, 2 by the government and 2 by *the Consejo General del Poder Judicial*, the organ in charge of regulating the key appointments in

the judiciary. This organ has also been subject to an extraordinary degree of politicization in recent years, primarily by the *Partido Popular*, and its members are rarely renewed when their term expires. On the origins of the politicization of the Spanish Constitutional Court (even before the Catalan crisis exploded), see Iglesias Carrera (2016). On how this problem has in recent years become more acute, eroding the internal legitimacy and international prestige of the institution, see López Guerra (2021).

9. For the constitutional and legal consequences of the Court's decision, see Fossas (2011) and Pérez Royo (2011a).
10. Accordingly, there have been many calls to reform this chamber in any future constitutional reform, so that it acts as a representative forum for the autonomous communities.
11. Serious discussions of how the constitution could be reformed along more federal lines in order to address specific dysfunctions include Aja (2014)and Muñoz Machado (2014).
12. Participation stood at 48,85%. The previous statute of 1979 was supported by over 88%, with a participation of almost 60% of the electorate. The numbers reveal the erosion of the consensus that sustains the system of limited regional autonomy after decades of structural conflict.
13. The recused jurist was Pablo Pérez Tremps, on the dubious grounds that he had previously provided in a professional capacity technical advice to the Generalitat. That ad hoc criterion was never applied, before or after, to any of the members of the Constitutional Court, some of whom might have been involved in more blatantly political activities. The recusation of this jurist has been described by Eliseo Aja in the following terms: "The marginalization of Pérez Tremps was a blow to the juridical capacity of the Court because it lost the most competent magistrate on the subject of [regional] autonomy, but it also represented a moral discredit for the Constitutional Court because the recusation was poorly justified and the outcome of a political conspiracy"; see Aja (2014, p. 90).
14. Some however already in 1978 had argued (in vain) against the very possibility that a statue of autonomy approved in referendum could be revised by the constitutional court, predicting the conflict of legitimacy that this could generate; see in this respect Amat (2017), 13. Such critics include one of the seven redactors of the constitution, Jordi Solé Tura. Following his line of thought, some jurists have further argued that the statutes, having been negotiated between the regional parliament and the national parliament, and having secured popular consent directly, must be considered as already forming part of the constitution, or more precisely, part of a "constitutional package" (*bloque constitutional*) that stands above those other laws approved by any single parliament, regional or national. See in particular, the various contributions by Javier Pérez Royo: Pérez Royo (2011b) (by the actions of the Constitutional Court, the constitution is

now politically broken) and Pérez Royo (2017) (arguing that the Constitutional Court should never have intervened to modify the Catalan statute of autonomy against the will of the Catalan citizens).

15. What the constitution and the existing statutes provide for is that the creation or reform of an autonomous government by means of a special statue is a regional initiative requiring a double majority: on the one hand, a majority in the region concerned, expressed in the regional parliament or equivalent representative assembly through the proposal of a statue by absolute majority, and additionally via popular referendum when the law has reached its final form; on the second hand, a majority in the Spanish parliament, whose role is to guarantee that the text of the statue is coherent with the constitutional principles, and to ratify it. In that respect a degree of regional sovereignty is recognized, because the Spanish *Cortes* alone cannot legislate on this issue.
16. At that point few in Madrid took the demand of independence seriously, preferring to believe that it was simply a tactical move by the regional government to obtain more "privileges", or perhaps a momentary radicalization of the masses (the usual image in the media was a soufflé) provoked by the economic crisis.
17. See in this respect the testimony of Josep Martí, communications secretary of the government of the Generalitat in that period (2018).
18. Some decisive evidence in Pérez (2022).
19. With the notable exception of the regional police of Catalonia, which managed the situation with professionalism. There was no need for the police violence because the referendum had no juridical validity in Spain or the EU, most opponents of independence—about half the active electorate—did not participate, and its results could not therefore meet the standards of international recognition. It was only symbolically significant as a demonstration of the existence of some substantial popular support for independence, but no more than a previous informal consultation peacefully held in 2014, with a similar result, and no practical consequences.
20. The refusal to grant a referendum under any circumstances pre-empts a meaningful discussion of how such a referendum should be conducted. Nonetheless, some critics of the referendum questioned whether a simple majority was an adequate threshold for a potentially irreversible decision of such consequences, sometimes appealing to the need to consider the citizenship rights of the minority. Granted the counterfactual of a legal referendum, the observation that the rights of the minority are important is true of any referendum, including, for example, the Scottish independence referendum and the Brexit referendum. In all these cases, a simple majority was the formal requirement. This may be because "the rights of a minority" cannot equate to "the right of the minority to have its

will prevail upon a majority", and any figure between "more than 50%" and "(an impossible) 100%" is entirely arbitrary. Any such figure also fails to guarantee any citizen rights not otherwise granted by ordinary legislation—which rights of a minority are guaranteed if the threshold is 55% rather than 50%+1? Why not 66%?, etc. The existence of qualified majorities for some parliamentary decisions that seek a broad consensus is arguably of a different nature that the majority that applies to the exercise of direct democracy. Nonetheless, a principle of territorial balance is relevant, and one might reasonably request a simple majority in each of the four electoral provinces of Catalonia (Barcelona, Tarragona, Lleida and Girona), or failing that, a qualified overall majority to compensate a single provincial shortfall.

21. For Carles Puigdemont's testimony, see Puigdemont (2020). Many other testimonies have been published. By contrast, almost five years later (writing in 2022), the decision-making process in Madrid government circles remains clouded in obscurity.
22. For a critical assessment of the judicial process, see Ekaizer (2019) and Martín Pallín (2020), Martín Pallín is a former judge of the Spanish Supreme Court (for criminal cases) who concludes that the prosecution was politically motivated, and that the Spanish judges responsible for condemning the Catalan civic and political leaders for "sedition" (a public and riotous uprising) rather than for disobeying the Constitutional Court "decided to take an initiative that corresponded to the political powers" (230). The concept of "lawfare" has been explored by del Clot (2021) (although the analysis is often simplistic in its historical parts).
23. Considering the ideological positions of the many political parties which have articulated such demands at various points would require a very extensive analysis. It seems however possible to generalize that the more progressive republican tradition was first articulated by nineteenth century federalists like Francisco Pi y Margall and (more decisively) his successor Valentí Almirall, and eventually led to some of the positions articulated by left-wing parties such as Esquerra Republicana de Catalunya (ERC) in its long history (the party, founded in 1931, was dominant during the Second Republic and is again central today). Crucially during the transition to democracy, we find also expressions of federalism and an explicit right to self-determination within the communist and socialist parties (PSUC and PSC), at that point dominant in the Catalan left. For an example of the persistence of this tradition in the current crisis, see Domènech (2020).
24. The *Plataforma pel dret a decidir* was created in February 2006 as an organization that campaigned for Catalan sovereignty by organizing mass demonstrations, with immediate support from the most consistently pro-Independence party, Esquerra Republicana de Catalunya. For a theoretical conceptualization, see Ridao (2007). Interestingly, Ridao's proposal

involved an explicit rejection of the federalist approach, and preceded the fatal intervention by the Constitutional Court in 2010. It considered the text finally approved by the people in 2006 as already too damaged. In other words, in 2010 the Spanish Constitutional Court massacred a consensus text that did not in fact please the pro-independence parties.

25. Ibid., 129. Ridao, himself a jurist, had been one of the leaders of ERC during the fiasco of the new statute, but his party, under the new leadership of Oriol Junqueras after 2011, would eventually move towards a more unilateral approach, especially during the later phases of the *procés* (2014–2017). More recently, ERC has led efforts to negotiate with the Spanish State, voting the formation of a left coalition government in Madrid led by the PSOE with the support of Podemos, in exchange for a formal dialogue, which, however, has failed to address any issues of sovereignty so far.
26. Many voters, however, were encouraged to believe that this was a direct route to independence, and not a few politicians ended up believing their own rhetoric. In this respect, a major criticism within Catalonia is that the political leaders were misleading their followers in order to improve their bargaining position, and that they miscalculated the Spanish response. In the negotiations of October 2017, the Spanish government effectively called their bluff and prepared to intervene the autonomous government, forcing the pro-independence leaders to live up to their words and declare independence without any hope of success.
27. Aja (2014). The cornerstone of the proposed reform would be the transformation of the Spanish Senate, currently powerless and redundant, into a territorial assembly representing the autonomous communities, with new functions, in large part inspired by the German model. In addition, the financial provisions would be clarified and re-balanced.
28. See again Losada and Pérez Royo (2018).
29. We could add to this lack of enthusiasm the unpopularity of the monarchy in Catalonia, not only because of the financial scandals surrounding the royal family and especially the king emeritus, but also because of the way Philip VI publicly intervened in the political debate at the height of the crisis on 3 October 2017, openly taking sides on behalf of Spanish unity and sovereignty (identified with the constitution), and against the Catalan authorities who had organised the referendum illegally for attacking Spanish democracy and social peace. He made the Catalan authorities alone responsible for "dividing" Catalan society and legitimized the subsequent repression, for example, by expressing strong support only for those Catalans negatively concerned with the political agency of the Catalan parliament and government, but not even mentioning the victims of police

brutality. Public opinion in Catalonia is largely republican. For a transcription, see https://es.wikipedia.org/wiki/Discurso_del_3_de_octubre_de_2017#.

30. For the view that International Law has little to say about the Catalan crisis, but comparative constitutional theorists can offer a valid perspective (hence the value of considering the cases of Scotland and Quebec), see Vidmar (2017).
31. An interesting issue is whether the granting of a referendum creates a precedent that facilitates future referendums, or on the contrary, it imposes an obligation not to hold any further referendums on the same issue within a reasonable time period of many years, taking into account how fundamentally disruptive the possibility of a separation is.
32. *Scotland Act* (1998).
33. Strictly, speaking the referendum was non-binding, and therefore formally there was not (yet) a Scottish sovereign nation. Democratically, however, the results could not be ignored, although their implementation would be subject to negotiation. After a balanced campaign (the Queen remained exquisitely neutral) and with a participation of almost 85% of the electorate, supporters of the Union won by a majority of 55,3% of the votes cast. Paradoxically in the light of subsequent events, one of the key arguments for maintaining the Union was that it guaranteed that Scotland would remain in the European Union.
34. See Christopher Lord in this volume, following Keating (2021).
35. Such a referendum would not imply that the people of Catalonia were already sovereign, only that the collective will of the Catalan citizens on this issue mattered, that it could be expressed democratically, and that it might lead to a constitutional reform in Spain in order to enable negotiations for an independent Catalonia.
36. At the start of the crisis, a few respected Spanish constitutional thinkers such as Francisco Rubio Llorente (former member of the Constitutional Court) argued that the constitutional provision declaring the indissoluble unity of Spain could be if necessary circumvented through a constitutional reform, because a purely formal obstacle should not be used to indefinitely impede a democratic demand by a "minority living in a defined territory": "Si una minoría territorializada, es decir, no dispersa por todo el territorio del Estado, como sucede en algunos países del Este de Europa, sino concentrada en una parte definida, delimitada administrativamente y con las dimensiones y recursos necesarios para constituirse en Estado, desea la independencia, el principio democrático impide oponer a esta voluntad obstáculos formales que pueden ser eliminados" (Rubio Llorente, 2012).
37. https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/1643/index.do.
38. For example, there is a great deal of sympathy in France for the position of the Spanish state, which after all is largely modelled on the French tradition of Bourbon absolutism in the eighteenth century, and

Republican Jacobinism afterwards. This is reflected, for example, in some accounts of the events particularly hostile to the Catalan demands, such as those produced by *Le Monde* journalist Sandrine Morel emphasizing the irrationality, foolishness, arrogance, hypocrisy and self-deceit of the pro-independence parties and the role of media connivance: Morel (2018).

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CHAPTER 5

Defending Sovereignty in the Name of Post-sovereignty: Liberal and "Illiberal" Constitutional Idioms in the EU

Hugo Canihac

5.1 Introduction

Conflicts of sovereignty have, once again, come to the forefront in the European Union (EU). Brexit has amply demonstrated that the old opposition to the EU's supranational authority in the name of state sovereignty is still vivid. Yet, in other member states—and to some extent also in the British case—it proves rather unsatisfying to analyse the tensions that arise as simple conflicts between states wishing to reclaim their independence (*external* sovereignty) and the EU (Brack et al., 2019). For these member states do not wish to leave the EU; rather, they claim, they want it to be rearranged so as to better protect the sovereignty of their national peoples (*popular* sovereignty). This is particular visible in

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Hungary and Poland, where governments have affirmed, in the name of popular self-determination, the right to selectively free themselves from certain constitutional rules promoted by the EU.

The aim of this chapter is to analyse the lines along which this type of conflicts is organized. It will first propose a framework to investigate constitutional democracy as a language, whose grammar can be declined in different (here, liberal or "illiberal") ways. Applying this framework to current EU legal debates, I will argue that it is as an opposition between different *idioms* of constitutional democracy that these conflicts unfold. This is to say that an "illiberal constitutionalism" has taken shape not against, but through EU constitutionalism. In this sense, this chapter adds to a body of literature pointing the abuses of EU legal concepts and tools (Canihac, 2021; Kelemen & Pech, 2019; Scholtes, 2021). Further, this descriptive analysis is of some normative importance, if only because it recalls the weakness of a vision of political liberalism resting entirely on legal-institutional arrangements, at the expense of a more comprehensive reflection on the conditions they require to operate.

5.2 Is "Illiberal" Democratic Constitutionalism Possible?

The emergence of self-labelled "illiberal" regimes in the EU has fostered an important debate about the possibility of "illiberal" democracy and constitutionalism. This debate has largely revolved around the values of constitutional democracy. In this chapter, I emphasize a different, but nonetheless important, feature of these regimes: their arguments are couched in the very language of constitutional democracy, or at least some form of it. It thus matters to understand *how*, precisely, they are able to use this language.

5.2.1 From Models of Constitutional Democracy to Constitutional Democratic Idioms

Constitutional democracy notoriously conceals a tension between the principles underlying its two elements (Habermas, 2001; Loughlin, 2000, p. 190). On the one hand, as a form of *democracy*, it states that the people are sovereign. It enjoys a right to self-determination through various procedures—most usually, but not exclusively, vote. These procedures,

as well as those entitled to participate, are generally defined by the constitution. On the other hand, however, as a *constitutional* democracy, it sets precise limits to this right to self-determination. The people, albeit sovereign, can go no further than the constitution allows—for instance, it usually cannot remove the rights of minorities. The German Constitution of 1949 might be the most famous illustration of this tension. Hence, while a democracy is supposed to be governed by "the unrestricted will of the united citizens […] the principle of the constitutional exercise of power, on the other hand, appears to set limits on the people's sovereign self-determination" (Habermas, 2001, p. 766). Given this tension, different arrangements have been forged to reconcile the democratic and the constitutional elements of constitutional democracies. For instance, in some cases, the judiciary is made a prominent actor of democratic life, while in others Parliament tend to overshadow it. This is to say that there is not one model of constitutional democracy, but several (see Held, 2006, pp. 6–7). Yet can there be an "illiberal" model of constitutional democracy at all?

Many authors have answered in the negative to this question, and regard an "illiberal" (constitutional) democracy as nothing but an oxymoron (Halmai, 2019; Lacroix & Pranchère, 2019, pp. 14–22). For in all its various models, modern democracy as well as modern constitutionalism include in their conceptual core liberal principles. Political liberalism is here understood as a family of political thought emphasizing the ideas of individual freedom and rights, limited government through law, and a "thin" ethos allowing for the expression and toleration of a plurality of beliefs and values (a paradigmatic, even though not exclusive, illustration is Rawls, 2011). By contrast, right-wing populist regimes reject some, or most, of these ideas (Mudde & Rovira Kaltwasser, 2017, p. 6). For instance, discriminatory policies against cultural minorities within these countries (Fitzi et al., 2018) are hardly compatible with the toleration of diverse beliefs and values promoted by liberalism.

However, a growing number of researchers have also stressed that, in practice, they have a more complex relation to constitutional democracy (Moffitt, 2020; Müller, 2016; Scheppele, 2017). It should be noted that, in spite of the vociferations of many populist leaders, right-wing populist regimes do not simply reject rights and courts, democracy and constitution (Castillo-Ortiz, 2019, p. 23). Tellingly, one of their first moves often is to pack constitutional courts (Lacey, 2019). The same applies to EU legal processes. Since its accession to the EU in 2004, Hungary

is in fact one of the member states making the most active use of the procedure of preliminary ruling, by which a national court can require an opinion from the CJEU (Court of Justice of the European Union, 2020). In this sense, no more can they be characterized as cases of "political constitutionalism" (Bellamy, 2007), since, precisely, they heavily rely on courts. Of course, to a large extent, one can suspect that it is mere hypocrisy and strategic opportunism—but it could perhaps also be argued that their understanding of constitutional democracy is rooted in other traditions. However important, here, I do not mean to engage with this philosophical-historical issue. Rather, my starting point is that, so far, they largely had to conform to liberal constitutional practices, which contributes to shaping what they can do.

Bearing this observation in mind, this chapter departs from a definition of democratic constitutionalism as a set of substantial principles, to concentrate on what can be labelled a political and legal *language*. To put it with J. Pocock, a language is "an institutional structure of public speech available for the diverse and often conflicting purposes of many actors" (Pocock, 1987, p. 37). In other words, the focus here is less on constitutionalism as a political and legal philosophy than as a set of discursive and practical conventions. They are in particular to be observed in court proceedings, a traditionally crucial site of democratic constitutionalism, where it is necessary to carefully articulate claims in a language understandable and acceptable to judges and lawyers. In this view, not only is an "illiberal" use of the language of constitutional democracy possible: It does exist already. This is not to say that the liberal and "illiberal" uses of this language are identical. Rather, they represent different *idioms* that is, variations of the same language. Failing to take the "illiberal" idiom seriously thus risks preventing us from understanding how the policies of such regimes are publicly justified: not from outside the language of constitutional democracy, but from within.

It is to reconstructing these idioms that this paper is dedicated. Its shows how, by making use of the EU legal tools and discourses, it is able to construct its "pure people", as opposed to outsiders, and to frame the exercise of its "general will", central to its claims. In a nutshell, it is the legal construction of right-wing populism through EU law that it sets out to illuminate.

5.2.2 *A Grammar of Constitutional Democracy*

Now, how are we to disentangle these different idioms? What criteria can be used to delineate an "illiberal" variation of the constitutional democratic language? A language follows some general, more or less institutionalized, rules. These rules can be regarded as forming its *grammar*, that is, the conventions that structure it and make it a language after all—even though a great deal of variation is possible in the way these rules are effectively applied. For that reason, I take a grammar as a set of conventional questions, a field of problems to be solved, rather than as definite, immutable answers. Here, as we are interested in idioms of constitutional democracy, the grammar will be especially concerned with the relation between (constitutional) law and (democratic) self-determination. But it does not state that "relations between the people's will and the constitution must be regulated by an independent court", but rather that "there must be a way to regulate these relations".[1] The various answers provided to address such issues constitute the different idioms of constitutional democracy.

I propose to focus on four basic questions that have structured modern idioms of constitutional democracy (here, I adapt a different set of questions proposed in Rosenfeld, 2010, 5sq). A first, major question to be answered is: who is the sovereign? Since we are concerned with democracies, it will come as no surprise that the people are sovereign; but there are in fact many ways of defining the sovereign people: Should it be only nationals, or all the inhabitants of a territory? Should it include all citizens, or only a fraction of them? This is the problem of the *subject of sovereignty*—i.e. of defining "we, the people", and relatedly, "them, the others". Second, how is the sovereign constituted, i.e. by whom and according to which rules? And who will, in practice, interpret these rules if a difficult case should arise? This points at the problematic field of how constitutional rules shape the democratic sovereign. I suggest calling this dimension the *constitution of sovereignty*.

Yet, a constitution can hardly be expected to have foreseen every single problem that may arise over the course of history. Third, then, we need to wonder how the sovereign can change the constitution. This is to ask how the people can interact with, and indeed alter, the constitutional framework in which it exercises its sovereignty. This dimension I will analyse, with the help of the conceptual tools developed by B. Ackerman about the US, as the *internal reach of sovereignty*. Finally, how do these

arrangements interact with other legal norms, not produced (only) by the sovereign? In other words, how do constitutional norms interact with international and European law? In the context of European integration, this is all the more relevant since EU law claims to enjoy a constitutional status. I define this as the question of the *external boundaries of sovereignty*.

While two questions will help specify the conception of constitutional rule that prevails (the constitution of sovereignty and the external boundaries), the two others are more concerned with the type of democracy (the subject of sovereignty and the internal reach of sovereignty). Taken together, they will allow to delineate the different idioms of constitutional democracy used in the EU today.

5.3 The Paradox of Post-Sovereignty in the EU

To that aim, this chapter compares how these questions are answered today by EU institutions, on the one hand, and by Hungarian and Polish officials, on the other. It focuses on a discussion brought about by the Maastricht Treaty, as well as the ensuing judicial controversies between, especially, the German Constitutional Tribunal and the Court of Justice of the European Union. These debates have been paralleled by the success of a peculiar legal and political discourse: post-sovereignty. Paradoxically, it has been endorsed not only by EU officials and lawyers, but by the member states most directly challenging EU law, too. Their uses of this discourse and of its building concepts are, therefore, a promising starting point to explore the similarities and differences between both.

5.3.1 Constitutional Pluralism and Constitutional Identity

Post-sovereignty is an attempt to describe the EU as a system of interdependent entities, in which there is no ultimate comprehensive authority—no sovereign, state or otherwise, in the modern sense (Avbelj & Komárek, 2012; Jaklic, 2013; Mac Amhlaigh, 2019; MacCormick, 1993; Walker, 2002). It revolves around two complementary concepts: constitutional pluralism and constitutional identity. On the one hand, it accepts that, over the years, the EU has become a constitutional order. But it has not replaced the national constitutional orders. Instead, authority is now dispersed across different sites, and neither the EU nor the member states

can claim the right to have the "final word" on every subject. Accordingly, there is no single supreme legal norm, but instead, a plurality of constitutions and constitutional authorities. Rather than relations of hierarchical subordination, such an order is thus heterarchical, it rests on the co-operation and "dialogue" between its different components. This situation was characterized by the Scottish legal philosopher N. MacCormick as "constitutional pluralism" (MacCormick, 1999). He made a distinction between a situation of "radical pluralism"—there is no sovereign nor comprehensive supreme norm at all—and of "pluralism under international law"—all members of the international community are submitted to global legal norms—often regarded as a more conventional form of monism (MacCormick, 1999, p. 118).

This pluralism raises important questions, though. In particular, if we accept that state sovereignty is disappearing without being fully replaced by a European sovereignty, it should be asked what remains of people's sovereignty—that is, the possibility for a people to democratic self-determination. In other words, how is democracy to survive sovereignty? This problem has been increasingly addressed in terms of "constitutional identity". In a pluralist setting, constitutions are said to protect the unique "constitutional identities" of the Member states and their citizens, as they have been shaped by their history, culture and values (see generally Calliess & van der Schyff, 2019). This identity is often thought of as including the institutional framework of the regime, and in particular its democratic character: Defending one's constitutional identity and democratic self-determination are presented as equivalent. Hence, while constitutional pluralism is concerned with regulating the relations between the multiple entities making up the post-sovereign order, constitutional identity is used to protect their democratic character.

At first largely criticized, for it seemed to endanger the long-established primacy of EU law, post-sovereignty has come to enjoy a growing popularity among EU lawyers (Avbelj & Komárek, 2012). It has eventually become accepted as a legitimate doctrine of EU legal integration, best expressing values of mutual respect and sincere co-operation. Yet, more recently, other uses have emerged. Mobilizing constitutional pluralism and constitutional identity, courts and governments of several member states—starting with the German Constitutional Tribunal in the line of its Lisbon ruling—have contested the absolute primacy of EU rules and the authority of EU institutions in the name of democratic sovereignty.

As we will see these uses have further been echoed in states ruled by self-labelled "illiberal" governments: In Hungary, the Constitutional Court has defied EU migration rules in the name of its constitutional identity; in Poland, the much-contested reform of the judicial system has been justified through explicit references to constitutional pluralism (Kelemen & Pech, 2019). The concepts of post-sovereignty have become part of the repertoire of conceptual and judicial tools used to challenge the EU's authority and to justify "illiberal" policies.

5.3.2 Exploring the Uses of Post-Sovereignty

This chapter explores how the concepts of "constitutional pluralism" and "constitutional identity" are used today by EU authorities, on the one hand, and by Hungarian and Polish officials, on the other. The analysis bears on the jurisprudence of national and European courts, as well as on relevant pieces of "grey literature" and academic writings produced by judges and lawyers, in which explicit reference to these concepts is made.[2] Based on a careful qualitative reading of these documents, it reconstructs the different constitutional democratic idioms that emerge from these uses.

As for the EU side, I mostly focus on uses in proceedings at the Court of Justice of the European Union, identified by searching for these specific concepts in the judgements and opinions. Complementary documents include the academic writings of prominent individuals active at the Court, and proceedings of other legal bodies, such as the Venice Commission on the rule of law and democracy of the Council of Europe (CoE) or the European Parliament (EP). As for the other side, I concentrate on debates that emerged in Hungary (constitutional reforms and refugees) and, to a lesser extent, in Poland (reform of the judiciary). Indeed, both countries are currently ruled by self-proclaimed "illiberal" governments and have developed tense relations with the EU in recent years, to say the least. In particular, Hungary, where the Prime Minister, Viktor Orban, has been most active in theorizing and promoting his "illiberal" ideas, will be the crucial case under scrutiny here; examples taken from Poland will be mobilized more punctually to illustrate the similarities between both Member states.[3]

On this basis, I contend that the interpretations they produce of post-sovereignty, and of its building concepts of "constitutional pluralism" and "constitutional identity", are directly conflicting with that of the

EU—and, ultimately, build a distinct idiom of constitutional democracy. However, it retains the concepts and formal practices of EU constitutionalism, while deeply altering their meaning so that they can be used to justify discriminatory policies.

5.4 The Liberal Idiom: Towards European *Demoi*

The interpretation of post-sovereignty by EU officials uses the language of liberalism. It rests on the idea that a dispersal of sovereignty between several bodies, none being in a position to claim comprehensive supreme authority, limits the risk of authoritarian domination. Here, sovereignty belongs to the peoples of the EU, defined through rights in a non-exclusive way. However, this sovereignty is simultaneously constrained by a self-given constitutional law and international norms.

5.4.1 Post-Sovereignty at the ECJ

The liberal interpretation of post-sovereignty in the EU is to be found both in academic texts and in legal proceedings. It reflects the porous structure of EU law, which is "co-produced" at the intersection of legal academia and legal practice (Vauchez, 2015). Post-sovereignty has gained much ground among a small, but influential, group of specialists of EU law (Avbelj & Komárek, 2012). Through their writings and practical mobilization, these ideas eventually permeated the practice and jurisprudence of the Court (Bobic, 2017). Indeed, it was perceived as useful to conceptualize the post-Maastricht situation in Europe: In spite of the initial reluctance of those who saw it as undermining the authority of the EU and its law, it could be interpreted as a way to reassert the constitutional status of EU law, while allowing for some diversity among EU members.

In this context, the theory was rapidly endorsed not only by academics, but also by practitioners of EU law—albeit in various declinations. Among the most prominent examples is the President of the ECJ, Koen Lenarts (Lenaerts, 2015). But before him, and most notably, such ideas were endorsed by the former Portuguese Advocate General, Miguel P. Maduro. M. Maduro is also a Professor of EU law, trained at the European University Institute in Florence (Canihac, 2019). In his dissertation, and in several texts in the late 1990s-early 2000s, he expressed his support, and own understanding of, in particular, the concept of "constitutional

pluralism". Appointed the youngest Advocate General at the ECJ, he further developed his ideas not only in academic texts, but in his opinions to the Court. For instance, in the *Arcelor* case,[4] which raised the issue of the hierarchy between the French Constitution and EU law, he contended that the "competing claim to legal sovereignty", expressed by the courts, "is the very manifestation of the legal pluralism that marks the originality of the process of European integration". Other famous cases in which he pleaded along explicit pluralist lines are *Kadi*,[5] touching on the relation of EU and international laws, or *Centro Europa 7*,[6] directly concerned with fundamental rights.

On the other hand, uses of the concept of "constitutional identity" have rapidly developed since its first occurrence at the Court in 2005. However, it is generally put forward by Member states—the Court preferring to stick to the concept of "national identity" used in the treaties (Article 4(2) TEU) (Cloots, 2016). But in both cases, what is at stake is the definition of the relation between the member states' identity and EU rules. More precisely, what is at stake is the ability to define this identity. This was made clear in several cases, such as the *Marrosu* case,[7] on conditions of public employment in Italy, or in the *Wittgenstein* case,[8] in which the Court had to deal with the claim of an Austrian citizen who had acquired a nobility title in Germany—title illegal according to Austrian law, which forbids any such distinction. The discussions of this concept also touched on the issue of fundamental rights, as in the *Melloni* case,[9] in which a Spanish tribunal raised the question of the different levels of protection of these rights in the EU and of the consequences of these differences for the application of EU law.

It is on the basis of these academic writings and those legal proceedings that I propose to reconstruct the main points of the liberal interpretation of post-sovereignty along the four dimensions identified.

5.4.2 *Rights and the Sovereign* Demoi

The starting point of this interpretation is the moderate version of constitutional pluralism—*pluralism under international law*. It rests on the widespread observation of a general constitutionalization of EU law: a new layer of transnational law, priming member states' law, has emerged. At the same time, the EU remains a pluralist construct because "the European Union is obliged to respect the constitutional identity of the Member States".[10] It recognizes that different historically developed

political systems can allow for variations in the interpretation of this EU constitution. However, "it is, nevertheless, necessary to point out that respect owed to the constitutional identity of the Member States cannot be understood as an absolute obligation to defer to all national constitutional rules. Were that the case, national constitutions could become instruments allowing Member States to avoid Community law in given fields".[11] Rather than from one single ultimate authority, it is from a dialogue between courts that an acceptable interpretation will emerge.

This consideration regarding the relation of constitutional laws with international and European rules also carries a certain idea of constitutional democracy. As one of the proponents of this understanding put it in the *Kadi* case, "the Court [must reaffirm] the limits that the law imposes on certain political decisions. […] Especially in matters of public security, the political process is liable to become overly responsive to immediate popular concerns, leading the authorities to allay the anxieties of the many at the expense of the rights of a few. This is precisely when courts ought to get involved, in order to ensure that the political necessities of today do not become the legal realities of tomorrow".[12] In line with liberal constitutionalism, democracy operates in a *constrained* framework set by the constitution and interpreted by the courts in a constant dialogue. Therefore, "the openness of the question of 'who decides who decides' and the lack of a ultimate authority can be linked to the values of constitutionalism as one of its guarantee of limited power" (Maduro, 2003, p. 522).

While it sets limits to the exercise of democratic decision-making, this constitutional framework also constitutes the sovereign people. For "constitutionalism is also about making politics possible and productive" (Maduro, 2013, p. 543) in line with a "liberal and individual-centred conception of democracy" (Maduro, 2001, p. 7). The people are in this interpretation understood primarily in terms of rights, granted to individuals by constitutions and protected by courts. It is not characterized in relation to a substantial, ethnic or cultural, definition, but rather in politico-legal terms: it is a *demos* of citizens sharing rights, not an *ethnos* of individuals sharing a collective identity. In the EU, democratic sovereignty belongs to the different peoples acting together to govern themselves. Therefore, it leans towards the normative model of *demoi*-cracy (Nicolaïdis, 2013). This does not preclude each national entity to define its own rules regarding citizenship—to a certain extent. The attribution of citizenship is, in the EU, done at a national level; but EU law and the

CJEU have to ensure a minimal compatibility between the differences made in this regard.

In this constitutional framework, the citizens are sovereign: they can express their preferences through parliaments, referenda or other legal means. Courts, too, play a deliberative democratic role, crucial in the resolution of conflicts and in the legitimation of these norms (Maduro, 2003, pp. 526–527). But should the people want to drastically change this framework, things would get much more complicated, since it is precisely designed to ensure the stability of the whole. However, change is not impossible. It is worth noting here that this theory was popularized during the constitutional debate of the early 2000s. This suggests how the constitutional framework can be amended in this model. In exceptional occasions, going way beyond the usual legislative process, citizens can get involved in a "constituent moment" allowing them to change their constitutional preferences. Such a process is similar to what B. Ackerman has analysed, in reference to the USA, as a *dualist democracy* (Ackerman, 1993). It means that, while most of the democratic work of legislation is done through normal, relatively closed procedures, in some exceptional occasions, the people can more directly push to change the constitutional framework. But such moments are rare, which provides a relative stability to the system, if not a maximal participation of the citizens.

All in all, the liberal interpretation of post-sovereignty offers the following picture. The *subject of sovereignty* is the people of citizens who are granted rights according to the currently valid constitutional rules. Such legal rules constitute the citizens, i.e. grant them the rights allowing them to participate to democratic life. They are enforced, and if needed interpreted, by national and European courts (*constitution of sovereignty*). The sovereign people are nevertheless tightly constrained by the constitutions, and may only in exceptional circumstances alter the basic framework itself, consistently with the model of dualist democracy (*internal reach*). However, while some degree of interpretative diversity should be tolerated, all rules adopted must remain within the framework set by European and international law, especially with regard to fundamental rights (*external boundaries*).

5.5 The "Illiberal" Idiom: Reasserting the Ethno-National People

A second reading of post-sovereignty has gained ground in recent years. It is here the pluralist promise of sovereign independence from any higher authority, which is emphasized. Thus, this reading, first of all resonates with the radical version of constitutional pluralism, which insists on the formal equality of the different claims to supreme power coexisting in the EU. Besides, it upholds a vision of sovereignty as belonging to the people, too—but defines this people in a closed, ethno-national manner, providing a very different picture of constitutional identity. The combination of the different features of this interpretation ultimately allows to justify deeply "illiberal" policies.

5.5.1 Post-Sovereignty in Hungary and Poland

The other interpretation of post-sovereignty was developed, first of all, in Hungary, then in Poland, during the 2010s. Its expressions are above all to be found in the proceedings of courts, in constitutional texts and in governmental documents justifying reforms undertaken in these countries.

In Hungary, the government led by Viktor Orban came to power in 2010 with a large majority, allowing him to undertake constitutional reforms. This he indeed quickly endeavoured to do, with a new constitution drafted in 2011. It was all the more significant than Hungary was the only former communist country where a completely new constitution had not been adopted after 1989: Instead, it did modify the communist, and first ever written, constitution of 1949. The 2011 Constitution was followed by no less than seven amendments, and a number of "cardinal laws" transforming the organization of the state and placing in its hand intermediary institutions (e.g. the media, the judiciary, the central bank, the universities). An important amendment was the seventh, preventing the settling of "alien" populations in the country. Triggered by the refusal to accept quotas of refugees, as proposed by the European Commission in 2015—it was first rejected by the MPs in 2016 (it fell two votes short of the number required), before being accepted in 2018. In the justification provided at the Parliament by the majority, as well as in the new constitutional text, the question of the "self-identity" of Hungary, and of its protection by the constitution, was crucial (László, 2018). The

Constitutional Court, by then packed with judges supporting the regime, was also asked its opinion on the issue of refugees, and, in its decision in 2016, abundantly developed the question of "constitutional identity" (Constitutional Court of Hungary, 2016).

Constitutional changes and policies adopted ever since have consistently targeted media, judicial independence and the institutional framework of democracy more generally (Kelemen & Pech, 2019). This has led the European Parliament to activate Article 7(1) of the Treaty on European Union (TEU). The protests also produced a number of critical accounts of the changes at work—in particular, by the Venice Commission of the Council of Europe (European Commission for Democracy through Law 2011; Minister for Foreign Affairs and of the Republic of Hungary 2011). But the exchanges between Hungarian and EU officials on matters of constitutional identity and pluralism have not been only confrontational. It is interesting to note that, in March 2019, a conference was organized in Budapest on the notion of constitutional identity and pluralism (Constitutional Court of Hungary, 2019). The opening speeches were given by the President of the Republic and the President of the Constitutional Court; the audience was then lectured by the President of the CJEU, Koen Lenaerts, and by the President of the German Constitutional Tribunal—arguably, the two most powerful European courts. This episode not only suggests that Hungarian constitutional lawyers, judges and academics are well aware of the concepts of constitutional identity and constitutional pluralism but also that they are engaged in a discussion with other European courts and legal authorities to interpret them.

At this point, it might be tempting to disregard these uses as simply paying lip service to a doctrine enjoying popularity in EU legal circles to legitimize reforms. Yet, there is another aspect in which they effectively follow the pluralist lines of judicial "dialogue": they largely use foreign courts' decisions and reasoning to make their claims. The Hungarian Constitutional Court clearly emphasized that it adhered to the principles of a "constitutional dialogue" between courts, and thus, proceeded to a review of the jurisprudence of other national courts (Constitutional Court of Hungary, 2016). Somewhat paradoxically, at first sight, it analysed their decisions regarding the concept of (national) "constitutional identity". In particular, it drew inspiration from the Lisbon ruling of the German Constitutional Tribunal—a ruling heavily criticized by EU

officials as too national in its orientation: In spite of authorizing the ratification of the Treaty, it put a strong emphasis on the preservation of the German constitutional identity. Of course, this is not to say that Germany also is "illiberal", but that its Constitutional Tribunal paved the way for some legal claims made in Hungary.

The Polish context can only be briefly summarized here. Constitutional pluralism has been used in recent years to defend the reforms launched by the government of Andrzej Duda—a former MEP—who came to power in 2015. Especially significant are the reforms of the judicial system, which had the overall effect of weakening the independence of the judiciary. They included changes in the appointment procedures of judges, especially to the Supreme Court, raising fears of political instrumentalization. Other reforms included changes in the appointment procedure to the judges' disciplinary Council. This has led the European Commission to launch several infringement procedures against Poland since 2018. Like in the Hungarian case, the Polish government produced defences of its projects making explicit references to constitutional pluralism—most notably in a White Paper on the reform of the judiciary published in March 2018 by the Chancellery of the Prime Minister (Chancellery of the Prime Minister of Poland, 2018).

As in Hungary, the Polish White Paper not only claimed its adherence to the ideas of constitutional pluralism: It made extensive use of other countries' jurisprudence and laws to justify its policies. Here, too, the German case stood out as a direct inspiration with regard to "constitutional identity". The White Paper, for instance, recalled that "defence of constitutional identity is a key matter for the German Constitutional Tribunal" (Chancellery of the Prime Minister of Poland, 2018, p. §172). Interestingly, it went on to stress that this reflected the "special character of the European legal system – comprised both of national systems and *acquis communautaire* – which was best described by a Scottish law philosopher, Neil MacCormick" (ibid., p. §173). Hence, in both cases, constitutional pluralism and its correlate, constitutional identity, were explicitly used to resist the EU. It is worth noting that this was done in constant reference not only to their national laws, but largely—even though not exclusively—with regard to the jurisprudence of the German Constitutional Tribunal as well.

5.5.2 *The Historical Constitution and the Sovereign Ethnos*

The "illiberal" interpretation of post-sovereignty, however, deeply differs from the liberal one. First, it endorses *radical constitutional pluralism*. In its radical version, too, constitutional pluralism acknowledges the diversity of constitutional claims coexisting in the contemporary international order, and above all in the EU. But it goes further than pluralism under international law in demanding their strict equality. The situation thus is one of complete heterarchy—which, in case of conflict between legal orders, becomes of major significance, as made clear already by the German Constitutional Tribunal in its "Maastricht" ruling in 1993.

Defending the equal status of national and supranational legal norms is justified by an appeal to a national constitutional identity to be protected. This constitutional identity acts as a constraint on national institutions, but appears to be mostly directed against EU rules (Chancellery of the Prime Minister of Poland, 2018, p. §169): As the Hungarian Constitutional Court made clear, "the constitutional self-identity of Hungary is a fundamental value not created by the Fundamental Law—it is merely acknowledged by the Fundamental Law. Consequently, constitutional identity cannot be waived by way of an international treaty" (Constitutional Court of Hungary, 2016, p. §67). Here, it is essential to remark that this identity is "acknowledged", expressed and not created by the constitution: It reflects a pre-existing reality, not a self-conscious creation. Hence, the real constraint on power is not so much the constitution itself as what it expresses, i.e. this pre-existing Hungarian identity. This quietly, but unambiguously, reconnects the concept with its older uses, in the work of Carl Schmitt, during the late 1920s (Polzin, 2016).

The protection of national constitutional identity is based on, as well as limited by, respect for the sovereign people. Indeed, the Hungarian Constitutional Court argued that "the joint exercising of competences [in the EU] shall not result in depriving the people of the possibility of possessing the ultimate chance to control the exercising of public power" (Constitutional Court of Hungary, 2016, p. §60). But, underpinning this claim, the understanding of the identity of the sovereign people is based on an *ethno-national definition of the people*, grounded on a pre-existing identity. As the Venice Commission critically remarked, "the Preamble [of the Constitution] seems to be premised on a distinction between the Hungarian nation and (other) nationalities [i.e. ethnic and religious minorities] living in Hungary. The Hungarian nation, in

turn, also includes Hungarians living in other states" (European Commission for Democracy through Law (Venice Commission), 2011, p. 9). In other words, the bloodline is the criterion of belonging to the Hungarian "nation" and to enjoy the constitutional rights associated with it. This was clear in the Hungarian constitutional amendment process, which was justified as follows: "the Hungarian people repeatedly made it clear that they do not want Hungary to become an immigrant country. (…) Therefore, the aim [of the proposed amendment] is to protect the national sovereignty and to prohibit the settlement of alien populations in Hungary" (László, 2018). Apart from the disturbingly clear statement of the aims pursued, here again, protecting ethnic national identity and democracy are presented as equivalent. This allows to exclude from the people not only non-nationals (e.g. European citizens), but minorities that are not deemed to correspond the historical constitutional identity.

Given the emphasis placed on the predefined constitutional identity, however, it might be expected that changing the constitution, and the definition of the Hungarian nation underlying it, would be virtually impossible: It "acknowledges" the people's identity and does not define it. Indeed, the VIIth constitutional amendment states that it is a constitutional duty of the state to "protect our self-identity rooted in our historical constitution" (László, 2018). And yet, the expression of this identity might at any time be restated to correspond its "original" nature more closely. This is visible in the handling of the communist past by the new constitution: It makes clear that this identity does not include "the suspension of our historical constitution due to foreign occupations"; in particular, "we do not recognize the communist constitution of 1949" (Constitution of the Republic of Hungary, 2013). Thus, the historical constitution is not equivalent to the constitutional history of the country. The Polish White Paper, too, dedicated lengthy developments to the historical reasons of the proposed reform of the judiciary. It claimed that it was a way of getting rid of the communist past, which was not part of the true Polish identity. This selective reading of history justified sweeping reforms, in particular of the Supreme Court (Chancellery of the Prime Minister of Poland, 2018, p. §13). Thus, constitutional identity can be re-articulated in the name of the sovereign people and its "true" identity. This conception of constitutional reform, where the sovereign people can easily reformulate its identity, fits in the model of *monist democracy* (Ackerman, 1993). The ability to modify the expression of the "true" national identity means that any group deemed to (no longer) correspond

to this identity can be abruptly excluded from "the people". Pushed at its extreme, the combination of an essentialist definition of the people and of monist democracy can justify discriminatory policies against any minority—for instance, removing their citizenship.

To sum up, here too, the *subject of sovereignty* is the people. But this people is already constituted before any formal constitution is adopted. The constitution is only the expression of a pre-existing collective, whose identity is the real constraint on power (*constitution of sovereignty*). This identity is determined by history, on a cultural and ethnic basis. Hence, it is a closed identity. And yet, it can be re-expressed in line with the model of monist democracy (*internal reach*). On the other hand, this very identity sets strict limits to validity of EU, and more generally international, rules: The relation between national and external rules is one of strict equality (*external boundaries*).

5.6 Conclusion

Table 5.1 summarizes the liberal and "illiberal" idioms that have emerged from the analysis of the uses of post-sovereignty by EU institutions, and by Hungarian and Polish officials. It shows that both liberal and "illiberal" uses of post-sovereignty can be construed as idioms of constitutional democracy. Nevertheless, they provide different answers to each of the questions identified.

They disagree over the version of constitutional pluralism at play in the EU, i.e. on the relation of their national constitutions to supranational rules (*external boundaries*): while the liberal interpretation maintains a relatively shared framework, setting *de facto* limits to national rules, the

Table 5.1 Two idioms of 'post-sovereign' constitutional democracy

	Constitutional rule		*Democratic sovereignty*	
	External boundaries	Constitution of sovereignty	Internal reach	Subject of sovereignty
Liberal	Pluralism under international law	Habilitating constraint through rights	Dual democracy	Demos
"Illiberal"	Radical pluralism	Expression of the national identity	Monist democracy	Ethnos

"illiberal" version insists on the strict equality of national and supranational rules. They further disagree on how the sovereign is constituted—by way of a constitutional rule, simultaneously limiting the people's power and constructing it through rights, for the liberals, or as the constitutional expression of a pre-existing national identity, for the "illiberals". Regarding their conceptions of democracy, the liberal idiom tends to endorse a dual democracy, limiting the possibility for the sovereign to significantly alter the constitution to exceptional circumstances; the "illiberal" privileges a monist democracy, in which the constitution can be transformed relatively easily in the name of popular sovereignty (*internal reach*). Finally, and this is perhaps the most striking difference, they adopt different definitions of the sovereign itself. While in both cases, the people is sovereign, the liberal answer to the problem of the *subject of sovereignty* emphasizes a political *demos*, defined in terms of rights and thus relatively open; the "illiberal" answer is expressed in terms of an *ethnos*, a pre-existing, and thus closed, community.

It should be underlined that, taken in isolation, none of these answers to the questions of constitutional democracy suffices to characterize an idiom as liberal or "illiberal". It might perhaps be doubted in the case of the subject of sovereignty and of its essentialized expression by the constitution. Yet, in Hungary as in Poland, the documents considered are careful, on this very issue, to emphasize that they do nothing but borrow the conception initiated especially by the German Constitutional Tribunal. While this stresses that the GCT differs in some respects from the liberal idiom articulated by EU officials (which might perhaps best be summarized as a difference between a "cosmopolitan liberal" and a "national liberal" idiom), the obvious difference is that the GCT does not endorse a monist democracy (because of the "eternity clause") and places the enforcement of international norms embedded in the constitution (in particular Human rights) out of reach of the popular will. By contrast, the "illiberal" idiom is made up of the combination of these four features.

If, to conclude, we turn back to the normative implications of the analysis, it should be clear that this specific combination allows to justify policies in direct conflict with the *principles* of (liberal) constitutional democracy indeed. In the "illiberal" idiom, the sovereign is strictly restrained neither by the constitution, which it is able to easily modify, nor by international and European norms, treated as strictly equal to its own norms. Therefore, through a process of constitutional amendment

and interpretation, the subject of sovereignty can be relatively easily redefined to exclude large parts of the population, not deemed to belong to the actual, real sovereign people. This very logic not only entails a constitutional fluidity hardly compatible with the idea of a predictable rule of law; it also allows to justify the unequal treatment of whoever is not (or no longer) regarded as belonging to the sovereign people—in particular minorities, ethnic or cultural.

Yet, "illiberal" regimes are able to do so using the very language of constitutional democracy—even though in an altered version. In other words, conflicts of sovereignty between the EU, on the one hand, and Hungary and Poland, on the other, oppose two types of justifications and legitimacy claims both expressed in the language of constitutional democracy. This analysis opens up at least two avenues for further reflection. First, as they can be articulated in a common language understandable in other countries as well, this makes it easier for these ideas and practices to circulate within the EU. They are made available to be taken up by other courts or governments—which, eventually, might generate further conflicts between the different understandings of sovereignty they convey. Second, this emphasizes that following the formal rules of liberal constitutionalism without the corresponding ethos of toleration and self-restraint in the exercise of power might soon enough lead to something deeply different (van Krieken, 2019)—"a rule by law rather than the rule of law" (Lacey, 2019, p. 88). It is a lesson worth meditating for the EU, which has tended to place so much trust in formal rules and institutions during its first decades that it might have forgotten that the law is but a tool that can be used for different, even opposite, political purposes.

Notes

1. If, of course, the answer is "these relations should be regulated by removing the constitution or popular sovereignty", we no longer are speaking the language of constitutional democracy.
2. A more detailed presentation of the sources used is provided in the following parts.
3. While the proceedings at the ECJ, in particular, are available in the different languages of the EU, most of the other documents used are translations from Hungarian (and Polish). Some were translated by opponents, others by public authorities themselves in order to present their reforms to other Member states. As such they should be considered as efforts at legitimizing, or de-legitimizing, these reforms and decisions.

4. See Opinion of Advocate General Maduro delivered on 12 May 2008, ECLI:EU:C:2008:292.
5. See Opinion of Advocate General Maduro delivered on 16 January 2008, Kadi, ECLI:EU:C:2008:11.
6. See Opinion of Advocate General Maduro delivered on 12 September 2007, ECLI:EU:C:2007:505.
7. See Opinion of Advocate General Maduro delivered on 20 September 2005, ECLI:EU:C:2005:569.
8. See Judgment of the Court (Second Chamber), 22 December 2010, ECLI:EU:C:2010:806.
9. See Opinion of Advocate General Bot delivered on 2 October 2012, ECLI:EU:C:2012:600.
10. See Opinion of Advocate General Maduro delivered on 8 October 2008, Michaniki AE, ECLI:EU:C:2008:544, §31.
11. Ibid., p. §33.
12. Opinion of Advocate General Maduro delivered on 16 January 2008, Kadi, ECLI:EU:C:2008:11, §45.

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CHAPTER 6

The Technocratic Populist Loop: Clashes Between Parliamentary and Popular Sovereignty in EU's Eastern and Southern Periphery

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6.1 Introduction

This chapter starts from an apparent paradox. Key policy competences in economic governance have shifted to the supranational level within the European Union, since the Maastricht Treaty onwards. At the same time, recommendations for member states' parliaments to act up and provide scrutiny, accountability, and thus legitimacy to justify policies have been on the rise. The surveillance role of national parliaments, however, is rooted in an idealized vision of national parliaments, especially in the field of macro-economic policy. European integration has more often than not disempowered the parliaments of member states. Second, we live in times of a profound crisis of party politics and a crisis of representation, with parliaments enjoying less and less trust from society. Both these developments trigger conflicts of sovereignty in national polities where different claims about where the final authority lies are clashing with each other.

In this chapter, we argue that examining some key symptoms and manifestations of parliamentary weakening accompanied by the decline of functional party politics in the South and East of the EU allows us to understand better the double pressure faced by democratic institutions stemming from supranational bodies and popular discontent. Comparisons between developments in Eastern and Western Europe remain rare in political science, generally speaking, as well as in the growing literature on "new conflicts of sovereignty", more specifically. The literature on "new conflicts of sovereignty" identifies three main types of sovereignty conflicts: foundational, institutional and territorial. Institutional conflicts of sovereignty take place not only vertically (between member states and the EU) but also horizontally, with actors contesting the institutionalization of popular sovereignty within member states or at the European level (Bickerton et al., 2022; Brack et al., 2019). Most research on sovereignty conflicts so far has focused on single case studies or comparative designs within Western Europe (for an exception, see Coman & Leconte, 2019). Still, there have been growing calls for researchers to go beyond disciplinary divides between the study of politics in Western Europe, on one hand, and Central and Eastern European, on the other, thus going beyond the established perception that the latter is fundamentally different and "other" from the former. Instead, it has been argued the two can and must be analysed as part of the same world system (Gagyi, 2015). Studying these two regions in comparative fashion, as

well as the multiple ways in which their politics are connected, allows researchers to go beyond the exoticizing "Central and Eastern Europe" and thus to outline common political trends (see, for example, Rone, 2021 on the rise of far right in CEE and Western Europe as a shared trend manifesting with different strength). Recently, we have seen a rise in such comparative approaches in political economy (Bruszt & Vukov, 2017), social movement's studies (Borbáth & Gessler, 2020; Rone, 2020) and studies on parliamentary accountability (Skazlic, 2021; Tudzarovska, 2021). Following in the footsteps of this research, this chapter uses paired comparison—between Greece and Slovenia, on one side, and Bulgaria and Italy, on the other—in order to analyse the weakening of the parliament as both the cause and effect of intense institutional conflicts of sovereignty. We focus in particular on the (non)use of referenda as key moments of tension and stand-off between different institutionalizations of popular sovereignty. More specifically, we observe how demands for a greater use of instruments of direct democracy (typically referenda) clash with the procedures and outcomes of representative forms of government.

The conflicts observed in our comparisons, therefore, do not primarily concern a clash between popular sovereignty at the national level and supranational sovereignty, but more crucially, tensions over popular vs. parliamentary sovereignty within national polities. These conflicts are taking place as a result of the state transformations and ruptures in representative democracies which have been growing in the long run. These ruptures have paved the way to the technopopulist logic as a political *praxis* in contemporary Europe. Technopopulism,[1] as coined by Chris Bickerton and Carlo Invernizzi (2017, 2021), is rooted in two alternatives to representative democracy—technocracy and populism. In different political settings, technopopulism combines the essentialist invocation of "the people" (Mudde, 2017; Müller, 2016) with a technocratic style of governance relying on (the politicization of) expertise (Habermas, 2015; Urbinati, 2020). Rooted in an unmediated form of party governance (Rosanvallon, 2011; Taggart, 2002), technopopulism is feeding "the void" (Mair, 2011) left behind by the weakened role of the political parties as custodians of the social contract between the state and the citizens. The rise of this logic, within the restructured party systems across Europe, is challenging the pluralistic forms of representative democracy (Piquer & Jäger, 2020, see p. 533). Since the technopopulist logic is not challenging party systems but rather feeding a certain *status quo*, it creates

a loop that feeds into the rise of sovereignty conflicts and is exacerbated by them.

The chapter proceeds as follows. In the following section, we outline tensions between parliamentary and popular sovereignty within the EU in the aftermath of the 2008 crisis. We then move on to situate these the current weakening of national parliaments in relationship with conflicts of sovereignty within long-term historical developments related to EU integration and the crisis of party politics. In the empirical part, we present and discuss our two paired comparisons: between Greece and Slovenia, on the one hand, and between Bulgaria and Italy, on the other. In the first comparison, we explore how national legislatures ignored the demands for or of popular referenda and voted instead measures supported by technocratic executives. In the second comparison, we explore two referenda aiming precisely at reforming the functioning of the parliament, both of which failed to pass but would have substantially weakened parliaments in the face of national executives.

In all cases explored, we focus on referenda as the ultimate form of direct democracy that brought to light and exacerbated conflicts of sovereignty that might have otherwise remained less visible. Referenda have been often interpreted as a tool favoured by "populist citizens" (Jacobs et al., 2018) but historically they have also been strategically used by (technocratic) elites (Topaloff, 2017). Our cases include examples of both populist referenda from below (Bulgaria) and referenda organized by ruling parties (Greece and Italy). In all cases, the organization of referenda has been caused by profound crisis in the party system, a crisis that these referenda only intensified by ceding (or attempting to cede) even more power to executive technocrats. Again, in all four cases, appeals to the people and claims to technocratic expertise have confirmed the rise of technopopulism as a new logic of contemporary decision-making, leading to 'policy without politics' (Schmidt, 2006).

6.2 Conflicts of Sovereignty in the EU

In the past few years, a novel conceptual framework has been put forward that distinguishes between foundational, institutional and territorial conflicts of sovereignty, elaborating on this taxonomy with reference to the historical evolution of the concept of sovereignty in Europe (Bickerton et al. 2022, p. 257). European integration is still a central factor in this framework, introducing "considerable institutional indeterminacy

into the political systems of member states" (ibid.). At the same time, the new framework acknowledges "the struggle of national party systems to institutionalize societal conflict via partisan competition" as another contributory factor for competing claims to institutionalizing sovereignty. Indeed, while popular sovereignty as a foundational principle of the modern polity has not been contested within the EU, its different potential institutionalizations have become the object of intense political battles (Bickerton et al., 2022), with tensions between demands for more direct democracy clashing with demands for more parliamentary sovereignty (see for example, Bickerton & Brack, 2022; Rone, 2022 and in this volume: Lord's chapter on Brexit and Weisskircher's chapter on demands for direct democracy in Germany). Tapping into this research strand, in this chapter we explore, first, how demands for organizing referenda or in popular demands stemming from referenda were ignored by parliaments; and second, how direct democratic instruments have been used to weaken parliaments more or less successfully. We unpack how these conflicts of sovereignty have unfolded in tight connected with (both caused by and further contributing to) the rise of a new political *praxis* taking the form of technopopulism.

6.2.1 A Decade of Mobilization: Citizens Versus Parliaments or Citizens and Parliaments United?

In the aftermath of the 2008 crisis, a crisis of representation and a deep suspicion towards political parties and the parliamentary process in general manifested themselves in a wave of social movements that demanded "real democracy now", organized bottom-up assemblies and engaged in intense democratic experiments to "save democracy" (Della Porta, 2020). In all these cases, what we see are attempts to reinvent the relation between 'the people', parliaments and executives, between direct and representative democracy, through a renewed embrace of popular sovereignty's constituent power and transformative potential (della Porta, 2020; Gerbaudo, 2017; Rone, 2020, 2022). Such attempts could be seen in different types of pre-figurative politics that imagined an alternative society now (Gerbaudo, 2017; Yates, 2021). But they can be seen also in attempts of drafting constitutions from below (della Porta, 2020) and a series of referenda, including the Brexit referendum (Bickerton & Brack, 2022), the 2016 Italian and Bulgarian constitutional referenda as well as the Greek referendum from 2015.

In the 2010s' wave of "movements of the squares", we often saw an opposition between national parliaments and citizen movements claiming to embody "the people", a concept that is always constructed and contested (Badiou et al., 2016). To the contrary, resistance against free trade agreements such as Comprehensive Economic and Trade Agreement with Canada (CETA) involved parliaments and civil society working together, at both the national and transnational levels, to oppose the concentration of power in the hands of executives (Crespy & Rone, 2022). Considering developments such as the Walloon veto on CETA as well as the rising number of parliamentary questions, answers, debates and resolutions on trade, many were hopeful to see a trend towards the assertion of parliaments both at national and European level (Roederer-Rynning, 2017; Roederer-Rynning & Kallestrup, 2017). Such more optimistic interpretations, however, have ceded way to more sceptical analyses arguing that despite the intense politicization of Transatlantic Trade and Investment Partnership (TTIP) and CETA, in particular, we have not seen any substantial challenge to the constitutional settlement over trade in the EU (Crespy & Rone, 2022). Crucially, both national and EU parliamentarians have proved less keen to engage with trade policy in the absence of broad public mobilization on the issue.

Furthermore, when it comes to economic governance, the happy collaboration (even if a temporary one) between parliaments and civil society that we saw in trade policy has been largely absent. Key economic governance instruments envisaged national parliaments would ensure accountability and provide legitimacy to European economic governance. Yet, it soon transpired that parliaments in Europe's North and South had very asymmetric powers (Maatsch, 2015; Maatsch & Cooper, 2017), different parliaments engaged in control to a very different extent (Skazlic, 2021; Woźniakowski et al., 2021), and in practice, most national parliaments were disempowered rather than empowered (Maatsch, 2015). As Ben Crum famously argued, national parliaments ended up on the losing side of a reinforced two-level game: "the first loss of collective accountability is not compensated at EU level, since the political authority at national level is suspended between national governments, and the second at the level of European Commission, which lacks a political mandate of its own" (Crum, 2018). Whenever there have been public mobilizations on issues of economic governance, for example, as we saw most famously with the Greek referendum in 2015, popular sovereignty has been disregarded (Crespy & Ladi, 2019). Parliaments

expected to serve as a democratic corrective to technocratic decision-making ended consistently sided with technocrats when it comes to economic governance.

Thus, despite the fact that popular and parliamentary sovereignty are not necessarily opposed, with some authors even arguing that this would be logically impossible (Bickerton & Brack, 2022), more often than not in the last decade, "the people" (whose will has been expressed through citizen movements and/or referenda) and parliaments have been pitted against each other. To understand better these tensions that we explore in the empirical part of this chapter, we need to discuss first the historical developments and ideological factors that have led to this impasse. How did the current situation come about?

6.3 Understanding the Historical Context of Sovereignty Conflicts

One of the key factors explaining the clash between different claims to sovereignty within EU member states is the transformation of member states' political systems rooted in the historical origins of the EU. To begin with, the period of the post-war European economic reconstruction has set a new trajectory for the transformation of the nation-states into member states (Bickerton, 2012, 2016). This has shaped new inter-state relations "by removing a key lever of domestic power to exercise the power to control a currency vis-à-vis other states in the regional and global economy" (Willkinson, 2021, see p. 170). Consequently, the democratization of economy has also set a new role for technocratic bodies—a logic extended to the macro-economic sphere, while at the same time party democracy and representative democratic institutions have started to change, struggling to engage citizens into the political life. The way of doing politics especially since the wave of market liberalization and the transfer of policy-making to the EU in the 1970s and 1980s has further contributed to the shift in the transfer of authorities, accompanied by an increasingly dominant role of the executives as opposed to the role of the national parliaments and political parties.

The translation of sovereignty associated also with *surveillance* as essential to achieving the ideal of a government embodying the "general will" (Rosanvallon, 2008, p. 31) into the democratic institutional structures of the member states, also transformed during this period.

The surveillance role of the national parliaments was dismantled (Rosanvallon, 2008, p. 8) in a way that has restricted the ability of legislatures to delegate power, provoking new constraints in the emerged new "constitutional settlement" (Muller, 2012). Regarding Central and Eastern European states' integration into the EU, these political constrains took the form of a "limited sovereignty" by removing the executives' action away from public scrutiny exercised by citizens or the legislatures (Raik, 2004, Malova & Haughton, 2002, Bickerton, 2009, Grabbe, 2014, Müller, 2016). Thus, regional economic integration deeply affected the relationship between societies and citizens, setting a new scope for exercising sovereignty "as a key political principle which identifies the legal and political source of ultimate authority" (Bickerton et al., 2022, see p. 258).

These transformations connected with the EU integration process were accompanied by changes in party democracy already since the late 1960s including "the waning of party identification, the erosion of traditional cleavages, increasing partisan de-alignment, rising levels of electoral volatility, declining party memberships and deteriorating relationships between parties and collateral organizations" (Biezen & Kopecky, 2014, Mair, 2012). These factors have also contributed to wider discontent and disenchantment with politics (Hay, 2007) identified as a 'void' (Mair, 2013) where new technocratic solutions were embodied in sorts of new regulatory, non-majoritarian institutions (Majone, 1994) and claims to expertise started taking roots, unable to stop the rise of the populist claims, representing "the people" as a whole.

Indeed, one should explore technocracy and the rise of populism as the two sides of the same coin. Authors have recently argued for the use of a combined term *technopopulism* (Bickerton & Accetti, 2021) to describe the new logic of doing politics that goes beyond traditional left–right distinctions. The rise of this logic within the restructured party systems across Europe, evident in (but not limited to) the rise of the Italian Five Star Movement, Macron's *En Marche* or the Czech ANO.[2] This shows how these new leaders combine populism with technocracy in the aim to legitimize their direct, unmediated, relationship with "the people" (Guasti & Buštíková, 2020, see p. 468). As such, it perpetually feeds the ruptures of democratic representation. The crisis of representation distressing European party systems is also identified as one of the sources of sovereignty conflicts, common for both West and Central and

Eastern Europe (Bickerton et al., 2022, see p. 265). In this perspective, we explore the loop created between the (institutional) conflicts of sovereignty and the reliance on technopopulism.

6.3.1 Bypassing the Democratic Legislative

The rise of technopopulism reflects the deep rupture in political systems described above, as well as the increased fragmentation and disorganization of society, under conditions of ideological disorientation. At the same time, technopopulism also exacerbates the conditions under which conflicts of sovereignty take place within EU member states. The actions of the Troika during the Eurozone crisis, exemplifying "emergency politics", were a manifestation of "exercising extraordinary decisions rationalized by appeal of necessity" as well as "a symptom of the hollowing of parties and the rise of an ethos of governance" (White, 2020, see p. 170). In the next section, we examine the conflicts of sovereignty pertaining to referenda in Italy and Bulgaria, Greece and Slovenia (where it is the failure of holding a referendum that we explore). In the first paired comparison, we trace parliaments' refusal to sanction referenda or enforce their results, making it even easier for technocratic executives to impose their desired policies. In the second comparison, we analyse popular referenda to weaken parliaments even further.

6.4 The Greek 2015 Referendum and the Slovenian Non-Referendum

The two countries from our first paired comparison—Greece and Slovenia—shared the same burden of dealing with the financial crisis in 2008 and both explored the idea of using a referendum to react to structural economic reforms proposed. Again, there are important differences between the two cases: Greece did manage to organize a referendum on the bailout conditions that were imposed on it –61.31% of the citizens voted "no" to the structural adjustment programme proposed by the Troika. Decision-makers in Slovenia never managed to organize a referendum on proposed economic restructuring. In both countries, claims to popular sovereignty were neglected and austerity measures were passed through tame national parliaments.

In Slovenia, the 2003 referendum on whether to join the EU (*Constitution of the Republic of Slovenia*, Article 3a), with 88.6% of the votes

in favour, took place in a context that contrasted with subsequent developments.

The new electoral system based on proportional representation resulted in a fragmented parliamentary composition. A deep division of the political spectrum between the post-communist centre-right, on one hand, and the centre-left, on the other, further decreased the capacity to govern. (p. 131). Between 2004 and 2008, two privatization waves triggered turbulences in the Slovenian party system, in favour of the small newcomers' political parties without any historical roots society (Fink-Hafner, 2011, 2014). In 2008, Slovenia became the fifth most crisis-affected EU Member State seeing its GDP contracting by 7.8%. In 2011, Zoran Janković, a businessman without any political experience, won by a landslide snap election and failed to build a governing coalition. Janez Jansa took over and, within a year, the government lost control due to a corruption scandal. In the peak of the financial crisis, the government led by Alenka Bratušek won a confidence vote over its efforts to avert an international bailout and to finalize the third wave of bank privations, which started in 2009, as a condition of the legality of the state aid mechanism.

An initiative for organizing a referendum on two anti-crisis measures—which was also indirectly intended to give full effect to the EU Fiscal Compact[3] fell short (Matej, & Cernic, 2020, p. 122). In December 2012, the Constitutional Court decided[4] to ban the *State Holding & Bank Stability Referendum* (on the Slovenian State Holding Act and the Measures of the Republic of Slovenia to Strengthen the Stability of Banks Act). In doing so, the Court overrode the constitutional right to a popular referendum, or the claim to popular sovereignty and gave precedence to a financial instrument of EU law (Matej & Cernic, 2020, see p. 237). This triggered a fall of Bratušek' weak coalition and new snap elections were called in 2013, and this time a law professor and political novice, Miro Cerar won the elections, only to see his government collapse prematurely in 2018. Once again, a new political party formed only weeks before the 2018 election, chaired by a comedian and a former mayor of a small town, Marjan Šarec, formed a coalition with both, the centre-left and radical-left political parties, echoing very much the same case of the Italian comedian Beppe Grillo, founder of the populist Five Star Movement. As a result of the clash between compliance with the Constitution and popular sovereignty, a chain of events was triggered, paving the way to the rise of technopopulism, namely the claims to popular sovereignty combined

with claims to expertise in absence of any intermediate form of the societal conflict through partisan political competition.

The fragmentation of party politics was evident in the decline of traditional parties, the rise of non-partisan candidates, the increased electoral volatility[5] (BTI Report 2018, Slovenia) and the failure to institutionalize the right to the popular rule. This reinforced the instability and unpredictability of the political system, paving the way to technocratic decisions and the rise of populist parties, who have been claiming the right to a popular vote, and rightful representation of 'the people' against the corrupt elites.

In the case of Greece, the popular vote against the conditions posed by the Troika for a bailout agreement was overruled by Syriza's party leader, Alexis Tsipras, and pushed through the national parliament. The use of the referendum as a mean to call on popular sovereignty clashed with the act of parliamentary sovereignty. In fact, the idea of parliamentary sovereignty[6] was later (mis)used by Alexis Tsipras to be able to sign the *Memorandum* for a third bailout granted by the Troika, against the popular will expressed in the referendum. To make the situation even more complicated, it was Tsipras's Syriza itself that had first called for a referendum (and vote "no").

The apparent conflict between competing understandings of sovereignty between the EU technocrats and the Greek leadership revealed a conflict within the Greek national political and legal system itself, and a tension between different claims of authorities within the country. A closer look at the period of extensive negotiations between the Troika and the Greek government led by Alexis Tsipras shows a polarization among political parties and a weakened capacity of the parliament to exercise control over macro-economic policy, or other decisions of the executive dominated by Syriza's leadership.

Syriza, initially a left-wing movement from below, came into power in January 2015 and formed a coalition with the Party of the Independent Greeks—ANEL. During the elections in 2008, dominated by socialists-led government of George Papandreou's, Syriza had come fifth, collecting only 4.6% of the vote. In 2009, the Prime Minister, George Papandreou, revealed a budget deficit much higher than previously thought, which triggered the Greek debt crisis. In late 2011, after proposing a referendum on the second bailout package, Papandreou was replaced by Lucas Papademos, an American-trained technocrat and economist, and a former vice-president of the European Central Bank (ECB) (Wilkinson, 2021,

see p. 264), who took the lead of a new transitional government that tasked with the implementation of the bailout agreement and leading the country to new elections. In order to win these elections, Alexis Tsipras instrumentally used the crisis to mobilize voters against the neoliberal establishment in Europe. "It has gagged the peoples, forcing upon them the straitjacket of austerity, disciplines and deregulation" (White, 2020, see p. 148; quotes from Alexis Tsipras speech[7], Rome, 2014). Still, Syriza's attitude to the EU has been more complex than it might seem. Once, the euro crisis erupted and the Greek economy went into sharp recession—left platform Syriza members began campaigning strongly for Grexit (Varoufakis, 2017, see p. 509), although even in 2009, Syriza was torn by internal disagreements over whether the party should or should not make Grexit its official policy (Varoufakis, 2017, see p. 57). Historically, the transformation of the Greek nation-state into an EU member state, same as Portugal and Spain, coincided with the period in the Cold War when the main concern was to prevent further isolation that would push these countries onto the path of political radicalism. In this sense, Syriza's own indecision during the negotiations had deeper roots, related to the Eurocommunist origins of its leadership team, and the "perception that the EU could be transformed into a Europe of the peoples" (Willkinson, 2021, see p. 266).

In the post-election period, Tsipras appointed the financial minister, Yanis Varoufakis, himself being a non-party member, to lead the negotiations with the Troika. This unintentionally exposed the position of the parliament and the authority to exercise sovereignty. In the peak of its mandate, Varoufakis, for instance, intended to tackle the tax evasion by passing law(s) through the Greek parliament, mainly referring to the MPs as executors of the party leadership rather than actors with a mandate to scrutinize publicly ether the proposed laws, the amendments, or, later, the results of the Greek referendum.

> In order to tackle the tax evasion ***I would pass a law through Greece's parliament*** that would allow for the taxation of money in Swiss bank accounts at this exceptionally low rate..[..]…I should have sounded a much louder alarm bell about Alexis's intentions. (Varoufakis, 2017, see p. 472)

This sort of technical exercise of the surveillance role of the Greek parliament was again repeated when Alexis Tsipras pushed for passing the—already signed—third bailout loan agreement and its accompanying

MoU through the parliament in mid-August 2015. In only a few hours, starting from 9 p.m. the MPs "received more than a thousand pages, to sift through overnight before the vote scheduled for early the following morning" (Varoufakis, 2017, p. 478). In absence of public scrutiny, 118 Syriza MPs and 114 pro-troika opposition legitimized Tsipras' decision by claims to parliamentary sovereignty, opposing the popular sentiment, expressed at the Greek referendum. Popular sovereignty was overruled twice, once when the third bailout loan agreement was signed behind closed doors, and once again, in absence of citizen participation in the political process through the national parliament.

As Crespy and Ladi have pointed out (2019, see p. 879), the Greek Prime Minister was not aiming at enhancing popular sovereignty, but he used the referendum as a tactical means for gaining advantage out from a political deadlock with the Troika, and also to push Syriza MPs to accept a new bailout agreement at domestic level, tackling internal party disagreements. In this way, Grexit debates also exposed the competition between very different understandings of sovereignty, with different actors framing the referendum differently. Crucially, no meaningful discussion or debate was exercised at the national parliament throughout the all period of the financial crisis.

This struggle, however, allowed the Troika to dominate the Greek the political system, further pushing the emergency logic of "no other alternative" and pressing for further privatization of the public assets, like in Slovenia. In 2019, the general elections had the lowest electoral turnout since the end of dictatorship in 1981, and new forms of authoritarian populism, such as rise of the extreme right Greek Golden Dawn (Halikiopoulou, 2020, p.36) emerged, again similar to the case of Slovenia.

6.5 The Bulgarian and Italian Constitutional Referenda: Better Poison Than the Cure

While instruments such as the European semester expect national parliaments to perform scrutiny and ensure the legitimacy of European economic governance, they have failed to take into account not only the various historical developments that have weakened national parliaments but also more recent attacks on national parliaments that have taken place in a number of European countries. In this second comparison, we look at two constitutional referenda that took place in Italy and Bulgaria. Both

referenda took place in 2016, in the aftermath of the 2008 economic crisis and a series of popular protests in both countries (Rone, 2022). They are comparable to the extent that both of them aimed to reform parliaments, among other demands, and both would have resulted in the strengthening of the executives (Blokker, 2016; BPSA Open Letter, 2016; Pasquino & Valbruzzi, 2017). Furthermore, neither of the two referenda was followed by a legislative change, yet they both opened a conversation about the functioning of parliaments that revealed deep-seated suspicions of the integrity of public representatives and the necessity of having them.

There are also two crucial differences that we need to keep in mind. First of all, the 2016 Bulgarian constitutional referendum was a bottom-up initiative put forward by the TV show host Slavi Trifonov and his scriptwriters. This referendum and has been defined as the "most successful popular initiative in the contemporary history of Bulgaria" (Stoychev, 2017). On the contrary, the Italian 2016 constitutional referendum was initiated by then Prime Minister Matteo Renzi and his centre-left Democratic Party and was thus a top-down referendum, even criticized by some as a form of plebiscite on the Renzi's leadership (Pasquino & Valbruzzi, 2017, p. 153).

Second, the Bulgarian referendum resulted in a resounding yes (more than 70% on the first and third question and more than 60%) on the following questions:

1) Do you support the election of members of parliament by a majoritarian election system with absolute majority in two rounds?;
2) Do you support introducing mandatory voting at elections and referenda;
3) Do you support the annual state subsidy for funding political parties and coalitions to be 1 lev for a vote received at the last parliamentary elections?

Ultimately, only 12,000 votes were missing for the vote to become legally obligatory. The different provisions were later discussed in parliament and due to the absence of majority in favour, none of them was adopted.

In Italy, the situation was different: 59.12% of the voters voted "No" at the referendum, which bundled together a series of constitutional reforms under the question:

> Do you approve the text of the Constitutional Law concerning 'Provisions for overcoming equal bicameralism, reducing the number of Members of Parliament, limiting the operating costs of the institutions, the suppression of the CNEL and the revision of Title V of Part II of the Constitution' approved by Parliament and published in the Official Gazette no. 88 of 15 April 2016?.

In 2020, another referendum was called, this time by the Five Star Movement, which posed a question only on reducing the number of Members of Parliament and this one did end up with a resounding "Yes" vote (Bergman, 2020).

While there has been ample research on the 2016 Italian constitutional referendum, its similarities with the Bulgarian referendum have been largely overlooked. This is understandable considering the different political backgrounds and history of attempting to reform the political system in both countries. In the case of Italy, the reforms proposed in the 2016 constitutional referendum ensued from the electoral reforms introduced after the collapse of the First Republic in the 1990s. Had a "yes" vote prevailed at the 2016 referendum, the country would have moved closer to the "more majoritarian and presidential project begun in the early 1990s" (Ceccarini & Bordignon, 2017, see p. 296). In a sense, the referendum would have thus finished the transition to the "Second Republic" envisaged in the 1990s (ibid). In Bulgaria, in turn, the proposed referendum meant a rupture with the post-socialist proportional political system that developed in the aftermath of 1989. Implementing the results of the referendum would have implied a complete overhaul of the political system, starting, so-to-speak, a "second transition" in the post-1989 transition to democracy.

Still, regardless of whether these two referenda are seen as a continuation or a rupture, there are many important similarities between their overall aims and potential (yet never-materialized) consequences. To begin with, the 2016 Bulgarian referendum started initially with six questions until the President referred them to the Constitutional Court, who ruled out three of the proposed questions. The second originally proposed question that did not make it to the vote, in fact, aimed to reduce the number of MPs similarly to the Italian referendum. What is more, the 2016 Bulgarian referendum demanded also a switch to a majoritarian electoral system with an absolute majority in two rounds, as well as a decrease in party funding. Slavi Trifonov and his team formulated

these demands claiming that they would secure a better representation of popular interest and a more democratic system of governance. The reason for demanding such a change had been the paralysis of the party system and a general feeling of lack of representation after two waves of mass protests in 2013 (Rone, 2020).

The Bulgarian Association of Political Scientists strongly opposed Trifonov's referendum. In a collective letter, the Members of the association argued that a reduction in the number of MPs, combined with the introduction of majoritarian vote, would lead to a concentration of power in a handful of parties, who would still be the ones to choose and propose candidates offering voters a "take-it-or leave it" choice. This would have been much worse than the current system of proportional preferential voting. In addition, less MPs would mean also less political representatives per capita thus reducing, rather than increasing the representativeness of the system, not to mention the dangers of gerrymandering known from political systems such as the US, for example (BPSA Open Letter, 2016). Furthermore, reducing the official state subsidy for political parties might have been presented as a good punishment for "do-nothing" politicians but was deemed to increase the power of business over political parties and MPs, thus further reducing the extent to which they represent the population (ibid).

Looking at the Italian case, the reforms voted at the referendum have been more complex and encompassing and some of them (such as reforms aimed at increasing citizen participation and direct democracy (arts. 71 and 75) did not even make it to the formulation of the final question (Blokker, 2016). Most analysts have been unanimous that the proposed reforms aiming to overcome bicameralism and reduce the number of MPs, would have resulted in weakening the Parliament in the face of executive, allowing for more efficiency and stability at the expense of representation, deliberation and accountability (Ceccarini & Bordignon, 2017; Pasquino & Valbruzzi, 2017). The 'No-vote' supporters consistently argued that "those reforms were significantly curtailing the power of the voters and their political representation at the same time they were increasing the power of government and the Prime Minister" (Pasquino & Valbruzzi, 2017, see p. 151). To be sure, the increase in efficiency might have also been overhyped. According to Pasquino and Valbruzzi, "all the available data indicate that the Italian bicameral parliament has consistently approved more laws than the parliaments of France, Germany or the United Kingdom and, on average, in a lesser number

of days. Moreover, Italian governments have always obtained what they wanted from their legislative assemblies whenever they knew what they wanted, and pursued their goals with determination" (ibid, p. 150).

Thus, it seems that in the case of both the Italian and the Bulgarian constitutional referenda, the stated goals of improving efficiency, representativeness and the democratic process overall, ultimately would have resulted in a considerable weakening of national parliaments. In both cases, populist arguments, drenched in suspicion towards politicians and members of parliament (Hay, 2007), aimed to decrease further the power of national parliaments, while both scholars and policy makers expected from them to be key institutions to uphold democracy in the new European economic governance (Bellamy & Kröger, 2014; Woźniakowski et al., 2021).

In the Bulgarian case, it was the very form of the popular referendum that served as a manifestation of popular sovereignty. Slavi Trifonov was the first public actor in Bulgaria to talk about the people as "the sovereign" ("суверенът") as part of a political campaign. He continued doing this when he joined politics later. He has used the word so much that it has become the object of irony by multiple commentators, not least since it is a foreign word in the Bulgarian language whose use he single-handedly has tried to introduce (Popov, 2021; Rone, 2021). In Italy, an attempt to increase citizen participation and direct democracy has been part of the reforms voted on in the referendum. Still, reforms aiming to increase popular sovereignty were described as a "fake gift" (Di Marco 2015 quoted in Blokker, 2016): "In toto, the reform of direct democracy seems to be limited to dimensions of a high political visibility, without substantively touching the profound representative nature of Italian democracy".

In sum, referenda aiming to strengthen the executives were thus promoted in the guise of "giving voice to the people". Supposedly corrupt, slow, inefficient parliaments were opposed to "the will of the people" and the technocratic expertise of the executives. What we saw in both referenda was clearly a technopopulist logic at play (Bickerton & Accetti, 2021). There is no better term than technopopulism to describe Renzi or Trifonov's programmes to push forward their respective referenda, in the name of the people and at the same time, clearly against the logic of representative democracy. Of course at the time, Renzi and many analysts argued that a "no" vote at the Italian 2016 constitutional referendum would be a triumph for the populist Five Star Movement

(Kirschgaessner, 2016). Yet, this shows clearly how behind the rhetoric of populism (in Bulgaria) or defence from populism (in Italy) a common institutional trend contributed to weaken representative democracy and attack parliamentary sovereignty at a fundamental level. Since these occurrences are taking place precisely due to the ruptures in representative democracies created over period of time, every use of this technopopulist logic triggers a loop exacerbating even further clashes in sovereignties.

6.6 Conclusion

The comparative analysis of the four cases, representing both the Southern and Eastern periptery of the EU in the aftermath of the 2008 financial crisis, shed light on domestic conflicts of sovereignty. Those are fed by several historical and ideological factors, including the crisis of party systems within states, as result of the long political and economic transformation of countries from nation-state to EU member states. The cases explored in this chapter are indicative of the struggle of party systems in post-authoritarian (Greece after its right-wing dictatorship) and post-communist regimes (Slovenia and Bulgaria after the fall of Communism) to reach stability (Lipset & Rokkan, 1967, Mair, 2006). In all four cases, we can observe the failure of the political systems to institutionalize popular sovereignty through partisan competition at the party level, leading to the rise of technopopulism. And in all four cases, the lack of strong intermediated representation and of citizen participation has increasingly reinforced a loop between the void in the party systems and the use of technopopulist logic in times of elections.

The analysis of the Slovenian and Greek cases has shown clearly that when political parties and national parliaments are weak, the responsibility of intermediation between the society and the citizens is passed onto external factors such as the EU or informal bodies such as the Troika (Mair, 2013). In its role to provide societal self-discipline, the EU functions as equivalent to the ties of partisanship that were previously so central to the workings of European societies (Bickerton, 2018, see p. 277). This gap between responsiveness and responsibility, that is, the void created in the political life of the modern member states, is compensated at the EU level, in the form of technocratic solutions and claims to emergency politics. Filling the ruptures in the political systems of the states, in such a way, especially in periods of crisis as the one described,

though is damaging in the long-term, as its triggers dangerous conflicts of sovereignties at the national level.

Indeed, as we have seen in the cases of Italy and Bulgaria, the crisis of party systems and of representation led to the rise of domestic social movements from below as well as bottom-up and top-down referendum campaigns that aimed to reform the political system "in the name of the people". Proposed reforms, however, would have only further weakened already weak parliaments, thus further exacerbating the crisis of representation.

These developments are all the more important since national parliamentary scrutiny has been many times invoked as a channel for legitimizing European economic governance. Yet, what our findings unveil is rather a situation in which parliaments supposed to legitimize executives lack popular legitimacy themselves and perpetuate the technopopulist logic of governance "for the people" rather than "by the people". In the cases analysed, politicians passed their desired policies through weak parliaments to ignore the people's will; if needed, they invoked popular sovereignty to weaken parliaments even further. Ultimately, both popular and parliamentary sovereignty remained trapped in a technopopulist loop that not only reflects new conflicts of sovereignty but also exacerbates them, leading to a state of permanent crisis of democratic legitimacy.

Notes

1. As term previously is recognized in the early 1990s by the political scientist Carlos de la Torre to characterise a series of Latin American politicians. See further in Piquer and Jäger, 2020, p. 533.
2. Action for Dissatisfied Citizens (ANO).
3. The Fiscal Compact is the unofficial name of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, an intergovernmental treaty isgned by all member states but the UK and the Czech Republic which enshrines rules to limit on deficit and debt at constitutional level.
4. Constitutional Court Case U-II-1/12, U-II-2/12 [2012].
5. The electoral turnout, felt from 85.6 in 1992 to barely 50% of the electorate in 2014 and 2018. Slovenian State Election Commission: available at: https://www.dvk-rs.si/index.php/en.
6. Parliamentary sovereignty states that nobody external to parliament can bind it.
7. Alexis Tsipras speech, Rome 07.02.2014. Available at: www.alexistsipras.eu.

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CHAPTER 7

Direct Democracy and the Impact of the Alternative for Germany (AfD)? "Populist" Demand for Popular Sovereignty as Latent Political Conflict

Manès Weisskircher

7.1 Introduction

A fundamental conflict over political sovereignty, and an essential question of how to design democratic institutions, revolves around the question of who should ultimately decide about legislation: a majority in parliament or a majority of citizens (Bickerton et al., 2022). Even though modern states have shown that a division of labour is not only more effective in markets but also in politics, some real-existing democracies allow their citizens to have the "final say", at least should they bother

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to insist on it (Morel & Qvortrup, 2018). And while they not always do so, majorities in many states think highly of direct democracy, approving of the expansion of direct-democratic instruments (Pew Research Center, 2018). Broad public support for linking popular sovereignty to direct democracy is in notable contrast to the reality of strongly, if not (almost) exclusively, representative constitutional arrangements in the world's most democratic states.[1]

For a long time, it was political parties left of centre, such as social democrats, greens or radical leftists, that were pushing hardest for more direct democracy (Michels, 2009, but see Bowler et al., 2002). By adding direct-democratic elements to representative political settings, they wanted to "democratize democracy". However, at least in Western Europe, with the rise of "populism", in particular of the far-right kind, parties such as *Freiheitliche Partei Österreichs* (FPÖ), the French *Rassemblement National* (RN) or the United Kingdom Independence Party (UKIP) have also become loud proponents of direct democracy as an expression of popular sovereignty—even though this party family is usually regarded as primarily cherishing national sovereignty. The FPÖ, for example, propagated binding bottom-up referendums in the presidential election of 2016, where its candidate nearly won office, and proclaimed it as a condition in case of government participation during the 2019 general election campaign. Ahead of the 2022 presidential election in France, Marine Le Pen announced her intention to govern through regular referendums if she got elected. Most prominently, UKIP has successfully pushed for a referendum on Brexit, an issue that did not only revolve around a conflict over national versus supranational, but also over citizen versus parliamentary sovereignty (Brack et al., 2019; Rone, 2022). In the past decades, prominent far-right parties have learned to link their calls for more direct democracy to their rejection of both domestic and EU politics.

This chapter follows calls to study the link of so-called populist parties, sovereignty and direct democracy (Basile & Mazzoleni, 2020). It analyses the impact of the far right on direct democracy in Germany. The Federal Republic of Germany is among the few European states that have not held a single state-wide referendum since 1945.[2] Still, it has some important direct-democratic instruments at the subnational level (Kost & Solar, 2019). Moreover, clear majorities of the German population—and a majority of sympathizers of *every* Bundestag party—are in favour of an expansion of direct democracy at the national level (infratest

dimap, 2017). In the country, the far right was a latecomer, but when founded in 2013, the *Alternative für Deutschland* (AfD) quickly established itself as a strong opposition party both on the national and the subnational level (Arzheimer, 2019; Weisskircher, 2020b). Moreover, it quickly became a strong proponent of more direct democracy (Franzmann, 2014), propagating the adoption of a "Swiss model". Has the party's rise and mobilization in favour of direct democracy made any difference? An analysis of the case will provide more general lessons on the political conflict over direct democracy in contemporary Europe.

By building on previous research (Bedock et al., 2022), this chapter provides four arguments that link the issue of direct democracy to the political conflict over sovereignty in contemporary Europe (see Introductory chapter to this volume). First, long before the rise of the far right in Germany, all mainstream parties apart from the *Christliche Demokratische Union* (CDU) already favoured an expansion of direct democracy. The demand for more citizen participation was also a story of mainstream party politics. Second, however, as an unintended consequence of the rise of the far right, some mainstream parties become quieter about the issue (*Sozialdemokratische Partei Deutschlands* [SPD]), while others changed position away from referendums (*Freie Demokratische Partei* [FDP], *Bündnis 90/Die Grünen* [the Greens]). Interestingly, facing the regional strength of AfD, some subnational CDU branches in the east moved towards supporting referendums. Third, institutional outcomes have been highly limited, in particular at the national level, where no changes towards more direct democracy have been made. Under the Merkel IV government (2017–2021), a planned government commission on the question was never set up. Fourth, even though all parties address the issue of democracy reform in general and direct democracy in particular, the topic is only rarely high on the political and public agenda. Unmet public demand for more direct democracy, held by a majority of citizens across the political spectrum, constitutes a latent sovereignty conflict in contemporary politics in Germany and beyond.[3]

Methodologically, this case study mainly relies on the analysis of basic and electoral manifestos for all parties represented in the German Bundestag, an AfD motion in the Bundestag, and the respective parliamentary debate as key sources. This data allows to trace down change over time and how political parties explain and justify specific stances and shifts. Germany serves as an exploratory case (Gerring, 2004) that should improve our theoretical knowledge of the processes and outcomes

of far-right mobilization in the context of direct democracy. The analytical consideration of regional politics reflects the increasing interest in the subnational level in the study of populism (Chou et al., 2022).

The chapter is structured as follows: first, it links discussions about sovereignty, direct democracy and the impact of the contemporary far right. It then turns to the issue of direct democracy in Germany and discusses to what extent the AfD has influenced policy positions and institutional outcomes concerning the issue, both on the national and the subnational level. The conclusion points to broader lessons concerning the conflict over direct democracy and the latent tension between parliamentary and popular sovereignty in contemporary Europe.

7.2 Sovereignty, Direct Democracy and the Impact of the Far Right

As this volume shows, conflicts over different conceptualizations of sovereignty have left a strong mark on contemporary European political competition—with tensions between parliamentary and citizen as well as national and supranational sovereignty strongly linked to each other. The rise of far-right parties in contemporary Europe, usually labelled as "populist radical right" (Mudde, 2007), very much reflects these conflicts. As Mazzoleni and Ivaldi (2022, p. 304) put it, "[c]laims to regain popular and national sovereignty are at the crux of the current wave of radical right-wing populism (RRP) in Europe".

If we follow dominant understandings of populism that emphasize the importance of anti-establishment politics and the prevalence of the "general will" (Mudde, 2007; Müller, 2016) it is only to be expected that contemporary far-right parties will favour an expansion of direct democracy. Anti-establishment politics imply a strong criticism of parliaments and governments—institutions usually controlled by mainstream political parties, not by their challengers. Support of the real or claimed general will implies the desire for instruments that help to put it into practice. It is therefore not a surprise that direct democracy is part of the democracy reform agenda of "populist" parties in Europe, no matter whether they are (far-)left, (far-)right or somewhere in-between (Best, 2020; Taggart, 2002). Correspondingly, far-right MPs are more likely than mainstream party's MPs to support an expansion of direct democracy (Núñez et al., 2016). The same relationship holds at the demand-side level: individuals with stronger "populist" attitudes are more likely to support an expansion

of direct democracy (Mohrenberg et al., 2021) and so are those far-right sympathizers with stronger anti-elitist attitudes (Rojon & Rijken, 2020). In practice, reflecting the multidimensionality of sovereignty conflicts, far-right parties across Europe have called for the use of direct-democratic instruments both in domestic affairs, but also when mobilizing against a deepening of European integration.

Still, even pro- and anti-Brexit mobilization has been an example of a political conflict revolving over the question of parliamentary sovereignty and direct democracy—despite the obvious importance of the tension between national and supranational sovereignty (Brack et al., 2019; Rone, 2022). Even for decisions as far-reaching as Brexit, the fundamental conflict over *who* rules in society was essential (Bickerton & Brack, 2022). On Brexit, of course, even though the far right was not the only driver, its impact—pushing for a referendum and achieving its main goal—is particularly obvious (Clarke et al., 2017).

Do (far-right) parties make a difference when they mobilize for more direct democracy? The specialized scholarship on the impact of far-right parties in Europe has largely focused on the issue of immigration, which is the core issue of the party family (Mudde, 2007). This line of research has presented an ambivalent picture. Research indicates that strong far-right parties can indeed push mainstream parties towards positional shifts on immigration (Abou-Chadi & Krause, 2020). However, another prominent study finds that while government coalitions that include far-right parties push for different policies than left-wing governments, they do not significantly differ from centre-right governments (Akkerman, 2012). Other research also does not find massive shifts in immigration policy when the far right is in government (Duncan, 2010). Its effect seems to be stronger on integration than on immigration policies (Lutz, 2019). On socioeconomic reform, governing far-right parties have been found to be less prone to welfare statement retrenchment and deregulation than their competitors on the centre-right (Röth et al., 2018). However, in some instances they have successfully pushed for welfare-chauvinist policies (Ennser-Jedenastik, 2020). But even in political conflicts that show the strong mobilization of far-right parties, mainstream parties have remained the "active agents" in the political process (Odmalm & Super, 2014).

On the question of direct democracy, the impact of the far right has been limited, too, while mainstream parties have typically refrained from expanding direct-democratic instruments: Previous research has already

shown that this has also been true for the case of Germany, in particular so at the national level (Bedock et al., 2022). While far-right parties in Europe have become increasingly positive about direct democracy, in parallel, efforts of some social democratic and green parties to expand direct democracy have gradually become lacklustre (*Ibid.*). Building on these comparative research findings, the chapter now delves more deeply into the case of Germany.

7.3 The Case of Germany

7.3.1 High Public Demand and Limited Institutional Supply

When it comes to direct democracy, the political system of Germany is a country of strong public demand and limited, merely subnational, institutional supply. The case for referendum is popular among the German public. To be sure, however, according to survey data of the Pew Research Center (2018), Germans are first of all strong supporters of representative democracy: 90 percent have a positive view on it, only eight percent are negative. At the same time, a huge majority of Germans also thinks positively of direct democracy: 74 percent are in favour, and only 23 percent are against such instruments. To contextualize, a government run by experts finds majority disapproval: only 44 percent of the Germans have positive perceptions, but 53 percent are against it.[4] Importantly, the approval of direct democracy in Germany is significantly higher than in countries such as the Netherlands (55 percent), the United Kingdom (56 percent) and the United States (67 percent).

The validity of the above-discussed data is underlined by survey data asking about views on referendums specifically: infratest dimap (2017) finds almost the same public support for this specific direct-democratic instrument than the above-reported majority on the more general question (72 percent).[5] Unsurprisingly, the sympathizers of Die Linke (85 percent) and the AfD (83 percent)—supporters of the two outsider parties in the political system—are almost unanimously in favour of such a reform. But also among supporters of the political mainstream, large majorities are in favour of more direct democracy, all on more or less the same level (68 percent of SPD sympathizers and 64 percent of the sympathizers of CDU/CSU, Greens, and FDP are in favour).

At the same time, Germany's political system comes without instruments of direct democracy at the national level—with the only exceptions being a restructuring of the territory of federal states or a new constitution. Neither the introduction of the Basic Law in 1949 nor German "reunification" in 1990 relied on direct-democratic votes. Political pundits in Germany are usually sceptical of an expansion of direct democracy. Even lucid analysts of the crisis of representation through *Volksparteien* in Germany do not welcome it as a potential response (e.g., Koß, 2021). The country's exceptionalism is often explained with reference to negative experiences with direct-democratic instruments in the Weimar Republic and the historic mass support for National Socialism, casting doubt over the desirability of popular sovereignty in the German context—even though in institutional terms it was parliamentary elections, coalition government with elite 'mainstream' actors, and a violent coup d'état that have brought the NSDAP in power, while experiences with (badly designed) direct-democratic instruments were highly limited. However, research has shown that for the Parliamentary Council drafting Germany's Constitution in 1948/1949, past experiences hardly mattered: Many members were even positive about direct democracy, but in the context of the intensifying Cold War, they decided not to risk providing challengers to the established and centrist parties with institutional opportunities (Schiffers, 2002).

But while direct democracy is de facto absent in German national-level politics, the subnational level has offered a great regulatory and practical variety of direct democracy since early onwards—and it has expanded over time. At the regional level, the possibility for top-down and bottom-up referendum exists, even though the thresholds—and practices—differ quite strongly (Kost & Solar, 2019). It is in the city-states of Berlin and Hamburg as well as Bavaria where most regional referendums have been held so far (Solar, 2019). However, also in the majority of German federal states, since 1945 no regional referendum has ever been held (*Ibid.*).

7.3.2 The Rise of the Far Right and Demands for More Direct Democracy

The AfD was founded in 2013 mainly as anti-Eurozone party but has since then developed into a typical contemporary far-right party (Arzheimer, 2019), at least in terms of ideology. Since 2014, the party is represented in the European Parliament. Moreover, since 2017 the

party has been part of the Bundestag. Back then, the party received 12,6 percent of the vote and became the strongest opposition party. In 2021, it lost slightly and received 10,3 percent of the vote. Importantly, in eastern Germany, the former territory of the German Democratic Republic, the party is about twice as popular than in the west (Weisskircher, 2020b). Despite the quick electoral breakthrough of the AfD, also at the subnational level, the AfD has remained largely excluded from formal and even informal cooperation by mainstream parties (Heinze, 2022).

Interestingly, quite atypical for a far-right party in Western Europe, the AfD is marked by a relatively high degree of internal democracy, also allowing for the possibility of internal bottom-up and top-down referendums (Heinze & Weisskircher, 2021). It is no surprise then that calls for more direct democracy were always an important part of the party's agenda (Franzmann, 2014). Similarly, the main far-right street movement of the mid-2010s, PEGIDA, a group that has been on close terms with part of AfD, focused on anti-elitism, calling for more direct democracy too (Volk, 2020; Weisskircher & Berntzen, 2019). For AfD voters, dissatisfaction with democracy is a key individual-driver for their support (Hansen & Olsen, 2019).

Importantly, the first comprehensive manifesto of 2016 even calls "the introduction of referendums according to the Swiss model […] a non-negotiable content of any coalition agreement" (AfD, 2016, p. 9). Among the documents' demands are popular initiatives for regular laws and constitutional changes, optional referendums on bills and obligatory referendums on constitutional changes and "significant" international treaties (AfD, 2016, p. 9). On the latter, the manifesto strongly refers to the conflict between national and supranational sovereignty: "Especially the transfer of national sovereignty to the EU and other international organizations over the heads of the citizens will be put to an end" (AfD, 2016, p. 9). Many documents such as electoral manifestos at the national and the regional level or other party publications such as leaflets or bills, make similar demands, sometimes with one or the other emphasis or specification.[6]

7.3.3 The National Level: Direct Democracy as a Declining Demand in Germany's Party System?

Before the electoral breakthrough of the AfD, all mainstream parties apart from the CDU favoured an expansion of direct democracy at the national

level—at some points in time more forcefully than at others. Already when drafting the Basic Law, it was mainly FDP and SPD which was in favour of direct-democratic instruments (Schiffers, 2002, p. 74). Therefore, at least rhetorically, several parties long reflected the public demand for a more direct institutionalization of popular sovereignty, in acceptance of some limitations to parliamentary sovereignty. From time to time, they also introduced respective bills. Most prominently, in the early 2000s, the Red-Green government made some reform proposals—however, they did not only lack the necessary support of the CDU for such constitutional changes, but also faced internal scepticism. More recently, parallel to the rise of the AfD, several parties moved away from explicit calls for the possibility of bottom-up and top-down referendums.

Apart from AfD, it is *Die Linke*—something of a semi-mainstream party which has been member of subnational governments in western and eastern German regions—that has been the staunchest supporter of direct democracy at the national level. In its basic manifesto of 2011, the party calls for a "renewal" of democracy in Germany, stating that "representative parliamentary democracy needs to be expanded by direct democracy" (*Die* Linke, 2011, p. 45)—demands that it has frequently repeated and specified.

The SPD approved of an expansion of direct democracy in many documents, such as its comprehensive manifesto (SPD, 2007). However, unlike in 2017 (SPD, 2017), the 2021 electoral manifesto of the SPD no longer mentions the expansion of direct democracy (SPD, 2021). Also, the German Green party, in expectation of upcoming government membership, did not mention the instruments of direct democracy in its electoral manifesto of 2021 anymore (*Bündnis 90/Die Grünen*, 2021)—in contrast to four years earlier (*Bündnis 90/Die Grünen*, 2017). This reflects the party's decision to leave out calls for direct democracy in its basic manifesto passed in 2020 (*Bündnis 90/Die Grünen*, 2020)—a significant move away from a position the party had held since its foundation.

The CSU, the Bavarian "sister party" of the CDU, has also been a long-time supporter of more direct democracy at the federal level. The party's basic manifesto refers to direct democracy as "an important addition" to parliamentarism (CSU, 2016, p. 28). In its manifesto for the general election in 2017, it made strong promises: "We guarantee to the people that we are expanding the opportunities for political participation in Germany further. We want to introduce nationwide referendums on

important political matters" (CSU, 2017, p. 2). However, it refrained from repeating such demands four years later (CSU, 2021). The case of the FDP is quite similar. Still demanding direct democracy at the federal level in its basic manifesto (FDP, 2012, p. 73), it demanded this for the regional and local level only in its electoral manifesto of 2017 (FDP, 2017, p. 96).

These changes in positions indicate that the "populist" challenge indeed made party preferences for direct democracy more volatile and rather more sceptical. Over time, SPD, Greens, CSU and FPD became more hesitant of respective instruments at the national level. The CDU remained rejective. Only *Die Linke* remained supportive.

With increasing mainstream party scepticism, it does not come as a surprise that institutional change towards an expansion of direct democracy did not occur. After the general elections of 2017, when the AfD entered parliament, some change could have still been expected: In its coalition treaty, the new government of CDU/CSU and SPD committed itself to discussing direct democracy as part of a new expert commission:

> We will set up a commission of experts to come up with proposals as to whether and in what form our proven representative parliamentary democracy can be supplemented by other elements of citizen participation and direct democracy. (CDU, CSU, & SPD, 2018, p. 163)

However, this turned out to be an empty promise—the government never installed such a commission. In the same legislative period, a proposal by the AfD shared a similarly negative fate. In February 2021, the Bundestag group of AfD introduced a bill to "introduce direct democracy at the federal level" (AfD-Fraktion, 2021), demanding the possibility for bottom-up and top-down referendums. Defining a lack of 'direct participation of the *Staatsvolk* in the formation of the political will' as a problem, the AfD argued:

> Direct-democratic procedures […] guarantee alternatives. They reduce the power imbalance between government and parliament on the one hand and the electorate on the other in favor of the citizens. There is substantial empirical evidence that citizens are demanding more participatory rights. With regard to the federal states and the municipalities, but also with a view to other countries such as France, the Netherlands, Denmark and in particular Switzerland, where the implementation of referendums are part of the basic understanding of democracy, it is therefore essential to create

> rules that allow the implementation of referendums. A state without such direct democratic elements is an amputated democracy. (AfD-Fraktion, 2021, pp. 1–2)

The bill also underlined that, with the exception of CDU/CSU, all Bundestag parties have at some point made proposals for the introduction of referendums at the federal level (AfD-Fraktion, 2021, p. 5). In parliament, the *Alternative für Deutschland* proposal was controversially discussed. It was mainly backbenchers who intervened in the parliamentary debate. First, the AfD MP Johannes Reusch, introduced the bill and portrayed it as a response to the problems of "*Partitocrazia*"—i.e. questioning the monopoly of parliamentary sovereignty:

> Therefore, a correction is necessary. Countervailing power needs to be built which in a democracy can only be the people, the sovereign, itself. With our bill, we want to give the people the means to exercise the power it should have. At the core of our draft is that the expressed will of the people must be the supreme law. (*Deutscher Bundestag*, 26.02.2021, p. 26826)

Philipp Amthor (CDU) was the first to respond to the AfD bill, speaking out against the idea of direct democracy. Accusing the AfD and *Die Linke* of disregarding parliamentarism, the MP said:

> They both share an unbelievable skepticism about parties, and they share the conviction that the will of the people is not represented here in parliament. But neither is vindicable […] If your parties aren't working, perhaps you should look to yourself for the problems and not dump them on representative democracy. (*Deutscher Bundestag*, 26.02.2021, p. 26828)

In line with the positional change of her party, Sandra Bubendorfer-Licht (FDP) spoke only in favour of direct democracy at the subnational level and heavily attacked the AfD, portraying its bill as anti-democratic move against parliamentary sovereignty and linking the party to the National Socialists:

> And it's not about participation for you, not even about more democracy, but about hate speech, turmoil and above all insecurity. […] It's not surprising that you are not into parliamentarism. Already your spiritual forefathers in the 1930s had nothing left for it. (*Deutscher Bundestag*, 26.02.2021, pp. 26828, 26829)

In contrast, Mahmut Özdemir (SPD) spoke out in favour of direct democracy as an expansion of the "community of responsibility", highlighting his party's previous efforts to push for such changes and accusing the CDU of preventing them. Özdemir, however, also strongly attacked the AfD, calling the party an "enemy" of democracy and the bill as bad copy of previous ones:

> You from the AfD have copied all these initiatives and drafts so miserably badly and tacked them together so that even with the best will and the noblest will one cannot agree to this miserably patchwork bill in this parliament. (Deutscher Bundestag, 26.02.2021, pp. 26830–26831)

Also André Hahn (Die Linke) spoke out in favour of direct democracy—mentioning the desire for direct democracy as important to many pro-democracy protestors in East Germany in 1989. However, he also questioned the authenticity of AfD's demand:

> In reality, the AfD does not care about expanding opportunities for democratic participation in our country. In the face of hatred, hate speech, and polarization which the AfD has spread since years, such grassroots demeanor is just cynical. The AfD does not want to complement the representative system with meaningful plebiscitary elements. It opposes direct democracy to the parliamentary order. (*Deutscher Bundestag*, 26.02.2021, p. 26831)

Canan Bayram (Greens) claimed support for the idea of direct democracy on an abstract level, but in specific terms, she only praised the concept of consultive citizen councils:

> Direct opportunities for participation enrich representative democracy. Citizens' councils are intended to create the possibility of allowing the everyday expertise of citizens to flow even more directly into legislation on selected topics. (*Deutscher Bundestag*, 26.02.2021, p. 26833)

Then another AfD MP, Albrecht Glaser, intervened, rejecting accusations of his party's disregard for parliamentarism:

> High time then to grant the actual sovereign, the Staatsvolk, the full rights. This and only this is what we, the AfD, wants to do with the instrument of

> direct democracy. All other speculations on doubts about parliamentarism are fictitious. (*Deutscher Bundestag*, 26.02.2021, p. 26835)

The remainder of the debate, among others, included a back-and-forth between the SPD and the Greens on whether the latter stopped supporting direct democracy at the national level or not. Interestingly, Lars Castellucci (SPD) explicitly acknowledged a more sceptical perspective among the political mainstream and linked it to Brexit, "the rise of populism" and "right-wing extremists":

> But I also want to tell you that the voices are of course also becoming more critical beyond the Green group. This has to do with the fact that we all have Brexit in our bones and that there are concerns about the rise of populism. Dear colleagues, ladies and gentlemen, we must not allow the relationship of trust with the citizens to be disrupted by populists and right-wing extremists. (*Deutscher Bundestag*, 26.02.2021, p. 26839)

Interestingly, in the debate no less than three MPs used Brexit as a negative example for direct democracy, linking the vote in the United Kingdom to an irreversibility and lack of willingness to compromise in direct-democratic decision-making and the potential of electoral propaganda based on lies. Also, the Bundestag debate in general illustrates how the increasing scepticism of the political mainstream concerning direct democracy—and therefore parliamentary sovereignty—is linked to the rise of the *Alternative für Deutschland*.

7.3.4 The Subnational Level: The Centre Right as New Proponents of Direct Democracy?

Interestingly, when looking at subnational politics, two eastern German states show another interesting development—with the centre-right CDU, traditionally sceptical of strong citizen involvement, suddenly calling for bottom-up direct democracy. Eastern Germany, the former territory of the GDR, is the stronghold of the *Alternative für Deutschland*, where it is electorally more than twice as strong than in the west (Weisskircher, 2020b). There, the AfD has succeeded Die Linke, frequently part of regional governments in eastern states, as main protest party (Olsen, 2018). Interestingly, in the two regions where the AfD is

strongest, in Saxony and in Thuringia, the strength of the party influenced the centre-right CDU to change course.

This development has been most obvious in Saxony. There, AfD has increasingly challenged the long-term dominance of the *Christliche Demokratische Union* in the regional party system. At the federal elections of 2017, the AfD was slightly ahead of the CDU and became the most popular party—a symbolic victory. In the regional elections of Saxony in 2019, where the AfD was again competing with the CDU for first place, the latter adopted the demands of the AfD for more direct democracy. Weeks before the election, the regional governor of Saxony, CDU's Michael Kretschmer, used a prominent outlet, the weekly *Die Zeit*, to publish his essay "The Final Say for the People", where he called for an abrogative referendum to reject laws:

> And I propose a "people's veto" for Saxony. Citizens should not only make binding decisions on election Sunday, but also have the last word on laws. After a certain number of signatures have been collected, they should be able to vote again on laws passed by the state parliament. […] In no way does such a popular repeal weaken representative democracy, but it develops it further. […] Saxony is taking a new approach: With the people's veto, we give the people the last word! (Kretschmer, 2019)

During the electoral campaign, this proposal was critically discussed—and Kretschmer was frequently accused of giving in to AfD demands. After the election, a three-party government of CDU, the Greens, and SPD was formed. The coalition treaty mentioned a reduction of quorums for already existing direct-democratic instruments in Saxony, more administrative support for initiators, a right to speak in state parliament—but merely an examination of whether an abrogative referendum would be a "sensible" addition or not (CDU, Greens, and SPD, 2019: 111). By the beginning of 2023, the Saxon government majority has not implemented any of these plans.

In Thuringia, the CDU has been in opposition—a coalition of Die Linke, SPD, and the Greens is in government. The AfD is also in opposition, outperforming the centre right electorally. Interestingly, in Thuringia, the CDU has even called for a "Swiss model" of direct democracy already in 2016 and later again suggested reforms such as an abrogative referendum (Hornig, 2023). However, so far, the left-wing government coalition has shown little interest in adopting such demands.

In both Saxony and Thuringia, the regions were the AfD is strongest, so far it seems to have influenced the centre right to switch position, without a change in direct-democratic institutions as an institutional outcome.

7.4 Conclusion

In institutional terms, tensions over the idea of popular sovereignty within democratic polities come down to the issue of direct democracy. Calling for an expansion of direct democracy has not been the original idea of "populist" or even far-right challengers. Even in Germany, with its highly limited history of direct democracy, for a long time all mainstream parties apart from the centre right were in favour of having more referendums. However, with the rise of the AfD, mainstream parties changed course—with almost all of them becoming more sceptical about introducing direct-democratic instruments at the national level. Correspondingly, the country has not seen any institutional changes towards more direct democracy—notwithstanding the pledge to set up a committee of experts by the Merkel IV government and the first mentioning of direct democracy in a coalition agreement. Ironically, at the regional level, the centre-right CDU, the only party who had long been sceptic of direct democracy, started to demand more citizen participation at least in two states that are an AfD stronghold.

All in all, however, the *Alternative für Deutschland* has so far been unsuccessful in pushing for more direct democracy—similar to other far-right parties in Western Europe (Bedock et al., 2022). In general, even though Western European political system undergo institutional reforms regularly (Bedock, 2017), the turn of the twenty-first century have not been marked by a significant expansion of legally enshrined direct-democratic instruments and even less by a strong direct-democratic practice in national states. Importantly though, the study of the political conflict over direct democracy in Western Europe points to changing perspectives on popular sovereignty among political parties across the political spectrum. Among centre-left and green parties, support for direct democracy seems to be on the decline—a pattern found in other contexts both at the party (Bedock et al., 2022) and at the individual level (Rojon & Rijken, 2021). On the political left, it seems that it is increasingly social movements than political parties that make effective use of

direct-democratic instruments (della Porta et al., 2017). These developments may have important implications for future debates on democracy reform.

Despite widespread public dissatisfaction with the functioning of real-existing democracy in Western Europe and beyond (Norris, 2011, Saunders & Klandermans 2019; for Germany in particular see Weisskircher & Hutter, 2019), democracy reform is usually not high on the public and political agenda. It remains to be seen whether the unmet citizens' demand for direct democracy will remain merely background noise of political dissatisfaction or whether it can, under certain circumstances, come to the forefront of debates on institutional reform. So far, it has remained a latent political conflict in contemporary politics: In a context of widespread dissatisfaction with mainstream politics (Hay, 2007), a majority of citizens is for more participatory rights, despite limited attention for the issue among both parties, but also, perhaps pardoxically, voters themselves.

Importantly, the quest for direct democracy is also constrained by the tension between national and supranational sovereignty. In Germany, just like in any other EU member state, an expansion of direct democracy always risks conflict with EU law. '*Nationale Alleingänge*' (unilateral action) is incompatible with EU legislation if the latter requires harmonization. Therefore, the relationship between EU integration and direct democracy does not only concern the more obvious question of whether or not to hold referendum about membership status, treaty changes, and enlargements, but also the general scope for direct democracy at the national level.[7] At least in EU member states, any future political conflicts over direct democracy at the national level will not only touch domestic politics alone, but also the one between national and supranational sovereignty.

Notes

1. Nevertheless, some scholars have emphasized the institutional expansion of direct democracy in advanced democracies (Scarrow, 2001), although starting from a particularly low base. This is not necessarily in contrast to observing an overwhelming dominance of representative politics in these respective countries.
2. Ironically, unlike in the Federal Republic, the non-democratic German Democratic Republic (GDR) indeed held a referendum: In 1968, a vast

majority of 94,5 percent was claimed to support the new GDR constitution. Referring to another case of 'real-existing socialism', the Italian language has invented the term 'Bulgarian majority' (*maggioranza bulgara*) for such rigged results.

3. Elsewhere, this conflict has at times turned into more explicit political conflict (see Lord, 2023 as well as Tudzarovska & Rone, 2023 in this volume).
4. In stark contrast, the alternatives 'government by a strong leader' (6 percent) and 'military government' (4 percent) find only very limited public support.
5. The survey was ordered by two NGOs campaigning for an expansion of direct democracy (OMNIBUS für Direkte Demokratie and Mehr Demokratie).
6. Mehr Demokratie, a German pro-direct democracy NGO, criticized the AfD proposal for positively referring to the 'Swiss model', arguing that the lack of judicial review ahead of a referendum poses a threat to fundamental rights (Beck & Weber 2021).
7. To be sure, EU-wide direct democracy is another institutional option, at least in theory. So far, however, the experience of the European Citizens' Initiative can hardly be called a success story (Weisskircher, 2020a).

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CHAPTER 8

National, Popular, or Neither? Sovereignty in the Rassemblement National's Contestation of European Integration

Marta Lorimer

8.1 Introduction

The return of debates on sovereignty to the centre stage of European politics has been a surprising feature of the last few years. Reclaimed in its national and popular forms by political parties of the Left and of the Right (Borriello & Brack, 2019; Heinisch et al., 2020b), and in its European form by European and EU leaders (Juncker, 2018; Macron, 2018), sovereignty has not only proven to be an extremely resilient concept, but also, one increasingly central to political contestation.

Far-right parties have been responsible for much of the politicization of the concept of sovereignty at the European level. Figuring among the staunchest critics of European integration (Gómez-Reino Cachafeiro,

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2018; Marks & Wilson, 2000; Pirro & van Kessel, 2017), they have sought to present it as an unacceptable violation of national, and increasingly, popular sovereignty. However, it is also worth noting that far-right parties have held varying positions on EU integration (Mudde, 2007), and some seemed to be willing, at least in the past, to consider some delegation of sovereignty as acceptable (Lorimer, 2021). In short, the far right's contestation of sovereignty presents a mixed picture of evolving positions and changing meanings associated with the term of sovereignty.

To study the dynamics of the far right's contestation of sovereignty, this chapter presents a diachronic analysis of how the French Rassemblement National (RN, previously, Front National) defined the concept of sovereignty in party programmes produced between 1978 and 2019. It shows how internal party composition and knowledge of the EU, domestic political competition, and transnational factors pertaining to the evolution in the shape of the EU and the international political context, prompted the RN to redefine its approach to the relationship between sovereignty and the EU, and shift from supporting 'European autonomy' in the 1970s and early 1980s to opposing the EU on grounds of national and popular sovereignty from the end of the 1980s onwards. The RN's shifting message on sovereignty, the chapter suggests, highlights the dynamic character of the contestation of sovereignty and the need to study it in a manner that captures such discursive evolutions.

The chapter proceeds as follows. It starts by reviewing the meanings of sovereignty and their use by far right parties, before introducing the paper's empirical approach. It then presents the analysis of the RN's evolving views on sovereignty. The conclusion summarizes the findings and discusses their implications.

8.2 The Meanings of Sovereignty

Sovereignty is a form of ultimate authority over a political-legal system (Kalmo & Skinner, 2010, pp. 2–3; Loughlin & Tierney, 2018, p. 997), which is, in most cases, the nation-state. As such, it is generally connected with ideas of power, autonomy, and the capacity to make final decisions. When it comes to identifying the locus of sovereignty, Brack et al. (2019) identify four main forms of sovereignty: national, supranational, parliamentary, and popular sovereignty. *National sovereignty* can be regarded as the 'traditional' understanding of sovereignty as an attribute of the Westphalian state. According to this view, the defining quality of the

state is that within its borders, it is the ultimate source of legal authority (internal sovereignty), while outside its borders, it is autonomous and not subject to foreign or external interference (external sovereignty). National sovereignty is frequently underpinned by another form of sovereignty, namely *popular sovereignty*. Popular sovereignty refers to the idea that the source of the state's autonomy is not the state itself, but 'the people' who authorize it to act on its behalf. In other words, national sovereignty requires popular authorization, making citizens the 'ultimate law-making authority' with a right to 'give continuous feedback to decision-makers and to participate in the political process through the various available channels' (Brack et al., 2019, p. 824). Whereas national and popular sovereignty are the most notable forms of sovereignty, Brack, Coman, and Crespy suggest that they are increasingly flanked by the notion of parliamentary sovereignty. *Parliamentary sovereignty* advocates for the ability of parliaments at national, regional, and EU level to be involved in decision-making practices and political processes as representatives of the people. In this sense, the representative link established between voters and MPs or MEPs justifies the involvement of parliaments in decision-making, rather than confining them to the realm of symbolic politics in a European Union which is frequently accused of favouring 'executive dominance' (Curtin, 2014).

If the previous forms of sovereignty were all located mainly (although not exclusively) at the national level, the final form of sovereignty the authors identify transcends the nation-state framework. *Supranational sovereignty* refers to the EU's ability to advance policies in the name of its member states in certain domains in which it holds competence. In these cases, the EU acquires external autonomy by negotiating on behalf of its members and acquires a measure of internal authority by passing laws that will have primacy over national law (as established by the principle of the supremacy of EU law). While speaking of supranational sovereignty remains largely taboo, European sovereignty has recently been invoked by political actors such as Emmanuel Macron and Jean-Claude Juncker as part of their views on what Europe should become (Juncker, 2018; Macron, 2018).

European integration affects and interacts with all these forms of sovereignty, frequently giving rise to conflicts between them. Far-right parties have been among the political actors most keen to politicize these conflicts, mainly due to their ideological background (although, as others have argued, they also had good strategic reasons to politicize

European integration Reungoat, 2015a, p. 296). In fact, these parties' nationalist and, in many cases, populist ideology (Carter, 2018; Mudde, 2007), led them to criticize the EU's claims to supranational authority on grounds of both national and popular sovereignty. Their view of the nation as the main locus of politics led to suspicion towards the EU as a construction that demanded that sovereignty be 'pooled', hence potentially undermining the 'autonomy, unity and identity' of the nation (Halikiopoulou et al., 2012; Smith, 1999, p. 256). For the subset of the far right that combines nationalism and populism (Herman & Muldoon, 2019; Mudde, 2007; Rydgren, 2018, pp. 5–6), this dynamic was further compounded by the EU's complex relationship with (direct forms of) popular sovereignty. Populism, whether as ideology or as discourse, draws on a fundamental opposition between 'the (dispossessed) people' and 'the elite' and considers that politics should be the expression of the general and unmediated 'will of the people' (for definitions of populism, see e.g. Canovan, 1999; Mudde, 2007, p. 23; Rovira Kaltwasser et al., 2017; Stanley, 2008). For far-right populist actors, the EU then poses several issues. Most notably, as a system with many checks and balances, it limits the extent to which politics may be the direct expression of the 'will of the people'. In addition, lacking a European demos or strong channels for national popular legitimation, it can also be easily represented as an elitist construction with little relationship to the people it is supposed to represent.

While we know that far-right parties have drawn on both popular and national sovereignty to criticize the EU, we know little about how the balance between these arguments shifted over time, and how the far right's politicization of the concept of sovereignty evolved in response to developments in domestic and international politics. However, there are good reasons to want to address these questions. First, as mentioned in the introduction, far-right positions on the EU are more nuanced or ambivalent that commonly understood (Heinisch et al., 2020a; Lorimer, 2021; Pytlas, 2020), suggesting the need to understand how their views on sovereignty may have fed into these varying positions. Second, understanding the balance between arguments on national and popular sovereignty can provide a more accurate picture concerning the nature of political opposition to the EU on sovereignty grounds. Understanding how this plays out in the far right specifically is important because of their growing relevance in European political systems and their ability to influence mainstream actors (Bale, 2003; Herman & Muldoon, 2019). As

such, understanding their views may provide us with cues concerning the future course of EU integration.

To address this gap, the remainder of this paper takes an empirical turn and analyses how the French Rassemblement National defined the concept of sovereignty, and how changes in its positions can be explained. The Rassemblement National is one of the most well-known far-right parties in Europe. The party was originally founded in 1972 with the aim of bringing together the different currents of the French far right (Camus, 1989). Placed under the charismatic leadership of Jean-Marie Le Pen, in its first ten years of life the party struggled to gain relevance. The RN's first national-level success came in the European Parliament elections of 1984, when it reached 10% of the vote and elected its first MEPs. Ever since, the RN has been a force to be reckoned with. While historically the party has struggled to gain representation at the national level, following the 2022 legislative elections, it became the single biggest opposition party in the French Parliament. In recent years, the RN's positions on European integration have also firmly established it as one of the most Eurosceptic actors in Europe. Most notably, Marine Le Pen advocated for 'Frexit' in her 2012 and 2017 campaigns, and although she has since abandoned this policy as too divisive, the RN remains broadly sceptical of the European construction.

The RN presents an ideal case study for several reasons. First, as one of the most long-standing representatives of the European far right, it enables the researcher to study the politicization of sovereignty over a longer timeframe, providing a better understanding of how the politicization of sovereignty has evolved along with changes in the process of integration and domestic political contexts. In addition, because the RN is both nationalist and populist, it may be expected to provide a view on the politicization of both national and popular sovereignty. Finally, due to its documented influence on the political parties that came after it, the RN is considered by many to be an 'archetypal' far-right party (Rydgren, 2007; Van Hauwaert, 2014; Vasilopoulou, 2018). Therefore, while it may not allow for generalizability, it may still be viewed as a critical case offering insights which may prove fruitful to the analysis of similar cases.

Empirically, the paper combines the qualitative study of the discourses on sovereignty presented by the RN in sixteen national and EU election manifestoes produced between 1979 and 2019 with the analysis of secondary literature on the RN to contextualize and explain its key findings. The analysis of party manifestoes allows to track the diachronic

evolution of the RN's discourse on sovereignty. It focuses on EU sections of national manifestoes or the entirety of EU election manifestoes, looking specifically for how the party defined sovereignty (and cognate concepts such as autonomy and power), which form of sovereignty it tended to privilege (popular, national, parliamentary or supranational), how it conceived of the EU's relationship with sovereignty and the implications of these views on how it conceptualized an 'ideal' EU. Party manifestoes were considered as helpful documents in this context, as they set out key positions which party members and candidates can then elaborate upon in interviews and speeches (Budge et al., 1987; McDonnell & Ondelli, 2020). Drawing on this analysis, the following section shows both how the RN's approach to sovereignty shifted over time, and why.

8.3 Defenders of European Autonomy into Guardians of National and Popular Sovereignty: The Rassemblement National's Approach to Sovereignty in European Integration

The RN's politicization of sovereignty followed a relatively straightforward path from minimal discussion of external national and supranational sovereignty, to sustained attacks against the EU in the name of national and, increasingly, popular sovereignty. The term sovereignty is remarkably absent from the RN's early documents, making its first appearance only in 1989. This does not entail that concerns about sovereignty were completely absent. In fact, if one looks at the 'functionally equivalent' (Stjernø, 2005) notions of liberty, autonomy, independence, and power, it does appear that the RN cared about sovereignty, although not in the way in which it began to approach it around the end of the decade. Early RN documents on European integration, in fact, are marked by a broadly supportive view of European integration in stark contrast with the positions for which the party is known today. Thus, the manifesto prepared for the 1979 EU elections (which the party eventually did not take part in) clearly stated that

> Menaced by the military and subversive imperialism of the USSR, subjected to the economic and cultural pressures of the USA, Europe is also internally undermined by a drop in birth rates, immigration and shortages in the domains of energy and raw materials. Its unity would improve its position in the world considerably […] It would thus be able to reconquer

> an influence which has not ceased to decline since the war of 1945. The current Europe of the Nine, with its 250 million inhabitants, constitutes a decisive step towards the powerful confederation we wish for. (Front National, 1979)

Along with support for European collaboration, the party even showed a measure of support for supranational sovereignty, albeit only in specified areas. For example, the RN advocated early on for a common European defence, as well as for a common police force (Le Pen, 1984, p. 160). While this would happen in the context of a confederal Europe in which nation states would maintain sovereignty, it is nonetheless important to note the party's openness to shifting core aspects of state authority to the supranational level.

The RN's early support for European integration was based on the understanding of sovereignty as a primarily external attribute of the nation and of Europe. Rather than approaching the EU as a limit on domestic sovereignty, it viewed it as a way to retrieve autonomy from external influence and enhance France's and Europe's power in a world dominated by the USA and USSR. It also approached European unity as a form of protection against the latter. As Jean-Marie Le Pen put it in his 1984 programmatic book '*Les Français d'abord*',

> one can now accept the creation of a united Europe in front of external threats. One never associates by natural reflex. When one creates a society, it is because one does not have the means to act alone. It is certain that the threat of Soviet Communism (and the dangers of disintegration by subversion it entails) is also Europe's great chance. It can allow it to define itself precisely against a certain form of danger. (Le Pen, 1984, pp. 155–156)

Sustaining the RN's support of the EU as a potential bulwark against Soviet imperialism and as a means to retrieve power was the fact that in the early 1980s, the European construction was still largely in flux and less powerful than it became in the following years. Its influence on domestic sovereignty was limited, and it was still open to rather different interpretations of how it should evolve. As such, the EU appeared as a construction which could still be moulded to fit the party's image of it as a defence against foreign interference and a way for Europe to retrieve power in foreign policy. Additionally, since until the early 1990s the EU remained a mainly uncontested issue in public opinion (Hooghe & Marks,

2009), there were few strategic incentives for the RN to adopt a stronger oppositional stance.

The RN's pro-Europeanism was, however, short-lived. From the middle of the 1980s, the RN started a slow but secure shift towards opposition to the European Union. It is around this time that sovereignty makes it first appearance in RN manifestoes. The RN's 1989 EU election manifesto is a case in point. The manifesto covers several of the party's pet issues including immigration, security, opposition to (Brussels) bureaucracy and presents the RN's plan for a 'Europe of the Homelands' which would reject 'the transfer of the sovereignty of the French people to commissions of stateless bureaucrats' (Front National, 1989a). While markedly more critical than in previous documents, the party's view of this Europe of the Homelands is still entwined in this manifesto with the idea of creating a 'powerful Europe' to 'cast another continent in the balance of continents'. Ideas of supranational power, in this sense, remained present but were firmly rooted within individual nations who chose to collaborate freely, and faded away in the following decade. The programme concludes with a message from Jean-Marie Le Pen to voters, in which he stresses how the RN will defend the idea of 'A French France in a European Europe. A Europe of freedoms against the supranational Brussels bureaucracy. A Europe of the Homelands, respectful of the sovereignty and identity of the nations and of the peoples that form it'. The seeds of the RN's critique of EU integration were thus sown, and the party brought sovereignty front and centre in it, employing a discourse based on both national and popular sovereignty to oppose supranational sovereignty.

The RN's shift towards opposition to the EU on grounds of sovereignty can be explained by changes taking place both within the party and in the European Union (Lorimer, 2022). First, the introduction of the Single European Act marked the beginning of an increasingly close cooperation between European countries based on a primarily economic agenda. This development was at odds with the party's view that European collaboration should be guided by the aim of transforming Europe into an international power. For example, former party cadre Bruno Mégret criticized the Single European Act as an act which did nothing to remedy the absurdity of '350 million Europeans asking 230 million Americans to defend them from 270 million Soviets' (cited in Front National, 1989b, p. 59). This critique was entwined with the idea that by privileging economic cooperation, the EU did little to reinforce the common identity

of Europeans and their sense of needing to unite against external dangers (Pichon, 1989; Front National, 1991). Within the party, the arrival of a group of more markedly Eurosceptic politicians such as Yvan Blot and Jean-Claude Martinez, as well as an increased knowledge (and scepticism) of European processes derived from having become part of the European Parliament, prompted a shift to more critical stances which crystalized into firm opposition during the campaign against the Maastricht Treaty (Reungoat, 2015b, pp. 228–229).

Developments in the international and domestic political context further contributed to the radicalization of the RN's positions observed at this time. The demise of the Soviet Union also marked the demise of calls concerning the need for European unity in face of an external threat. Additionally, the emergence of popular opposition to the European Union (Goodliffe, 2012; Hooghe & Marks, 2009) gave the RN the opportunity to appeal to a new segment of the electorate with a radical anti-EU platform. In a context where mainstream actors were mainly favourable to European integration, opposing the EU became a way for the RN to differentiate itself from the mainstream and appeal to an increasingly Eurosceptic public. The radical nature of its platform also served to differentiate the RN from the other Eurosceptic actors that campaigned against the Maastricht Treaty, making its positions instantly recognizable (Reungoat, 2015a).

Opposition to the European Union on grounds of national sovereignty appears as the most prominent form of sovereigntist contestation between the early 1990s and 2002 (although it remains present throughout). The RN's view of national sovereignty draws heavily on the concepts of external autonomy and domestic self-rule and is defined as an essential attribute of an independent state. In the party's own words, it is 'to nations what freedom is to individuals. Without sovereignty, a people falls into dependency and servitude' and associated with the idea that 'nations should never have to be subject against their will to decisions taken by others' (Front National, 1993). It is considered, in short, as 'the collective form of liberty: the freedom of a people to decide of its own future' (Front National, 2002).

The European Union is perceived as a fundamental violation of several of these principles. The 1993 manifesto, for example, considered that through integration, 'The nation loses, finally, its independence and sovereignty. These essential notions, which have guided our princes for

1500 years […] have been forgotten. In practice, they have been trampled on by the European construction as conceived of by Brussels and the Maastricht Treaty' (Front National, 1993). The reasons for this are succinctly presented in the 2004 EU election manifesto, which identified EU encroachment and supranationalization as the root causes for this decline in sovereignty:

> The entire history of the European construction consists of depriving states of their sovereignty. First, because Europe has seen its areas of intervention grow more and more […]. Additionally, because the organization and functioning of the European institutions, as well as their decision-making modes, tend more and more to make the notion of a Nation-State disappear and to give power to the Brussels technocrats. (Front National, 2004)

Scepticism of shifting power to the supranational level is also entangled with a suspicion towards the European Union as a mere 'step' towards a globalist super-state. This point is well exemplified by the 2009 European Election manifesto, in which the party stresses that 'the French patriots of the Front National […] are resolutely against the fraud that consists, under this cover of cooperation, to build a super-state that will destroy their individual identities, their sovereignties, their liberties' (Front National, 2009, p. 4). Thus, while the RN does not necessarily exclude the possibility of European collaboration, it only accepts it to the extent that nations remain fully sovereign and are under no circumstances forced to accept the decisions imposed by others. This is usually expressed though the advocacy of a 'Europe of the Nations', constructed around ad-hoc voluntary partnerships and bilateral agreements which leave sovereignty intact. It also entails demands to repatriate sovereignty in the domains in which it has been lost, a point presented in the 2017 manifesto which called for the need to 'Give France its national sovereignty back' by 'returning sovereignty (monetary, legislative, territorial, economic) to the French people' (Front National, 2017). A similar message pervaded Marine Le Pen's, 2022 presidential campaign, although Europe itself was strikingly absent from her 2022 presidential programme (Le Pen, 2022).

Whereas the RN's critique of the EU on grounds of national sovereignty dominated the 1990–2002 period and focused on national autonomy and self-rule, the last two decades have been marked by a

growing focus on popular sovereignty and the notion that the EU is undemocratic and unresponsive to popular wishes.

Popular sovereignty did not initially appear as an unquestionable principle in the party's opposition to the European Union. The 1993 manifesto is the best illustration of this point, although similar arguments were repeated elsewhere (e.g. in a speech by Jean-Marie Le Pen commonly known as the Reims Oath: Le Pen, 1992). In the manifesto, the party appeared to pit national and popular sovereignty against one another, arguing that while the French people had approved the ratification of the Maastricht treaty 'through a referendum, by a small minority', 'for the Front National, which considers that the people itself does not have the right to give up on its sovereignty […] the treaty is illegitimate' (Front National, 1993).

Occasional references to popular sovereignty appeared in several later programmes. For example, the 2002 national programme stressed how 'The Nation is for all French people, the natural framework of their freedom and their sovereignty'. In a similar vein, the 2009 EU election manifesto advocated

> For a sovereign France in a democratic Europe—For the respect of the people's right to self-determination: we demand the organisation of referendums in all countries for all new treaties and all new memberships, and the respect of their results. […] Against the Lisbon Treaty, which is nothing but a re-transcription of the European Constitution rejected by the French, Dutch and Irish! (Front National, 2009)

The growing relevance of popular sovereignty becomes however most visible following Marine Le Pen's arrival at the helm of the party. Two factors may help understand this shift. First, since the 2005 French referendum on the EU Constitution and the 2008 economic crisis, popular and party political disavowals of the EU became more frequent both on the left and on the right of the political spectrum, as did calls for more democracy at the European level (Chazel, 2023 this volume; Crespy & Rone, 2022; Reungoat, 2015a). These calls created more space and credibility for narratives of 'the people' versus 'the EU'. Second, Marine Le Pen has dedicated much of her political career to 'de-demonising' the RN (Dézé, 2015; Ivaldi, 2016). References to popular sovereignty and democratic principles can therefore be understood as attempts to mainstream the party's message and make it more appealing.

The first of the party programmes put forward under Marine Le Pen's leadership illustrates well the growing relevance of concerns about popular sovereignty. The programme includes paragraphs discussing specifically the issues of 'Europe without its peoples' and 'Europe against its peoples' (Front National, 2012). It argues that the EU suffers from a democratic deficit because it ignores popular referendum results and because its institutions are dominated by unelected technocrats. Reinforcing the point on the EU's conflicted relationship with domestic referendums, the 2019 EU election manifesto, for example, accuses the EU of 'trampling the will of the people' and ignoring 'referendum disavowals' of its actions (Rassemblement National, 2019). Criticisms of the EU as the home of 'unelected technocrats' are also mentioned elsewhere. It builds primarily on long-standing attacks on the European Commission (a target of the party since at least the 1980s), but in recent years the party has extended its criticism to other bodies such as the European Central Bank.

As with national sovereignty, these views also inform what the party thinks an ideal EU would look like. In this sense, the 2012 programme advocates the need to 'break with a failing dogmatic European construction' through Article 50 and 'lay the foundation of a Europe that will respect popular sovereignties, national identities, languages and cultures, and that will be at the service of the peoples through concrete actions'. The 2019 EU election manifesto moderates those purposes in that it does not mention leaving the EU, but insists on the need to create a new 'Europe of the nations and of the citizens' founded on 'the defence of individual liberty, and therefore on democracy, and, at the state level, on sovereignty in the framework of loyal and fruitful collaborations' (Rassemblement National, 2019).

In sum, in addition to presenting the EU as a violation of national sovereignty and as a threat to the nation's survival, the RN has increasingly presented it as a body ignoring democratic principles as well. This has led the party to advocate for leaving the EU or, at very least, transform it into a 'sovereignty-friendly' 'Europe of the Nations'.

One final point mentioning is that while for analytical purposes, narratives of national, and popular sovereignty have been presented as more or less neatly separate here, they frequently overlap in the RN's message. Therefore, while both terms are employed, they may not be fully separate in the party's mind. For a party such as the RN, this may be down to the fact that 'the Nation' and 'the People' are conceived of as very similar entities: the 'people' the party refers to are always the 'nationals',

making the two concepts difficult to fully disentangle. The two narratives, however, should be seen as mutually reinforcing. For example, when the party is attacking 'Brussels bureaucrats', it can make two separate points: on counts of national sovereignty, it can claim that they pose a problem because they 'impose' external laws on the nation and contribute to the dissolution of the state; on counts of popular sovereignty, it can attack them for being unelected and unaccountable. In short, drawing on both forms of sovereignty provides the party with additional ammunition in its opposition to the EU, leading it to create a more comprehensive critique of it.

8.4 Conclusion

This chapter presented a diachronic analysis of the RN's definition of the concept of sovereignty. It showed how the party moved from barely speaking of sovereignty, to bringing it front and centre in its contestation of the EU. Its views on the relationship between sovereignty and the EU also changed: whereas in its early years, the RN saw it as a potential booster of national sovereignty and accepted a measure of supranational sovereignty, it shifted to viewing it as a threat to both national and popular sovereignty. These views informed the party's views on how far European collaboration could proceed, leading it to support a 'Europe of the Nations' which would leave sovereignty intact, while allowing European countries to work with one another where needed.

Throughout the analysis, the chapter has also sought to provide cues concerning how these shifts could be explained. It has highlighted how at different stages in the party's history, party dynamics, evolutions in the EU process itself and changes at the level of public opinion and party competition provided the motivating factors for positional shifts, leading the RN from supporting the EU as a foreign policy actor, to opposing it on grounds of first national and then popular sovereignty.

Although the relative weight of these explanatory factors was not assessed, they highlight the dynamic nature of a process in which meanings evolve over time and in response to context and evolutions in the EU itself. The EU, in fact, is a malleable construction (Flood, 2002), which may be interpreted in different ways and whose relationship with sovereignty may therefore be viewed differently depending on how one looks at it. As such, it is important to study how these factors interact, and how they shape certain views of what is possible in European integration.

These findings also suggest that the EU remains contested on grounds of both national and popular sovereignty. Conflicts between national and supranational sovereignty have not been replaced by ones between supranational and popular sovereignty. Rather, these conflicts have overlapped, creating an environment where mutually reinforcing conflicts of sovereignty coexist. These conflicts are likely to shape the future path of EU integration, as they can either restrain and diminish the space for supranational sovereignty, or force a counter-movement to reassess it. At a time in which the war in Ukraine is spurring further conversations concerning the EU's 'strategic autonomy', this represents a crucial area for further research, both for how sovereignty is understood and how actors such as far-right parties contest it. Conflict, in short, can spur evolutions, but whether these changes will lead towards further integration or disintegration remains to be seen.

Notes

1. The Front National changed its name to Rassemblement National in 2018. Documents produced by the party before 2018 are cited following the original nomenclature.
2. Documents for the 1972–1978 period were not available in the Bibliothèque Nationale de France's archives at the time of the fieldwork.
3. The RN's fear of the USSR did not survive its demise and the RN has since adopted a broadly positive approach to Russia. Even following Russia's invasion of Ukraine, it did not return to advocating European unity against it but remained mostly moderate in its criticism of Russian President Vladimir Putin.

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CHAPTER 9

Left-Wing Populism and Sovereignty: An Analysis of Jean-Luc Mélenchon's Discourse (2011–2022)

Laura Chazel

9.1 Introduction

Scholars have long associated the concept of sovereignty—and its corollaries, such as nationalism—mainly with radical-right parties. However, the Great Recession (2007–2009) has created a breeding ground allowing the emergence/consolidation of populist movements in Europe (Kriesi & Pappas, 2016), among which left-wing parties and movements that have partly built their discourses and programs on the desire to recover a "stolen sovereignty" (Crespy & Rone, 2022; Gerbaudo, 2021). Jean-Luc

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Mélenchon's movement, *La France insoumise* (Unbowed France, LFI) has been one of those new parties on the left. Created in 2016, *La France insoumise* presents as one of its main objectives the urgent need for the people to regain its sovereignty stolen by national and supranational elites (Chiocchetti, 2019; Marlière, 2020).

In the mid-2000s, March and Mudde (2005) already observed a general tendency of radical left parties to turn toward a new ideology, "social-populism", defined on the basis of two elements: the drawing of an antagonistic boundary between the people and the elite; and the idea that "politics should be the expression of the general will" (Mudde, 2004), which implies a Rousseauian vision of democracy "which sees the sovereign people as the exclusive source of political power" (Ivaldi, 2018). The aim of this chapter is to analyze how a part of the French radical left, embodied by Jean-Luc Mélenchon, mobilizes the theme of sovereignty, defined as the "claim to ultimate authority" (Walker 2003 in Brack et al., 2019).

Analyzing left-wing populist movements' relationship to sovereignty first of all contributes to the understanding of the major political changes that Western Europe has experienced since the end of the 2010s. It is crucial also because some of these parties have succeeded in taking power and others are on the verge of taking power. In the French case, Mélenchon ran for the first time in the presidential election in 2012, as the candidate of a left-wing coalition (*Front de gauche* [Left front]) and obtained 11.1% of the votes. During the 2017 presidential election, he presented himself as the candidate of *La France insoumise*, a more transversal movement. LFI was created to overcome the limits reached by the strategy of the union of the left of the *Front de gauche*, and partly under the influence of left-wing populist movements which opposed the people to the elite rather than claiming a left-wing identity—e.g. the Latin American movements of the "pink tide" of the 1990–2000s (e.g. Rafael Correa in Ecuador, Hugo Chávez in Venezuela, Evo Morales in Bolivia), and European movements such as *Podemos* (We Can) in Spain created in 2014 (Alexandre et al., 2021). In 2017, LFI obtained 19.6% of the votes. Since then, the party has established itself as the main left-wing force in France, well ahead of the French *Parti socialiste* (Socialist Party, PS). The hegemony *La France insoumise* had acquired in the 2017 election was confirmed during the 2022 presidential election in which Mélenchon presented himself under the banner *Union Populaire* (Popular Union, UP) and obtained 22% of the votes in the first round.

Left-wing populist parties are most often studied through the prism of their relationship to popular sovereignty. In this chapter, I will broaden this analytical framework by looking at sovereignty in its multiple dimensions. Four dimensions have been identified by Brack et al. (2019): (1) national sovereignty; (2) supranational sovereignty; (3) parliamentary sovereignty; and (4) popular sovereignty. The aim of this chapter is to examine what place the issue of sovereignty occupies in the discourse[1] of French left-wing populism and what types of sovereignties are emphasized more. I will show that these four dimensions are intertwined in Mélenchon's discourse. According to him, the sovereignty of the people must be exercised directly (mechanism of direct democracy, social movements), indirectly (through the Parliament), and within the national framework. Mélenchon argues that popular sovereignty is today threatened by several enemies among which can be found supranational bodies as the European Union (EU) and the North Atlantic Treaty Organization (NATO)—organizations that he portrays as defenders of financial capitalism and authoritarian liberalism.

It should be noted from the outset that Jean-Luc Mélenchon's sovereignist discourse is influenced by the national inter-party competition and especially by the presence of a strong far-right party currently represented at the time of writing this chapter by Marine Le Pen (succeeded by Jordan Bardella in 2022). In France, before Jean-Luc Mélenchon created the *Front de gauche*, the political arena was already familiar with a populist discourse—the radical-right one of the *Front National* (National Front, FN) (Betz, 2016), renamed *Rassemblement National* (National Rally, RN) in 2018. Jean-Luc Mélenchon's political opponents regularly use the term "populism" to draw parallels between his political movement and that of Marine Le Pen, to point their demagoguery, and to associate them with negative anger, mass irrationality, and a danger to (liberal) democracy. In this context, Mélenchon has constantly attempted to distance himself from the FN/RN in order to prevent any amalgam. This distancing is even more marked when Mélenchon develops a sovereignist discourse, in which case he runs the risk of being accused of "playing into the hands" of the far right. The analysis provided in this chapter will shed a light on how Mélenchon distances himself from the far right regarding popular sovereignty (he constructs an "inclusionary" people) and national sovereignty (the patriotism he defends can be described as "civic" and is partly constructed against American imperialism).

The analysis is based on a corpus (2011–2022) of various materials on which I conducted a lexicometric analysis (through Iramuteq) and a qualitative content analysis. I focus on the figure of Jean-Luc Mélenchon as the mutations of the French radical left since the end of the 2000s are above all embodied in the figure of this political leader who favors a communication based on strong and unique leadership (Alexandre et al., 2021). The analysis focuses mainly on the three presidential campaigns in which he participated (2012, 2017, 2022).

The chapter is divided into six sections. I first present the theoretical framework on which the analysis is based. I then expose the corpus and the methods used throughout this chapter, and the results of the lexicometric analysis. Following this, I show popular sovereignty is the backbone of Mélenchon's discourse and that according to him it is exercised through the Parliament and within the national framework. Throughout the text, I show that according to Mélenchon, sovereignty is being attacked on several fronts: by national and supranational bodies, but also by the French, European, and American elites. He is opposed to the very notion of "supranational sovereignty" which he considers to be an oxymoron.

9.2 Left-Wing Populism and the Multiple Dimensions of Sovereignty

There is a relative consensus in the academic field on the definition of the concept of populism (Chiocchetti, 2019; De Cleen & Stavrakakis, 2020; Hunger & Paxton, 2021) which relies on minimal and formal criteria. Minimal, as it is based on three core elements: people-centrism, anti-elitism, and popular sovereignty (which implies a call for a "radicalization of democracy"). Formal, as scholars agree that populism can be associated with different ideologies (Laclau, 2005). Therefore, populism can be defined as a *thin ideology* (e.g. as elitism or pluralism) which is most often attached to a *thick ideology* (e.g. as socialism, communism, liberalism) (Mudde, 2004).

Jean-Luc Mélenchon's different movements (*Front de gauche*, *La France insoumise*, *Union populaire*) belong to the "populist socialist" party family as defined by March (2011). Populist socialist parties belong to the radical left family, a party family located "to the left of social democracy" (March, 2011: 15) and characterized by its anti-capitalism, its opposition to "globalized neoliberalism", its defense of a mixed economy

model, and its adherence to democracy (March, 2008: 3). Socialism is the host ideology of populist socialist parties, but they rather call upon the "people" more than upon the "working class". Their anti-capitalism is materialized by a critique of the "establishment" and of a corrupt elite (March, 2008, 2011; March & Mudde, 2005).

As pointed out by Borriello and Brack (2019), European integration, particularly since the ratification of the Maastricht Treaty in 1992, has "opened the Pandora box of sovereignty" with the rise of Eurosceptic parties criticizing the loss of sovereignty. The numerous crises the EU has been through have fueled sovereignist discourses. While facing these crises, populist actors have thus defended sovereignty at many levels. Building on the work of Brack et al. (2019), the chapter aims to understand how sovereignty has been mobilized by Jean-Luc Mélenchon, by distinguishing four types of sovereignty: popular, parliamentary, national, and supranational.

The existing literature has identified popular sovereignty—and the imperative need for the people to "(re)take power"—as a core element of populism. Borriello and Brack (2019) showed that the "tensions between different types of sovereignty […] diverge depending on [the] ideology" of populist parties. Indeed, the *thick ideology* to which populism is attached explains how populists will define the "people" and the "elite", and consequently the very nature of the sovereign people. Consequently, the "people" and the "elite" can be defined as *empty signifiers* (Laclau, 2005), or *empty vessels* (Mudde & Rovira Kaltwasser, 2013), as their content depends on how the political actor will "fill" them. Left-wing (inclusionary) populism delimits the frontier between the "people" and the "elite" from a socio-economic dimension whereas right-wing (exclusionary) populism does it according to socio-cultural criteria (Mudde & Rovira Kaltwasser, 2012).

Regarding national sovereignty, the links between nationalism and right-wing populism have been extensively analyzed in the academic literature (see, for instance: Moffitt, 2018; Mudde & Rovira Kaltwasser, 2017; Pappas, 2019) and much less analyzed in the case of European left-wing populism. At an analytical level, I do not associate populism with nationalism, as I consider that their articulation is "contingent" (Custodi, 2020; De Cleen & Stavrakakis, 2017, 2020). However, they are often, in "political practice" linked (De Cleen & Stavrakakis, 2020). Scholars have shown that recent European left-wing populist movements such as

Podemos in Spain and *La France insoumise*, inspired by the Latin American "pink tide" of the 2000s, have developed a strong "national-popular" rhetoric and have insisted on the need to get back the "lost sovereignty" of their country (Chazel, 2019; Chazel & Dain, 2021; Chiocchetti, 2019; Custodi, 2020). To be sure, when defending national sovereignty, left-wing populist parties differ drastically from right-wing populisms in the narrative they present. Borriello and Brack (2019: 836) distinguished between left-wing populist movements which "[tend] to oppose economic liberalization and the opening up of borders as threats to social rights" and right-wing populist movements which "[point out] threats to national identity differentiate between the nation's own people and the 'cultural other'". One could also add that left-wing populists usually develop a civilian and democratic nationalism, which varies considerably from the ethnic nationalism mobilized by right-wing populist movements.

Regarding parliamentary sovereignty, scholars have shown that it is usually less mobilized by populist parties, sometimes not mentioned (Borriello & Brack, 2019) or that it is "in typical populist vein […] dismissed" (Freeden, 2017). Other studies, such as the one of Müller (2016), have opposed the notion of popular sovereignty defended by populist parties (that Müller considers to be an illusion) to parliamentary sovereignty (that Müller considers to be the real foundation of democracy). For some other researchers, the "fusion of popular and parliamentary sovereignty", for instance through referenda, can actually "[undermine] the very principle of parliamentary sovereignty" (Wellings & Vines, 2015). However, other scholars move away from the Manichean opposition between "popular sovereignty" and "parliamentary sovereignty" (Bickerton & Brack, 2022). Despite their anti-establishment rhetoric, populist actors seek power, votes, and influence over public policies and therefore, they accept the rules of electoral contestation and of the political institutions. Moreover, scholars have shown that left-wing populist movements, as *Podemos*, are defined by their respect toward the parliamentary institution as they "focus on (…) institutions" and on a "change through institutions" rather than through social movements (Diaz-Parra et al., 2015). In this vein, some have challenged the usual opposition made between populism and institutionalism (Aboy, 2010; Franzé, 2017) showing that populism is not limited to an anti-institutional discourse that simply emphasizes the need for the people to exercise power *directly*.

9.3 Methods and Corpus

I conducted a corpus-based analysis with (1) an automated text analysis performed with Iramuteq and (2) a qualitative content analysis to re-contextualize the leader's messages. The first step corresponds to an exploratory analysis whereas the second step corrects the biases associated with purely quantitative text analysis. The lexicometric analysis was done using the corpus presented in Table 9.1. As already stated, I focus on the three presidential elections in which Jean-Luc Mélenchon participated as a candidate: 2012, 2017, and 2022. I rely on various types of materials of different nature. I look at the discourse delivered by the party leadership: the direct messages Mélenchon issues or the messages he has explicitly approved. The corpus is divided into five categories: (1) meeting speeches; (2) blog posts; (3) press interviews; (4) political programs; and (5) elections candidate's pledges (See Table 9.1).

The first step of the analysis relies on a statistical reading of the corpus. I conducted frequency analyses with Iramuteq on each corpus. Frequency analyses involve comparing the frequency of words to compare different

Table 9.1 Corpus used for the lexicometrical analysis[2]

		Meeting speeches	*Blog posts*	*Press interviews*	*Program*	*Pledge*
2012 *Front de gauche*	Number of texts	12	33	6	1	1
	Time span	29 June 2011 to 6 May 2012	1 February 2011 to 12 April 2012	21 June 2011 to 7 January 2012	2012	2012
2017 *La France insoumise*	Number of texts	9	28	9	1	1
	Time span	5 June 2016 to 6 May 2017	8 July 2016 to 7 May 2017	26 August 2016 to 16 April 2017	2017	2017
2022 *Union populaire*	Number of texts	12	218	9	1	1
	Time span	16 October 2021 to 20 March 2022	20 November 2020 to 3 April 2022	2 October 2021 to 7 April 2022	2022	2022

corpora to each other. Since the size of the corpora are not homogeneous, I reduced the frequency to 100,000 words. This tool was mainly used to look at the variations of a word in time (between elections). When I used this tool, I took into account that I could not measure the importance of an element simply by looking at the place a word occupied in the active forms. For instance, it is not possible to understand the place of the democratic issue only by looking at the ranking of the word "democracy" in the active forms as this issue is linked to other terms, for example the "presidential monarchy", and the "Sixth Republic" in Mélenchon's case. I, therefore, identified a set of lemmas for each dimension of sovereignty based on my preliminary readings of the corpus and on the existing literature.

The second step corresponds to a qualitative content analysis which I conducted by using a wider range of data from the periods between presidential elections (selected according to their importance in relation to the issue of sovereignty in Mélenchon's discourse). I distinguished between the sovereignist messages that Mélenchon addressed to the public space, and the reflexivity he may have about it.

9.4 An Exploratory Lexicometric Analysis of the Weight of Sovereignty in Jean-Luc Mélenchon's Discourse

The frequency analysis shows that in Jean-Luc Mélenchon's discourse, the term "sovereignty" itself is underused compared to the whole of the terms in his discourse. When comparing to other presidential candidates, the "Discourses Measures" database[3] shows that in 2012, 2017, or 2022, the candidates from the centrist right to the far right overused the term of "sovereignty" compared to Jean-Luc Mélenchon and other left-wing candidates. These first results could suggest that the issue of sovereignty—often conflictual within the partisan left and within critical theories—is abandoned by the French left meanwhile this theme is central to the French far-right's discourse as "the words *souveraineté* (sovereignty) and *souverain* (sovereign) abound in [Marine Le Pen's] political discourse" (see Alekseev in this volume). However, the frequency analysis also shows that sovereignty is highly present in Mélenchon's discourse in 2012, 2017, and 2022, but that he favors indirect forms to defend its multiple dimensions (see Table 9.2). Throughout the three

elections, lemmas related to popular sovereignty (e.g. people, democracy) and national sovereignty (e.g. country, France, Republic) are the ones he mobilizes the most, whereas the parliamentary (e.g. presidential monarchy) and supranational (e.g. European Union) dimensions of sovereignty are much less mobilized (see Fig. 9.1).

9.5 Popular Sovereignty as the Backbone of Jean-Luc Mélenchon's Discourse

Jean-Luc Mélenchon considers that in the Republican tradition "sovereignty can only be understood as the one of the people. The word merges with that of democracy".[4] He frequently refers to the French Revolution of 1789 as a historical reference and he repeatedly recalls that the initial distinction between the left and the right found its origins on different visions of what sovereignty should be. For instance, in November 2014 during an interview, he stated:

> The Great Revolution is based politically and symbolically on the question of the sovereignty of the people. We know that the primitive scene that organized the division of the left and the right was that of the deputies siding with the king's right or left, in October 1789, depending on whether they were in favor or against his right of veto. Since sovereignty is only national, as the Declaration of the Rights states, who is the depositary of sovereignty? The people or the king? Everything starts from there, in France and far beyond.[5]

Jean-Luc Mélenchon proposes a definition of the people which can be defined as inclusionary as it includes "specific groups" (e.g. the victims of neo-liberalism, the discriminated minorities, the declassified middle classes) in the "distribution of state resources", in "political participation and political representation", and since it delimits the frontier between the people and the elite based on socio-economic criteria (Mudde & Rovira Kaltwasser, 2013: 158–161). Mélenchon distances himself from the "exclusionary" people defended by the *Rassemblement National*, for which "the people […] are always the 'nationals', making the two concepts [the Nation and the People] difficult to fully disentangle" (see Lorimer in this volume), and which defends a "populist model of ethnic democracy centred on the nation-state" (see Alekseev in this volume).

Table 9.2 Absolute and relative frequencies of use of lemmas related to the different dimensions of sovereignty in Jean-Luc Mélenchon's discourse during the 2012, 2017, 2022 presidential elections

		2012		*2017*		*2022*	
		Absolute	*Relative (100,000)*	*Absolute*	*Relative (100,000)*	*Absolute*	*Relative (100,000)*
	Sovereignty [souveraineté]	48	26.746	27	13.6921	61	16.5832
Popular sovereignty	Left [gauche]	260	144.8767	110	55.78291	207	56.27431
	People [peuple]	265	147.6627	227	115.1156	276	75.03242
	People [gens]	134	74.6672	566	287.0284	419	113.9079
	Referendum [référendum]	18	10.02992	31	15.72064	47	12.77726
	Classe [classe]	42	23.40315	36	18.25623	72	19.57367
	Democracy [démocratie]	104	57.95066	71	36.00533	119	32.35093
Parliamentary sovereignty	Parliament [Parlement]	42	23.40315	36	18.25623	76	20.6611
	Presidential monarchy [monarchie présidentielle]	5	2.78609	30	15.21352	9	2.446709
	Assembly [Assemblée]	11	6.129397	38	19.27046	161	43.76891
National sovereignty	Homeland [patrie]	26	14.48767	28	14.19929	30	8.155698
	Nation [nation]	33	18.38819	40	20.2847	83	22.5641
	Country [pays]	306	170.5087	298	151.121	575	156.3175
	France	284	158.2499	226	114.6085	778	211.5044

		2012		2017		2022	
		Absolute	*Relative (100,000)*	*Absolute*	*Relative (100,000)*	*Absolute*	*Relative (100,000)*
Supranational sovereignty	Republic [République]	66	36.77638	116	58.82562	199	54.09946
	European Union [union européenne]	199	110.8864	55	27.89146	58	15.76768
	NATO [OTAN]	7	3.900525	24	12.17082	50	13.59283
	IMF [Fonds monétaire internationale/FMI]	46	25.63202	1	0.507117	2	0.543713
	European commission [commission européenne]	69	38.44804	24	12.17082	109	29.63237

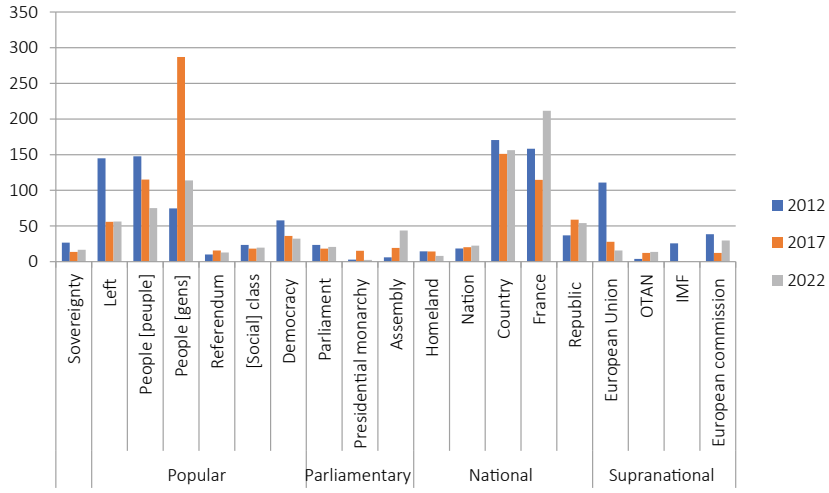

Fig. 9.1 Relative (/100,000 words) frequencies of use of lemmas related to the different dimensions of sovereignty in Jean-Luc Mélenchon's discourse during the 2012, 2017, 2022 presidential elections

During the three presidential campaigns in which he ran, Jean-Luc Mélenchon mobilized an axis opposing the French "people", sole holder of sovereignty, to the national and supranational "elites" who would have stolen its sovereignty. Mélenchon opposes *le peuple* [the people], *les gens*[6] [the people], against the elite, e.g. *la caste* [the caste], l'*oligarchie* [the oligarchy], *ceux qui se gavent* [those who take too much]. In 2012, 2017, and 2022, he intended "precisely to bring together […] three ideas: occupied public squares, the people, its sovereignty".[7] Although he addressed the "people" as early as 2012, it was only in 2014, in his book *L'Ère du peuple* (The Era of the People), that he theorized the emergence of this new political actor as the main political subject (replacing the working class) of the "citizen revolution" that he aimed to lead—inspired by Rafael Correa's project. Therefore, it was during the 2017 presidential election that this axis was most mobilized as it corresponds to Mélenchon's "populist turn" (Chiocchetti, 2019; Marlière, 2020). The lexicometric analysis confirms an overuse of the term "people" during this campaign (see Table 9.2).

To theorize the "people", Mélenchon uses Negri and Hardt's concepts of "multitude" as well as the writings of Ernesto Laclau, theorist of populism whose work has been considered as a theoretical reference within several left-wing populist movements such as *Podemos* (Kioupkiolis, 2016). According to Mélenchon, the "people" corresponds to "urbanised human multitudes": a multitude which becomes a "people" when it "sets common goals" (Mélenchon, 2017 [2014]). He relies on Karl Marx's distinction between "class in itself" and "class for itself" which he adapts to the concept of "people" by recalling that the latter only exists when it can exercise its sovereignty. He writes (2017 [2014]):

> The theory of the citizen revolution postulates the mutation of the "people in itself", the common people forming the multitude without a common project, into a "people for itself" becoming an actor of history. It shows that it does it by the exercise of its sovereignty on the members who compose it and on the territory which it occupies.

Mélenchon frequently refers to the Arab Spring of the early 2010s, to the 2011 "Indignados" movement in Spain, and to recent French social movements as the Yellow Vests (2018–2019). He encourages these movements as he considers that they are part of the global "citizen revolution" he is advocating for. For instance, in November 2018, Mélenchon explained that the Yellow Vests movement allowed the French people to regain its sovereignty in the following way:

> Everywhere, in one way or another, the Yellow Vests movement has signaled the beginning of a new era, that of the people becoming sovereign again. The first word that comes to mind when addressing the Yellow Vests is a huge thank you. Thank you for having awakened the dignity of the French people [...] Thank you for having re-established the right of the humblest, the oppressed, of the exploited [...] for showing their humor, their contempt for all the powerful.[8]

More recently, during the 2022 presidential campaign, Mélenchon has on several occasions recalled the importance for the sovereign people to express themselves in the street, through mass movements. For instance, during a meeting in Toulouse on April 3, 2022, he stated:

> Whatever happens, and especially if we win, don't be demobilized, be vigilant, demanding, and never surrender anything.[9]

Mélenchon also proposes to put in place mechanisms of direct democracy as the introduction of a Citizens' Initiative Referendum (RIC)—which was the main claim of the Yellow Vests (Gonthier & Guerra, 2022)—whereby "citizens who gather enough signatures can remove elected officials from office, propose or repeal a law, and amend the Constitution".[10]

9.6 The Defense of Parliamentary Sovereignty Against the "Presidential Monarchy" (National Elite) and the European Union (Supranational Elite)

Although Jean-Luc Mélenchon calls on the people to exercise their sovereignty directly, he also considers that its sovereignty cannot be exercised outside the framework of representative institutions. Therefore, he does not consider popular sovereignty and parliamentary sovereignty separately. Traditionally, a significant part of the radical left has criticized the institutions of "bourgeois democracies" as instruments at the service of the ruling classes, but Mélenchon does not fit directly into this tradition. He is deeply attached to the republican institutions of France—although he wishes to "democratize" them. Mélenchon's strong attachment to representative, republican, and democratic institutions can partly be explained by his activist trajectory as he was politically socialized within a social-democratic party. Before creating the *Parti de gauche* (Left Party) in 2008, he was a member of the *Parti socialiste* during thirty-two years but then left the party considering it had reached an impasse following its neo-liberal turn (Confesson, 2019; Mathieu, 2015).

Mélenchon regularly speaks about the "greatness" and the "nobility"[11] of parliamentarianism. His ambition is to "radicalize" democracy through representative institutions and by giving more weight to Parliament. Following this idea, Mélenchon explained in March 2017:

> I want to be clear on the institutional form that the expression of popular sovereignty must take. We agree that a direct relationship of power is not possible for 65 million people. The need for a mechanism of representation is therefore almost unavoidable […] Voting, random draw, without being identical or of equal scope, can be considered as such mediations.[12]

Mélenchon identifies several enemies of parliamentary sovereignty. The corpus analysis shows that he considers that among supranational authorities, it is first of all the European Union (EU) which threatens the sovereignty of national parliaments. For instance, he considers that the EU forced the ratification of the Comprehensive Economic and Trade Agreement (CETA) by "avoiding the national parliaments" which represented an "incredible proof of the EU's anti-democratic stubbornness".[13] Similarly, Mélenchon denounced the process of ratification of the Japan-EU Free Trade Agreement (JEFTA) and the loss of sovereignty of the national parliaments which had "not even be consulted".[14]

Mélenchon also considers that the current institutions of the French Fifth Republic do not allow the French people to fully exercise its sovereignty. The political programs he presented in 2012, 2017, and 2022 were directed against the French "presidential monarchy". Since 2017 and the election of Emmanuel Macron as the President of the French Republic, he often referred to him as the king "Macron Ier". To counter this "presidential monarchy", Mélenchon defends a more parliamentary regime, proposes the instauration of a Sixth Republic in which the executive would have less power than in the current Constitution, and proposes the organization of a Constituent Assembly to write the new Constitution to give back the power to the people. Therefore, the radicalization of democracy he advocates for passes through institutions, and not through the criticism of representation per se.

This long-term tendency to defend Parliament as a place of expression of popular sovereignty was reinforced during the COVID-19 crisis. The crisis pushed Mélenchon to multiply his interventions to criticize Emmanuel Macron's authoritarianism and to show the flaws of the "presidential monarchy". During this period, he has repeatedly reiterated and confirmed his commitment to parliamentary sovereignty and criticized the weight the National Defense and Security Council had in the management crisis—i.e. a restricted council of ministers which sets French security and defense policy, and which was mobilized during the COVID-19 crisis to decide the government's health policy. While Mélenchon had supported the introduction of a lockdown in March 2020 (Chazel, 2020), he started to openly criticize the management of the health crisis in November 2021 and recalled the importance of parliamentary sovereignty facing an executive power that ruled alone. For instance, during an intervention in the National Assembly, on November 4, 2016, he explained:

> You [the government] are building, with a smile on your face and with general applause, a special kind of authoritarian regime […] The Assembly does not mean anything to you […] We are under the leadership of the Defense Council, which exceeds the rights that the Constitution and the Defense Code give it, decides everything, and we are summoned here to record your decisions under your acclamation. What you are doing – suspending freedoms while ignoring the National Assembly – defines you.[15]

The strategy chosen by the *Union populaire* for the 2022 legislative elections is another interesting example of Mélenchon's defense of parliamentary sovereignty. After obtaining 22% of the votes in the first round of the 2022 presidential election, Jean-Luc Mélenchon announced on April 19, 2022, five days before the results of the second round—which pitted the liberal Emmanuel Macron against the far-right candidate Marine Le Pen—that he would ask the French people to "[elect] him Prime Minister".[16] He announced his will to impose a cohabitation regardless of the political label of the President and used the term "elect" to give importance to these elections, while in France the Prime Minister is *appointed* by the President. Although there was an obvious strategic dimension to this statement, he also took this opportunity to reiterate his commitment to parliamentary sovereignty by reaffirming the importance of the National Assembly and by denouncing the monarchical character of the Fifth Republic.

9.7 The Nation-People Against Supranational Entities

Jean-Luc Mélenchon also considers that the people can only exercise its sovereignty within the national framework. Therefore, national sovereignty is a core element of his discourse (see Table 9.2). It should be pointed out that Mélenchon constructs a "people-nation" by directly associating national sovereignty with popular sovereignty, unlike other right-wing populist movements such as Jean-Marie Le Pen's *Front national*, whose discourse was above all based on the defense of national sovereignty and dissociated of popular sovereignty (see Lorimer in this volume).

9.7.1 *A Civic Definition of the Homeland*

Mélenchon has always been a member of the left republican tradition inherited from the French Revolution. He is particularly committed to the respect of national sovereignty (Chazel & Dain, 2021). He conceives France as a revolutionary homeland and as a Social Republic. In his patriotic tale, Mélenchon defends France as a "universalist" nation and recalls the "greatness" of this country.

In 2012, 2017, and 2022, Mélenchon mobilized very strong Republican symbols (*La Marseillaise*, the French flag), made references to patriotic figures as Marianne, and chose symbolic places to organize his meetings (La Bastille, Place de la République). He relied on a civic patriotism that opposes the ethnic nationalism represented by the far right of Marine Le Pen. However, while in 2012 he opposed left-wing values to the nationalism of the *Front national* (National Front), in 2017 and 2022 he began to try to convince the "fâchés mais pas fachos" (angry but not fascist—abstentionists and part of Marine Le Pen's electorate). Therefore, from 2017, Mélenchon adopted a more national-popular strategy than in 2012. Since then, he has dropped the symbology of the traditional radical left and has preferred to mobilize national transversal symbols—e.g. the red communist flags were removed from his rallies in 2017 in favor of tricolor French flags.

During the 2022 presidential campaign, Mélenchon has mobilized the concept of "creolization"[17] to mobilize a patriotic rhetoric while distinguishing himself fully from the French far right represented by Marine le Pen (RN) and Éric Zemmour (*Reconquête* [Reconquest]), both presidential candidates. The concept allowed him to reaffirm his attachment to the Republican tradition while not discriminating against the cultural particularities of minorities by (1) recognizing the importance and inevitability of "encounters of different cultures"[18] in every national community and (2) while distancing himself from communitarianism as the concept of "creolization" defends the "mixing and spontaneous creation of common cultural practices" rather than "assimilation […] through the standardisation of practices".[19] Mélenchon explained, in an interview on September 4, 2021, that "creolization completes [the] universalism without cancelling it".[20]

9.7.2 *Defending French Independentism Against the UE and NATO*

During the three presidential campaigns, Mélenchon argued that a "new French independentism" should be built. According to him, France should be as autonomous as possible in terms of material and industrial infrastructures to ensure industrial knowledge, employment, and national sovereignty.

In 2012, 2017, and 2022, Mélenchon strongly defended France's sovereignty facing both the EU and the United States. Regarding the EU, Mélenchon is not an opponent of Europe per se. In 1992, while he was still a member of the PS, he defended the Maastricht Treaty, and, even today, he still defends the importance of building a real "European protectionism". However, he considers that the idea of popular sovereignty does not mean anything while being a member of the current "anti-democratic"[21] EU dominated by Germany. He opposes himself to the neo-liberal dimension of the EU, and to the austerity policies implemented in most European countries following the 2008 crisis, to the budgetary rigor policies, and to the policies of economic liberalization increasing the flexibility of the labor market. Mélenchon is highly critical of the notion of "European sovereignty" developed by Emmanuel Macron. He considers Macron's position to be the continuity of the betrayal of democracy initiated by the French government and the EU since the ratification of the Lisbon Treaty in 2007. This ratification has been described by numerous political actors as anti-democratic as two years earlier, during the 2005 French European Constitution referendum, 54.7% of the French people had expressed themselves against the Treaty establishing a Constitution for Europe. In 2018, Mélenchon stated:

> The people's vote on the Constitutional Treaty of 2005 has been flouted, the budgetary treaties condition public policies, and the management of the currency is out of the people's reach. The practice of Emmanuel Macron's power constitutes a new authoritarian stiffening.[22]

However, the lexicometric analysis shows that the theme of the European Union has lost intensity in each election since 2012 (see Table 9.2). It was extremely present in 2012, and less so in 2017 and 2022. Mélenchon softened his rhetoric on the EU in a French context where Euroscepticism remains low, and in which political parties critical of the EU and which aspire to govern, such as the RN, have followed the same strategy. In

2017, Mélenchon considered his program was not compatible with the current European treaties and proposed a two phases plan: (1) Plan A: a concerted exit of the European treaties and their re-negotiation; and (2) Plan B: a unilateral exit of the European treaties. In 2022, the "Plan B" was replaced by the activation of "the opt-out clause […] regarding the parts of the European treaties that prevent certain parts of the program from being implemented".[23]

Jean-Luc Mélenchon's program also includes getting France out of NATO. During the 2017 electoral campaign, he presented himself as the "candidate for peace" and strongly insisted on the fact that peace could not be achieved while still being a member of this military alliance, arguing that "the Europe of war passes through NATO".[24] Mélenchon also considers that by staying within NATO leads France to be a "vassal country" of the United States. He stated in 2018:

> The United States, through their aggressive actions, are destabilizing the international order. As for our country, it cannot, by being in NATO, promote respect for international law and the UN as a framework for dialogue between States.[25]

The 2022 presidential election was marked by Russia's invasion of Ukraine on February 24 on the orders of Vladimir Putin. At this occasion, and despite the polemics surrounding his position, Mélenchon confirmed his desire for France to leave NATO, showing that, despite the possible negative electoral fallout, his anti-American rhetoric structures his discourse. Regarding the war in Ukraine, Mélenchon defended an "non-Aligned" position while repeating that it was not synonymous with *neutrality*, but that it was the only way to guarantee the sovereignty of France. This "non-Aligned" position allowed him to remain critical of the North American and European military alliance, while clearly condemning the Russian invasion and calling for a ceasefire and the withdrawal of Russian troops. Although this position was strongly criticized by his political opponents, Mélenchon defended it throughout the presidential campaign, showing his attachment to national sovereignty despite the controversies that may arise from it. This position, in this particular context, suggests that his anti-American rhetoric will probably not be abandoned in the years to come regardless of the geopolitical shifts that will take place, and of possible negative electoral consequences.

9.7.3 *Inter-Partisan Conflicts Around the "National-Popular" Discourse*

The development of a populist discourse emphasizing the importance of popular and parliamentary sovereignties has been consensual within LFI. However, the national question has largely divided the party and opposed (1) defenders of a "no-border rhetoric" which consider that the adoption of a national-popular discourse blurs the boundaries with the far right and (2) defenders of national sovereignty who denounce the "the economic consequences of massive immigration for the living conditions of the working classes" (Mathoux, 2020: 188). These two currents can both be considered as the ends of a long continuum within the party. In 2017, Mélenchon represented a synthesis of the two ends of this continuum. He tried to present the problem of immigration or multiculturalism in a positive light, while reaffirming the priority of republican values. During the 2017 campaign, in one of his most noticed meetings, in Marseille, the LFI candidate paid tribute to the 30 000 people who died in the Mediterranean with a minute of silence, declaring that he wanted to be the "president of peace". During the same meeting, he affirmed that it was necessary to solve the problem of immigration at the source, stating that "immigration is always a forced exile, a suffering".[26] Since the end of 2017, Mélenchon has oscillated between the two positions, sometimes shifting his position toward one of the extremities, while trying to keep together both electorates. However, in the French context where LFI's opponents tend to draw parallels between Marine Le Pen's RN and Jean-Luc Mélenchon's LFI, the most fervent defenders of a nationalist rhetoric have been excluded from the party in 2018 (e.g. Georges Kuzmanovic). The conflicts that were raised within LFI reflect the main debates and tensions that define current radical left parties: between supporters of internationalism and supporters of "progressive" patriotism.

9.8 Conclusion

The main objective of this article was to analyze Jean-Luc Mélenchon's use of the notion of sovereignty in its multiple dimensions by proposing an analysis of a corpus of texts and speeches over a period of eleven years (2011–2022), including the three presidential elections in which he was a candidate. The results of the analysis show that in his speeches and programs Mélenchon mainly emphasizes two types of sovereignty:

popular and national. He considers that, in a democracy, sovereignty only belongs to the people, and that the people can only fully exercise its sovereignty within the national framework. Mélenchon also defends that popular sovereignty should be exercised through social movements and mechanisms of direct democracy. Therefore, my analysis confirms the existence of "an elective affinity […] between populism and direct democracy" (Mudde & Rovira Kaltwasser, 2017: 16–17). However, the analysis also showed that Mélenchon was deeply committed to parliamentary sovereignty. Therefore, against the widespread idea that left-wing populism, by emphasizing popular sovereignty, puts aside parliamentary sovereignty, the chapter has shown that these two sovereignties are in fact complementary in Mélenchon's discourse. While not denying the existence of a conflict between the rhetoric of popular and parliamentary sovereignty—which was for example very present in the discourse of the British Conservative party in the context of the Brexit (see Bressanelli in this volume; see also Lord, this volume)—my analysis, therefore, suggests that this conflict does not *necessarily* structure the discourse of all populist parties. I argued that Mélenchon does not reject democratic institutions and representativeness but rather advocates for a "radical reformism" (Mouffe, 2018: 72). The analysis also shows that Mélenchon considers that the neo-liberal and conservative French, European, and American elites, as well as supranational institutions, are a threat to democracy. According to him, they undermine both parliamentary and national sovereignties leading to a dispossession of the sovereignty of the people.

The development of a sovereignist discourse by Mélenchon does not seem to have hindered his political progression, nor to have created confusion between him and the extreme right in the eyes of the electorate. He has continued to improve his electoral results since 2012 and since 2022 has become the main left-wing force in France. It should be noted that LFI has not recuperated voters from the RN but rather benefited and contributed to the collapse of the Socialist Party (Alexandre et al., 2021) which only obtained 6,4% of the votes in 2017 (19.6% for LFI) and 1.7% in 2022 (22% for UP). This hegemony on the left has been confirmed in the June 2022 legislative elections, when LFI presented itself as the main party of the electoral coalition *Nouvelle Union populaire écologique et sociale* (New Ecological and Social People's Union, NUPES), which included the Socialist Party, the *Parti communiste français* (French Communist Party) and the Green party *Europe Écologie Les Verts* (Europe

Ecology—The Greens). Future work could focus on the adherence of LFI voters and activists to the sovereignist discourse of the party to understand whether its hegemony is perennial (adherence to the discourse and the program) or contextual (default choice).

Future research could also conduct comparisons on larger samples to fully understand the articulation between sovereignty and left-wing populism, in particular the links between popular sovereignty and national sovereignty. I showed that French left-wing populism developed a national-popular rhetoric that constructs the notion of the "people" in relation to national sovereignty. It would be interesting to examine if all European left-wing populist parties mobilize the nation in their populist narrative and the differences that exist regarding (1) the form of the state that is defended (e.g. federal, unionist) and (2) the designation of the (supranational) enemies (e.g. Euroscepticism, slight criticism of the EU) in the light of national contexts.

Notes

1. The term discourse is defined in a broad way and includes rhetorical and symbolic elements, the speech as such, the ideology, the program.
2. For each election, I recovered material from the moment Jean-Luc Mélenchon officially presents himself as a candidate for the presidential election.
3. Interactive database that allows to see from a specificity index the over-use or under-use of a term by all the candidates in a presidential election. Available online: http://mesure-du-discours.unice.fr/.
4. All the original French quotes have been directly translated in the text. Jean-Luc Mélenchon, "Le drapeau de l'Union n'est pas celui du peuple souverain", 16 October 2017. Available online: https://melenchon.fr/2017/10/16/le-drapeau-de-lunion-nest-pas-celui-du-peuple-souverain/.
5. Interview of Jean-Luc Mélenchon in *Regards*, by Roger Martelli and Catherine Tricot, 14 November 2014. Available online: https://melenchon.fr/2014/11/14/il-faut-federer-le-peuple-interview-regards/.
6. It should be noted here that the term "gens" in French is often translated into English as "people". It is important to distinguish between these two terms (gens/peuple), which are both used by the leaders of LFI. In French, "peuple" refers to a much more political, collective notion, whereas the term "gens" refers to more indeterminate individuals. However, the term "gens" has been used by the leaders to address the wider public in order to break away from left-wing discourse markers.

7. Jean-Luc Mélenchon, "Drouet et le nouvel âge citoyen des révolutions", 4 January 2019. Available online: https://melenchon.fr/2019/01/04/drouet-et-le-nouvel-age-citoyen-des-revolutions/.
8. Meeting of Jean-Luc Mélenchon, Bordeaux, 8 November 2018. Extract available online: https://twitter.com/jlmelenchon/status/1328631462887829507?lang=fr.
9. Meeting of Jean-Luc Mélenchon, Toulouse, 3 April 2022. Available online: https://www.youtube.com/watch?v=x4LEGmF3JuA.
10. 2022 political program, L'Avenir en commun. Available online: https://laec.fr/section/4/une-republique-permettant-lintervention-populaire.
11. Jean-Luc Mélenchon, "Grandeur et dérive du palementarisme", 21 June 2017. Available online: https://www.youtube.com/watch?v=anBYfs4r9Uc.
12. Jean-Luc Mélenchon, "Leçons de Barcelone", 18 March 2017. Available online: https://melenchon.fr/2017/12/18/lecons-de-barcelone/.
13. Jean-Luc Mélenchon, "CETA: libre-échange, Juncker passé en force. Les mensonges de Hollande s'écroulent", 29 June 2016. Available online: https://melenchon.fr/2016/06/29/ceta-libre-echange-juncker-passe-force-mensonges-de-hollande-secroulent/.
14. Jean Luc Mélenchon, "L'Europe va dans le mur, Juncker appuie sur l'accélérateur", 12 September 2018. Available online: https://melenchon.fr/2018/09/12/leurope-va-dans-le-mur-juncker-appuie-sur-laccelerateur/.
15. Intervention in the National Assembly, 4 November 2016.
16. Interview of Jean-Luc Mélenchon on BFMTV, by Bruce Toussaint, 19 April 2022. Available online: https://www.bfmtv.com/politique/elections/presidentielle/la-premiere-interview-de-jean-luc-melenchon-depuis-le-premier-tour-sur-bfmtv-en-integralite_VN-202204190615.html.
17. In linguistics, the term creolization originally refers to the process of inventing creole languages (a crossbreeding of languages that creates a new language).
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CHAPTER 10

Sovereignty in Political Discourses of the European Populist Radical Right: The Right of the People and the Right of the Peoples

Alexander Alekseev

10.1 Introduction

The emergence of the populist radical right (PRR) on the European political landscape in the early 1970s coincided, among other things, with the beginning of a new era of globalisation. Since then, ever-expanding and intensifying flows of ideas, capital, goods, and people across national borders have reshaped the face of the world. And even if the claim that "the rise of populism has been triggered by globalization and the consequent massive increase in inequality in many rich countries" (Fukuyama, 2018, p. 168) has remained heavily debated (see, e.g., Bergh & Kärnä,

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2021; Colantone & Stanig, 2019; Swank & Betz, 2003), various populist actors across the globe, including the populist radical right, have consistently blamed globalisation for the destruction of the world as it used to be (Gerbaudo, 2017). The populist radical right has emphasised that globalisation undermines sovereignty and menaces the very existence of the nation-state, the core concept in most PRR ideologies.

On the European continent, the topic of (restoring) sovereignty has gained particular salience in connection with the European Union (EU), EU membership, and European integration (see, e.g., Hainsworth, 2016; Meijers, 2017; Heinisch et al., 2020). The fierce discussions about sovereignty in the EU context(s) have touched upon a wide variety of issues ranging from migration and fiscal policies (Jabko & Luhman, 2019) to international trade (Crespy & Rone, 2022) and the rule of law (Coman, 2022a). So far, the sovereignty debates in Europe seem to have culminated in controversies surrounding Brexit (see, e.g., Baldini et al., 2020; Rone, 2021; Van Kessel et al., 2020). Yet, over the last few decades, various populist forces in Europe, both on the right and on the left of the political spectrum, have significantly intensified their calls to restore sovereignty that was allegedly stolen from the people by the national and global elites (see Borriello & Brack, 2019, for a comparative analysis but also the chapters by Chazel and Lorimer in this volume for in-depth analyses of (French) left- and right-wing populist discourses on sovereignty, respectively).

Nowadays, the populist radical right in the EU so frequently evokes sovereignty as one of the indispensable rights of the people(s) (Alekseev, 2021) that a clear need arises to examine how the European PRR constructs the relationship between the concept of sovereignty and the concept of rights and freedoms. This chapter explores how references to rights are discursively instrumentalised to construct PRR vision(s) of sovereignty in the EU context(s). In practice, it outlines concrete discursive strategies that contain references to rights and that are utilised by the EU populist radical right to discursively construct the people along PRR ideological lines, to advance populist radical right conceptions of (national and popular) sovereignty built upon the idea of a monocultural and ethnically homogenous majoritarian democracy, and to challenge the European Union as the embodiment of supranational sovereignty.

To identify common features in populist radical right interpretations of sovereignty across the European Union, I follow the logic of the "most different systems" research design (Przeworski & Teune, 1970) and take

the cases of two very dissimilar populist radical right parties in contrasting positions regarding access to power, i.e., in government and in opposition, from two very different, and yet compatible contexts within the framework of the EU. This chapter studies the cases of the *Prawo i Sprawiedliwość* (*PiS*, *Law and Justice*) leading a majority government in Poland and the *Rassemblement National* (*RN*, *National Rally*, formerly *Front National*) that has remained in opposition in France since its foundation in 1972. The two national contexts differ drastically: France and Poland have very dissimilar historical legacies and distinct societal and economic backgrounds; the French presidential republic differs remarkably from the Polish parliamentary republic in terms of organisation and functionality; France and Poland do not have equal political and economic power within the EU and in a wider international arena. And yet, both countries share the common institutional, axiological, and discursive framework of the EU.

By proclaiming a common attachment to a set of common values including the principles of liberty, democracy and respect for human rights and fundamental freedoms (Schimmelfennig, 2010; for details see, e.g., Consolidated Version of the Treaty on European Union, 2012), the EU has effectively set boundaries between the allowed and the forbidden in public discourses in all of its member states. At the same time, as a union, the EU has had to come up with common solutions to common challenges (e.g., climate change, global economic crisis, migration, etc.) (Risse, 2010, pp. 107–126; but see also, e.g., European Commission, 2015).

The shared experience of living in the European Union has inevitably had a strong impact on all the EU populist radical right and has been reflected in its ideology and political discourses (Vasilopoulou, 2018b). Moreover, as the idea of monocultural and ethnically homogenous majoritarian democracy lies at the very heart of any populist radical right project, all PRR conceptions of sovereignty inevitably question (albeit to a different extent) the legitimacy of the current European project, arguing for a Europe of Nations rather than a United States of Europe (Vasilopoulou, 2011).

In terms of empirical evidence, the chapter concentrates on the party discourses in the run-up to the 2019 European Parliament (EP) elections and focuses on electoral speeches given by the leaders of the two parties, i.e., Jarosław Kaczyński and Marine Le Pen. Usually, the elections to the European Parliament are treated as specific, second-order elections

(Reif & Schmitt, 1980), characterised by lower voter turnout, higher scores for protest parties, and lower scores for mainstream ones. Even if the 2019 elections still fall short of qualifying as genuinely first-order elections (Plescia et al., 2020), they mark a profound shift in European party politics (Mudde, 2019a, pp. 32–33). A general preoccupation with issues of immigration and security, which informed these elections, was reflected in the growing popularity of populist radical right politics across the EU. This, in turn, translated not only in populist radical right parties' electoral success, but also in a rightward shift of the mainstream right, coupled with the mainstreaming and normalisation of authoritarian, nativist, and populist discourses and policies across the continent (Mudde, 2019a). Thus, the analysis of PRR discourses in the EU electoral contexts becomes especially relevant. From this perspective, speeches given by populist radical right leaders are seen as "actual manifestations of political thinking" (Freeden, 1994, p. 151), perceived to be a priori ideologically loaded, and used to construct those conceptions of sovereignty that these politicians strive to convey to the voter.

This chapter sets off by proposing a theoretical framework for the research and by reviewing how the (uneasy) relationship between the concept of sovereignty and the concept of rights in populist discourses and ideologies has been explored in academic literature. The second section clarifies the methodology of this research, outlines the rationale behind the case selection, and describes the data under consideration. Next, the chapter presents the results of an analysis demonstrating how in practice Marine Le Pen and Jarosław Kaczyński use references to rights and freedoms when discursively constructing the concept of sovereignty. Finally, the chapter concludes with a comparative analysis of these conceptions of sovereignty and their transformations in line with the ideological core of the populist radical right.

10.2 The Discursive Construction of Sovereignty: A Theoretical Framework

What is sovereignty? This seemingly innocent question has not ceased to stir up debates in law and political science for decades. On the European continent, the discussions on the nature and contours of this heavily contested concept have been largely shaped by European integration and the challenges it has posed.[1]

Yet rather than theorising on the concept of sovereignty in general, this chapter explores how in practice populist radical right parties in the EU discursively construct their ideologically loaded conceptions of sovereignty and instrumentalise references to rights in the European context to this end.[2] For the study of conflicts of sovereignty in the European Union, this chapter adopts a theoretical framework developed by Christopher Bickerton, Nathalie Brack, Ramona Coman, and Amandine Crespy. Here, sovereignty is approached as "a key political principle which identifies the legal and political source of ultimate authority, translates abstract claims about 'who rules?' into institutional structures vested with authority to govern, and delineates the borders of the political community" (Bickerton et al., 2022, p. 258). The three dimensions of sovereignty—the foundational, the institutional, and the territorial—are seen as the three spheres where sovereignty contestation actually happens. This chapter examines how the EU populist radical right discursively challenges the very idea of supranational sovereignty as well as its practical implementation in the European polity; that is, it analyses the means of the discursive construction of foundational and institutional conflicts of sovereignty in the European Union.

To analyse populist radical right political discourses, this chapter focuses on populist radical right parties. In doing so, it follows the conceptual approach developed by Cas Mudde who argues that despite many peculiarities of particular PRR parties in Europe, stemming from their diverse social, cultural, and historical backgrounds, all of them share "a combination of three core ideological features: nativism, authoritarianism, and populism" (Mudde, 2007: 22).[3]

Populism, however it could be defined, is inseparable from the concept of sovereignty, namely popular sovereignty. Since the beginning of systematic studies of populism, attempts to describe the *phenomenon* of populism or conceptualise a *theory* of populism have consistently pointed at populists' emphasis on the idea of unmediated popular sovereignty. The notion of popular sovereignty originally coined by Jean-Jacques Rousseau in *The Social Contract* (1762/1968) refers to the principle whereby the authority of a state and its government are created by and subject to the will of the people which is seen as the ultimate source of all political power. The concept of popular sovereignty has been influential enough to inspire the American and French revolutions and inform many republican constitutions; it lies at the very heart of modern national-popular states (Gerbaudo & Screti, 2017, p. 323).

Often populism is even defined via references to the concept of popular sovereignty. In one of the earliest accounts in which populism is systematically described, Edward Shils notes that it "proclaims that the will of the people as such is supreme over every other standard, over the standards of traditional institutions, over the autonomy of institutions and over the will of other strata" (1956, p. 98). In other words, as Cas Mudde and Cristóbal Rovira Kaltwasser put it more than half a century later, "[p]opulism is not only about attacking 'the elite' and defending the interests of 'the common people'; it is also about the very idea that all individuals of a given community are able to unify their wills with the aim of proclaiming popular sovereignty as the only legitimate source of political power" (2013, p. 151).

In many cases, this observation leads scholars to the conclusion that populism is essentially incompatible with the concept of rights, as it neglects or overrides the rights of minorities (cf. Dahl, 2006, pp. 4–6, 34). Taggart, for instance, writes that "[p]opulism is hostile to a discourse of rights, because, by definition, rights are tools of the embattled minority, while populism sees the majority as embattled and blames the excessive deference of the state to rights claims of minorities for this injustice" (2000, p. 116). Yet, the reality is more complex. Not only do populists extensively use discourses of rights, but also the concept of rights plays a crucial role in populist constructions of the concept of supremacy of the will of the people, i.e., popular sovereignty, and, consequently, in populist conceptions of democracy. For instance, Peter Worsley who elaborates on Shils's observations on populism highlights the importance of the notion of rights in his reflections on the relationship between populism and democracy:

> Populism is certainly compatible with democracy, though this is often denied. In so far as it ignores the need for institutions and pluralism; in so far as it dislikes factionalism; in so far as it distorts social mechanisms which seem to it specialized and bureaucratic, it appears to undervalue the importance, and even the rights, of minorities, and to depart from 'rule of law'. But there is always a tension in our conception of a just society between the rights of minorities and the rights of the majority. Insofar as populism plumps for the rights of majorities to make sure – by 'intervening' – that they are not ignored (as they commonly are) populism is profoundly compatible with democracy (1969, p. 247).

Other scholars in their conceptualisations of populism convincingly show that references to rights lie at the very heart of populist discourses and ideologies. For instance, Gino Germani notes:

> Populism usually includes contrasting components such as a claim for equality of political rights and universal participation for the common people, but fused with some sort of authoritarianism often under charismatic leadership. It also includes socialist demands (or at least a claim for social justice), vigorous defense of small property, strong nationalist components, and denial of the importance of class. It is accompanied with the affirmation of the rights of the common people as against the privileged interest groups, usually considered inimical to the people and the nation. Any of these elements may be stressed according to cultural and social conditions, but they are all present in most populist movements (1978, p. 88).

Some scholars even include references to rights of the sovereign people in their definitions of populism. For example, Albertazzi and McDonnell describe Western European populism as "an ideology which pits a virtuous and homogenous people against a set of elites and dangerous 'others' who are together depicted as depriving (or attempting to deprive) the sovereign people of their rights, values, prosperity, identity and voice" (2008, p. 3). Margaret Canovan in outlining the principal populist message takes a step further and effectively reconstructs the concept of popular sovereignty as a right of the people to decide: "[T]his is our polity, in which we, the democratic sovereign, have a right to practise government by the people; but we have been shut out of power by corrupt politicians and an unrepresentative elite who betray our interests, ignore our opinions, and treat us with contempt" (2002, p. 27).

Such reconstructions of popular sovereignty where the people is predicated to possess a collective right to decide draw upon actual populist discourses across the political spectrum (cf. Betz, 2002, p. 199; Gerbaudo & Screti, 2017; Jungar, 2016, p. 121; Stanley, 2008, p. 101; Tarchi, 2002, p. 136) and are widely accepted in academia (cf. Hindman, 2020; Panizza, 2005; Panizza & Stavrakakis, 2021; Van Kessel, 2015, pp. 1–32; Weale, 2020).

In practice in many populist discourses, the concept of popular sovereignty is closely intertwined with that of national sovereignty referring in its essence to the "the autonomy of the Westphalian Nation-State to rule on a territory delimited by borders" (Brack et al., 2019, p. 824).

As De Cleen notes, "[a]s a consequence of the predominantly national organization of political representation, most populist politics operate within a national context […] [and] tend to define the people-as-underdog on a national level" (2017, p. 347). So, when populists claim to represent the people and demand that politics should be (re)defined as an expression of the will of the people, the people "becomes equated with the nation and 'the elite' is opposed to the nation and its interests" (De Cleen, 2017, p. 353). This, in particular, means that in the discourses of most populist parties—whether these parties are nationalist or not—the people is equated with the nation constructed as sovereign as "it has the right to take decisions independently and without interference" (De Cleen & Stavrakakis, 2017, p. 310).

In populist radical right discourses, the fusion of the concepts of popular and national sovereignty (the people-as-demos and the people-as-nation) is compiled by a nativist, exclusionary definition of the people as the people-as-ethnos (Taguieff, 1997, p. 17). From the populist radical right perspective, as Betz shows, the collective right of the people to decide is constructed as being threatened not only by the "corrupt" elites, who betrayed the people as the demos and as the nation but also by "privileged" minorities, alien to the nation defined in nativist terms (cf. Betz, 2002, pp. 203–204).

Although this overview clearly shows that scholars both analyse references to rights in populist discourses of sovereignty and use references to rights to reconstruct populist conceptions of sovereignty, it also highlights that the study of the role of references to rights in populist discourses about sovereignty has been neither systematic nor particularly thorough. This chapter intends to bridge this gap at least partially by looking at how in practice the EU populist radical right discursively instrumentalises references to rights to construct the concept of sovereignty.

10.3 Research Methodology and Data

To clarify how the populist radical right uses references to rights in the discursive construction of the concept of sovereignty, this chapter relies on a combination of methods and techniques developed in the framework of the discourse-historical approach (DHA) to critical discourse analysis. The DHA developed in the late 1980s by a group of researchers with Ruth Wodak at the head (Reisigl, 2014, p. 68) has already shown its effectiveness in studying far-right (i.e., extreme right and populist radical

right) discourses (see, e.g., Krzyżanowski, 2018; Reisigl & Wodak, 2001; Van Leeuwen & Wodak, 1999; Wodak, 2013).

The discourse-historical approach is interdisciplinary (Wodak, 2001a, p. 69). Its methodology is abductive and pragmatic: the categories of analysis are informed by the research question, and the research constantly moves back and forth between theory and empirical data (Meyer, 2001, p. 27). Its theory, as well as methodology, is eclectic: this approach integrates any theories and methods allowing to understand and explain the object under investigation (Wodak, 2001a, p. 69). The DHA regards language "as a form of social practice" (Fairclough & Wodak, 1997) used to construct ideologies and identities. Every ideology is seen as "a perspective, i.e., a worldview and a system composed of related mental representations, convictions, opinions, attitudes, values and evaluations, which is shared by members of a specific social group" (Reisigl & Wodak, 2016, p. 25). Serving to construct social identities, ideology is seen as an important aspect of establishing and maintaining unequal power relations (Wodak, 2001b, p. 10). In practice, ideologies are realised through discourse (Reisigl & Wodak, 2016, p. 25).

Discourse is defined in the DHA as "a cluster of context-dependent semiotic practices that are situated within specific fields of social action" (Reisigl & Wodak, 2016, p. 27). Specific discourses are realised in a variety of different genres, i.e., "socially ratified way[s] of using language in connection with particular type[s] of social activity" (Fairclough, 1995, p. 14), and texts, i.e., "materially durable products of linguistic actions" (Wodak, 2001a, p. 66). This chapter analyses verbal texts of speeches given in election campaigns and, following the DHA, regards every object under investigation as "a semiotic entity, embedded in an immediate, text-internal co-text and [simultaneously in a wider] intertextual and socio-political context" (Wodak, 2008, p. 2).

In practice, using methods and techniques of the DHA means that all texts are processed in six consecutive steps:

First, I create a corpus of verbal texts for a deeper analysis by tracing the use of the words right and freedom and selecting the texts which contain them.

Then, I narrow the corpus down to the cases where these words are used in plural forms and/or in phrases with dependent words. In this way, I exclude from my analysis the instances when the words right and freedom refer to concepts other than the concept of rights and freedoms. I draw this distinction, as in the concept of rights and freedoms

these words acquire a substantially distinct meaning in all major European speech communities.

The next stage consists in the analysis of the macrostructures of the selected texts: I identify the main discourse topics of these texts, extrapolating them from the themes, and select those thematic blocks of these texts which contain the words right and freedom in plural forms and/or in with dependent words.

Afterwards, I identify the context-dependent linguistic realisations of references to rights and freedoms in the selected thematic blocs of the sampled texts.

Next, I examine discursive strategies related to these references to rights and freedoms. Discursive strategies are seen here as "more or less intentional plan[s] of practice (including discursive practices) adopted to achieve a particular social, political, psychological or linguistic goal" (Reisigl & Wodak, 2016, p. 33). The DHA distinguishes five types of discursive strategies: nomination (discursively constructing social actors, objects, phenomena, events, processes, and actions), predication (discursively qualifying them), argumentation (justifying and questioning claims of truth and normative rightness), perspectivisation (positioning the author's point of view and expressing involvement or distance), and intensification (mitigation) (modifying the illocutionary force and the epistemic or deontic modality of utterances) (Reisigl & Wodak, 2016, p. 33). Following the DHA, I pay special attention to exploring argumentation strategies (Reisigl, 2014, p. 67), as argumentativity is regarded as one of the three necessary conditions (along with macro-topic relatedness and pluri-perspectivity) for any discourse to exist (Reisigl & Wodak, 2016, p. 27).

Finally, by relying on the studies examining references to rights and freedoms in populist discourses about sovereignty and by analysing the characteristics, qualities, and features of particular references to rights and freedoms in the selected texts, I identify those references to rights and freedoms which are used to construct the concept of sovereignty. To highlight common features in the conceptions of sovereignty advanced by various PRR parties across the European Union, I take the cases of two very dissimilar populist radical right parties from the EU: the French *Rassemblement National,* which has always remained in opposition since its inception in 1972, and the Polish *Prawo i Sprawiedliwość,* which leads a majority government.

The *RN* (founded as the *Front National*) is almost universally regarded as a typical PRR party. In fact, some authors see it as *the* defining party for the whole party family of the populist radical right (e.g., Kitschelt & McGann, 1995; Rydgren, 2005). Even if most authors take a more cautious approach, the *RN* is widely regarded as a model PRR party (e.g., Mayer, 2018) alongside the Austrian *Freiheitliche Partei Österreichs* (e.g., Wodak, 2013) or the Belgian (Flemish) *Vlaams Belang* (e.g., De Cleen, 2016), as the very notion of the populist radical right was conceptualised, drawing, to a large extent, on their history, ideology, and discourse (see, e.g., Betz, 1994; Mudde, 2007).

The *PiS* case is more complex. This Polish party was founded in 2001 as a mainstream right-wing conservative party, initially focused mainly on the issues of corruption and crime (Van Kessel, 2015, p. 123). Yet, after the 2005 Polish parliamentary election, the *PiS* formed a governing coalition with two minor partners—the radical right *Liga Polskich Rodzin* (*Ligue of Polish Families*) and the populist *Samoobrona* (*Self-Defence*). This coalition marked the turning point for the party as since then, the *PiS* "underwent a far-reaching evolution in almost all aspects: its rhetoric, policies, ideology, political allies, sources of symbolic support, and voter base, […] took on strong features of populism and nationalism with authoritarian tendencies, and positioned itself as an anti-systemic force seeking radical change rather than maintaining democratic stability" (Pankowski, 2010, p. 153). Even though scholars differ in their opinions on whether the *PiS* (just like *Fidesz* in Hungary) should be classified as a PRR party based on its historical origins and tend to highlight the continuous nature of its transformation (see, e.g., Mudde, 2007; Minkenberg, 2017, p. 2; Stanley, 2017, p. 185), they agree that the *PiS* (just like *Fidesz* in Hungary) has comprehensively internalised populist radical right politics (see, e.g., Pytlas, 2018) and discourse (see, e.g., Krzyżanowski, 2020; Wodak, 2021; Żuk & Żuk, 2018). So, today the *PiS* is listed among the biggest and most successful populist radical right parties in Europe alongside the *Dansk Folkeparti*, *Fidesz*, the *RN*, and the *Schweizerische Volkspartei* (see, e.g., Mudde, 2019b).

In terms of empirical data, this analysis is centred on the verbal texts of electoral speeches given by the leaders of the *Prawo i Sprawiedliwość* and *Rassemblement National* in the run-up to the 2019 European Parliament elections. Here, Jarosław Kaczyński and Marine Le Pen are seen to be the principal mouthpieces for their respective parties: as the party leaders,

they necessarily play a substantial role in formulating party ideologies and key political messages.

The corpus of analysed data consists of 45 video recordings of campaign speeches delivered by Kaczyński and Le Pen over the course of their 2019 EP electoral campaigns. Between 23 February and 23 May 2019, the *PiS* leader delivered his speeches at 23 public meetings and party conventions in 19 different Polish locations. All of them were recorded and uploaded on the official YouTube channel of the *Prawo i Sprawiedliwość*.[4] From 13 January to 24 May 2019, Marine Le Pen, the *RN* party president, delivered speeches at 22 public gatherings and party conventions held in 22 different French cities, towns, and villages. Her speeches were also recorded and uploaded on the official YouTube channel of her party.[5] All these videos uploaded on YouTube were transcribed into verbal texts and translated from French and Polish into English by the author. All the texts under consideration belong to the genre of election speech and refer to the same field of social action, i.e., political advertising.

10.4 Right to Sovereignty in the Case of the *Prawo i Sprawiedliwość*

In his electoral speeches, Jarosław Kaczyński, leader of the *Prawo i Sprawiedliwość*, constructs the concept of sovereignty in several ways. He does not only directly reference sovereignty by recurring to such words as *suweren* (noun, sovereign), *suwerenny* (adjective, sovereign), or *suwerenność* (sovereignty), but also uses its numerous contextual synonyms. For instance, the analysis of particular discursive strategies with a special focus on nomination, predication, and argumentation strategies reveals that the word *podmiotowość* which can be literally translated as (international) subjectivity is used interchangeably with the word *suwerenność* (sovereignty) (see Example 1).

Example 1 We need to build an efficient State apparatus, generally speaking, an efficient State. **We** must have an efficient democracy and **we** must have an efficient State that cares for **our** interests. That cares so that **Poland**, operating today in concrete circumstances – being **a member of the European Union** (today this is a requirement of **Polish patriotism**), being **a NATO member** (this is also a requirement of **Polish**

patriotism) – that this **Poland** would simultaneously preserve **its subjectivity,** that the decisions would not be taken for it, that **it** would be able to settle its matters in a right way, in a way that is supported by **the majority of society**, that **we** could simply do everything that serves **Poland** well. And **we**, here in Poland, know best what serves well **our people**, **our homeland**.

It is evident that **we** must do so within a certain framework, but this framework is clearly outlined in the treaties, and that must be respected. The European treaty, the Treaty on the functioning of the European Union, these are the treaties that do not take ***sovereignty*** away from **the states**, these are the treaties that transfer certain elements of the power that **the states** normally retain into other hands, into the hands of **the organs of the European Union**, which **we** should have an influence on. But that does not mean that **we** will lose everything. What is reserved for **us** should be tightly guarded, and it must be a principle that **we** uphold and defend. Because it is absolutely necessary for **our** dignity, but also for **our** interests.[6]

In Example 1, Kaczyński effectively defines *sovereignty* as (1) the ability of the people equated with the majority of society to exercise its collective will and, simultaneously, (2) the ability of the Poles to take decisions without any interference from outside the country, and (3) the ability of the ruling *Prawo i Sprawiedliwość* to do what they believe is beneficial for Poland. In practice, it is constructed as a series of co-textually and contextually connected phrases associated with each other as using the same or a related correspondence between the signifier and the signified within the same thematic bloc:

> [Poland's] subjectivity;
> [a situation when] the decisions [are] not taken for [Poland];
> [a situation when Poland is] able to settle its matters […] in a way that is supported by the majority of society;
> [a situation when] we can do everything that [as we believe] serves Poland well.

In Kaczyński's speeches, Poland also referenced as a collective "Us" is predicated to possess both subjectivity and sovereignty in the international arena. Both abstract notions are constructed as material objects that can be obtained, preserved, protected, or taken away:

to preserve Poland's subjectivity;
to take sovereignty away from states;
to protect our subjectivity;
to strengthen our subjectivity.

The objectification of sovereignty allows Kaczyński to (1) attribute it to the political reality of today's Poland and (2) accentuate its necessity and fragility in the allegedly hostile environment of the European Union, highlighting, therefore, the pragmatic meaning of sovereignty as a value of paramount importance. Yet, using direct references to and contextual synonyms of the word sovereignty is not the only way to construct the concept of sovereignty. A thorough examination of thematic blocks containing references to rights and freedoms demonstrates that Kaczyński actively uses a group of such references related to the topic of sovereignty as a separate functional category of rights and freedoms. This group of typical references to rights and freedoms which will be called here the right to sovereignty can be reconstructed as a series of notions associated with each other by using the same or a related correspondence between the signifier and the signified, where sovereignty is constructed as the ability of the people as the citizen body to exercise its collective will. The right to sovereignty is attributed not to a particular individual, but to a group of individuals, the Polish people conceived simultaneously as the demos and the nation (see Example 2).

Example 2 Equality should be interpreted more broadly as well. Because once **I** heard from the **prime minister of a certain State** – I cannot tell you what State it was, but you can guess it – who told **me** that once **they** were told not only how the office of the human rights commissioner was supposed to look like, but also who was to become [the human rights commissioner]. Yeah. Very often the **countries of our sphere** come across this statement: "It is true that **your** solution is the same as **ours** or it works in countries of the **old European Union**, but **you** have a different aura. **We** can and **you** cannot." Or just as someone put it more harshly: "**We** are allowed, and **you** are not." This also happens. That is why **Poland**, the Polish solution regarding the judiciary, can be considered to be a highly mild one and, in fact, a very restrictive one of the influence of the [**Polish**] **citizens** through the democratic system on the selection of **judges**. Taking such *rights* away from *the* ***citizens [of Poland],*** while ***citizens of other European Union countries*** have *them*, means that the **citizens of different countries** are unequal.[7]

Jarosław Kaczyński promotes a concept of sovereignty, constructed along primarily populist lines and conceived as a combination of national sovereignty (in the international arena) with popular sovereignty (within the country). The sovereignty of the peoples which can be reconstructed as presupposing that all legitimate decisions should be taken within the nation-state and not imposed from abroad (i.e., national sovereignty or sovereignty in the nationalist sense centred on the nation-state) is complemented with the sovereignty of the people, envisaging that all legitimate decisions should be taken by the majority of the Poles (i.e., the people) and not imposed by the minority, the elites (i.e., popular sovereignty or sovereignty in the populist sense) (see Examples 2 and 3).

Example 3 It is clearly outlined that the system that **our opponents** want must, in its essence, boil down to the fact that the law is the will of **the elite** which is changeable, and the law must also be changeable. As somebody said –- differently interpretable – different things could be interpreted from it. Meanwhile, all the rest are supposed to be appearances. But I repeat, it is not worth elaborating on this topic. **We** believe in the **Poles**; we believe in **Poland**. The **Poles** will not allow taking away *their freedom* and the *right to choose*.[8]

The realisation of the people's right to sovereignty within the country, at the national level, is discursively conditioned on the participation of the people, the citizenry, in the electoral process (see Example 3). As in Jarosław Kaczyński's speeches, the people is constructed in the PRR spirit, the *PiS* leader offers to the voter a populist model of majoritarian ethnic democracy centred on the nation-state, that is, a system of government in which the majority of the citizens—the ordinary Poles—the people, sharing a common, essentially Catholic identity, is opposed to the elites, referenced as powerful corrupt minorities (see Examples 3 and 4).

Example 4 But there is also an extremely important sphere of a completely different kind – the sphere of ideas, the sphere of views, religion. And here, **we** must strive hard to restore the foundations on which not only the **European Union** was established, because it was the 1990s, but the **EEC**. That means those foundations that relate to Christianity, at least to the European tradition, the best European tradition. Because they have been challenged by this revolution in the sphere of ideas, a moral revolution. **We** do not want to impose **anything** on anyone. But **we** do not want anyone to impose anything on **us** either. **We** want to live

as it derives from **our traditions**, and personally – this is my completely private view – I think there will come a time when **these traditions** begin to return and spread elsewhere. Because otherwise, unfortunately, **our civilisation**, the **civilisation** most benevolent to man in the history of the world, will descend in favour of a **civilisation** that is more brutal, that is crueller to man, that does not recognize equality, does not recognize women's rights, and so on and so on. So let **us** remember that **we** have been striving for ***our*** *Polish rights* here, but **we** have been also striving for the future of **Europe**. And this is **our** program in the broadest outline, because of course it covers a lot of different, very specific matters.[9]

In his programmatic speech in Gdańsk, a symbolic location where the independent trade union of *Solidarność* was born in 1980, and a city intricately connected to the fight against the Soviet Union and communism for Poland's freedom and independence, Kaczyński constructs the concept of sovereignty as a condition of liberty. The discursive realisation of the *sovereignty of the* peoples, i.e., national sovereignty, is directly connected with the concepts of liberty and statehood: liberty is explicitly defined as the right of every people to have its own sovereign State. The sovereignty of the people, i.e., popular sovereignty, is tied to the concepts of statehood and democracy defined by Kaczyński as a system in which decisions are taken by the people (see Example 5).

Example 5 Liberty is the right of the **individual** to freedom, to action, to unrestricted action. It is the liberty of different **social groups**, also to be free and to act. It is also *the holy right of* ***the people*** *to have its own State, a sovereign State*. **We, the Poles**, know the importance of *this right*. But the *right to create the State* serves not only the widest community of **the people**; it also serves **individuals** and **groups**. Let us imagine what liberty would look like without the State. This would be the right of the strongest, the most insolent, the worst, the most brutal. This would be slavery, not liberty. But the conditions of liberty do not end there. It is not about any State, it is about a State of a special type, a democratic State, about a democracy. About a democracy or a system in which the decision is ultimately made by **the citizens**. Only within this system can liberty exist.[10]

The predication of the right to sovereignty to the (Polish) people constructed as the majority of Polish citizens discursively equates it with the (Polish) nation and, by extension, with the (Polish) State (ruled by the

PiS government). From this perspective, Polish sovereignty, discursively realised as the opposition of the people to the elites at the supranational (the European Union, Germany, France, and other old EU member states) and national levels (the Polish elites who are predicated to strive to regain their lost power), is connected with the concept of liberty and serves as an illustration to the metaphor of protection of the weak against the arbitrary force of the strong.

10.5 Right to Sovereignty in the Case of the *Rassemblement National*

Marine Le Pen, the president of the *Rassemblement National*, also actively recurs to the concept of sovereignty in her electoral speeches. Direct references to sovereignty using the words *souveraineté* (*sovereignty*) and *souverain* (sovereign) abound in her political discourse. The analysis of nomination and predication strategies in the thematic blocks containing direct references to *sovereignty* implies that the concept of sovereignty is unequivocally constructed as a (quasi)material object that could be lost and, therefore, should be defended or even reconquered if lost:

the reconquest of sovereignty;
the loss of sovereignty;
to defend sovereignty.

By using the metaphor of war in debating sovereignty, Le Pen highlights the imminence and urgency of the (symbolic) struggle over sovereignty, and, simultaneously, curbs any potential criticism which would be perceived as treasonous in a context of the ongoing war. The objectification of the abstract concept in combination with the use of the war metaphor allows her to emphasise the positive nature of sovereignty and attribute to it a clearly identifiable pragmatic meaning of a value worth fighting for, hence, a value of paramount importance.

Example 6 What **we** defend is the right of **peoples**, the right of the **citizens**. It is the freedom of the **nations** to join or not to join cooperation projects. It is the freedom of the **citizens** to democratically decide on the form that this cooperation will take. In other words, [we defend] **sovereignty**.[11]

The referential meaning of sovereignty, as Example 6 shows, is constructed by the speaker as a combination of direct references to sovereignty and a series of co-textually as well as contextually connected notions associated with each other as using the same or a related correspondence between the signifier and the signified within the same thematic bloc:

> sovereignty;
> the right of peoples;
> the right of the people;
> the freedom of the nations to join or not to join cooperation projects;
> freedom of the citizens to democratically decide on the form that this cooperation will take.

In her self-styled definition of sovereignty featured above, Marine Le Pen merges together national sovereignty referenced as sovereignty of nations, where nations are equated with peoples, and presupposing that all legitimate decisions should be taken by the nation and not imposed from abroad, and popular sovereignty referenced as the sovereignty of the citizens envisaging that all legitimate decisions should be taken by the people and not imposed on it.

In practice, Le Pen discursively constructs the concept of sovereignty combining national and popular sovereignty by using a series of references to rights and freedoms co-textually and contextually connecting them to the topic of sovereignty. Just like in the Polish case, in Le Pen's discourse, a group of such references can be identified as a separate functional category of rights and freedoms. These references to rights and freedoms related to the topic of sovereignty which could be called the right to sovereignty can be reconstructed as a series of notions associated with each other by using the same or a related correspondence between the signifier and the signified, where sovereignty is constructed as the ability of the people as the citizen body to exercise its collective will.

Example 7 **We** will give the **French** and **500 million Europeans** back ***their*** *political freedom*, **their** ability to decide for themselves.[12]

The right to sovereignty is constructed as a collective right attributed not to a particular individual, but to a group of individuals, the citizen body, the people conceived simultaneously as the demos and the nation (see Example 7). At the same time, by explicitly attributing the right to

sovereignty to a series of references to social actors, Le Pen constructs associations between them: for instance, the identity of the French people is constructed not just by representing the French as citizens in a populist and nationalist sense, but also by referencing them as one of the European peoples, which has a strong nativist connotation (see Example 7 and compare with Example 8).

Example 8 Our Europe is not sixty years old but is several millennia old. it is not a market! It is a geographical reality, a historical reality, a civilisational reality. It is not from **Brussels** or **Berlin** but from **Athens** and **Rome**. **It** draws its roots from a **Judeo-Christian heritage** and has freedom as its cardinal value. How can **we** imagine that this value which has been the source of emancipation and progress, of human dignity and democracy, how can we imagine that this value which **we** have taught the **world** is not the cornerstone of the cooperation of **500 million Europeans** between them? The *freedom of* ***peoples*** and therefore the ***sovereignty*** of **States**, respect for **States**, for **all States**, including the smallest, the dignity of **States** cannot be divided! […] **Our Europe** is one of freely consented cooperation, of à la carte cooperation [where some elements can be chosen and prioritised over other ones at will], which **each of the nations** will be free to join or not to join.[13]

As Marine Le Pen discursively links the practical realisation of the right to sovereignty to the participation of citizens in the electoral process, she connects the right of the people to the right of the peoples and consciously blurs the line between national and popular sovereignty. In practice, it means that Marine Le Pen promotes an essentially populist model of ethnic democracy centred on the nation-state where populist democracy is conceived as a system of government in which the people as the sovereign and the central element of the political system is opposed to the elites at different levels, both national and supranational (see Example 9).

Example 9 We want, **you** have understood, to make **the voice of France** heard again. **The voice** that the weakness of **our leaders** has let cover with the hubbub of sterile discussions of **the twenty-eight** [EU member-states]. **The French voice** that **Europeanism** has stifled to make a globalist logic triumph. **The French voice** to really defend **France** and the **French**. **This French voice** is the voice of the **people**. Because we believe in *the right of the* ***peoples*** *to self-determination*. In Europe, this

means giving the voice back to **the *sovereign* nations** and putting **the Brussels Commission** in its place, that is to say, at the level of the administrative secretariat. **We** will give effective power back to **the Council of Heads of State**, that is to say, to **the States** because that is where democracy dwells. **This French voice** is the voice of the **peoples,** but it is also the voice of the **people**. It corresponds to a democratic requirement which now **everyone** aspires to. It consists in giving back to the **citizen** their due pre-eminence and consideration. Our project is to give power back to the **people**.[14]

In a way, the predication of the right to sovereignty to the people, the sovereign, defines its identity in its opposition to the Other along vertical (the elites) and horizontal axes (the aliens). The elites at the supranational (the European Union and its individual bodies) and national levels (French political elites in power who support the current European integration project) are predicated to promote a globalist agenda, detrimental to (the people's) sovereignty in France and (French) sovereignty in the international arena, which is constructed as unacceptable to the French people. The aliens (non-native individuals on the French soil) are not even mentioned in such contexts, which allows for supposing that Marine Le Pen excludes them from the citizen body and does not consider them to be a part of the people.

Example 10 The civilizational values that bind **our** project together are inseparable from what **Europe** fundamentally is: freedom, democracy, diversity of the **nations**, ***sovereignty*** of the **peoples**, equality between the **man** and the **woman**, freedom of expression.[15]

This finding is further corroborated by how Le Pen discursively constructs the semantic field of the concept of European values. By making a reference to sovereignty of the peoples as one of the European values where Europe is perceived to be a distinct civilisation, she stresses that the concept of the people and, as a consequence, the concept of sovereignty are conceived along explicitly nativist lines (see Example 10).

10.6 Discussion

A thorough analysis of discursive strategies used by Jarosław Kaczyński and Marine Le Pen reveals that when speaking about sovereignty, both leaders extensively recur to references containing the words right and

freedom. Such constellations of thematically similar nomination strategies related to the topic of sovereignty can be seen as a distinct functional category of rights, i.e., the right to sovereignty. In practice, the speakers usually construct the right to sovereignty by using a co-textually as well as contextually connected series of notions within the same thematic bloc, with these notions being associated with each other as using the same or a related correspondence between the signifier and the signified, where sovereignty is conceived as the ability of the people as the citizen body to exercise its collective will.

As earlier research shows, the references to rights and freedoms are in general instrumentalised to discursively construct social identities: social actors are predicated to possess *rights* or strive for them (Alekseev, 2021). The identification and analysis of predication and argumentation strategies allow highlighting two different types of referencing rights and freedoms in the process of discursive identity construction: (1) the predication strategies are utilised as a more direct tool for attributing positively or negatively qualified actions or positions regarding rights and freedoms to a specific social actor; (2) the argumentation strategies are used as a subtler instrument to uphold claims of truth and normative rightness about rights employed to construct different identities.

The analysis of concrete discursive strategies related to the topic of sovereignty demonstrates that rather than being merely attributed to a specific social actor, the right to sovereignty is instrumentalised to construct a particular configuration of social identities along populist radical right ideological lines. The right to sovereignty is objectified and placed at the centre of symbolic struggles between several social actors: Le Pen and Kaczyński construct the concept of sovereignty as a quasi-material (limited) resource which the people fights over against the elites. At the same time, the right to sovereignty is constructed as a collective right, which allows the speakers to normatively qualify sovereignty as something desirable and (rightfully) belonging to the (good) people who is (wrongly) attacked by the (corrupt) elites at the national and the supranational levels but defended by the populist radical right parties that the speakers themselves represent. Thus, Le Pen and Kaczyński effectively outline the following configuration of identities: the people is predicated to possess the right to sovereignty while the populist radical right speakers are constructed as simultaneously belonging to the people (the Self), representing its interests, and protecting its rights against the elites

who are predicated to have betrayed the people and now threaten its sovereignty from within the nation and from abroad.

By discursively linking the practical realisation of the right to sovereignty constructed as a combination of the right of the people (within the country) with the right of the peoples (at the European level) to the participation of the people in the European Parliament elections, Kaczyńskiand Le Pen blur the line between national and popular sovereignty (cf. De Cleen, 2017). This configuration of the right to sovereignty reveals the functional rationale behind its discursive construction as a separate category of rights: when urging the people to defend the allegedly threatened right to sovereignty by voting for the *PiS* and the *RN,* the party leaders effectively recur to "political mobilisation through the articulation and eliciting of shared emotional repertoires in the public realm" (Kazlauskaitė & Salmela, 2022, p. 143). In other words, by focusing on the threat to the people's right to sovereignty, the populist radical right strives to regulate negative self-focused emotions—in particular fear and insecurity—via the instrumentalisation of deep-seated collective and/or individual inferiority and shame, and transform them into "anger, resentment and hatred towards perceived 'enemies' of the self" (Salmela & von Scheve, 2017, p. 587) and, eventually, into the desired political action of voting.

Obviously, the *Prawo i Sprawiedliwość* and the *Rassemblement National* have rather dissimilar backgrounds and play quite distinct roles in the political systems of their respective countries. Hence, there is nothing astonishing that the two leaders construct somewhat different conceptions of sovereignty.

Kaczyński, whose party leads the Polish coalition government, uses the concept of sovereignty to describe Poland's political reality that he intends to preserve and protect from internal and external threats. The *PiS*-dominated political regime already in place is discursively associated with sovereignty and represented as the biggest achievement of the Polish people. Thus, the primary accent in Kaczyński's discourse is placed on alleged threats to sovereignty coming from those who may challenge the dominance of the *PiS* within Poland and from abroad (cf. Coman, 2022b; Kłosińska & Rusinek, 2019, tit. suweren). At the same time, Poland's unique position as the biggest net recipient of the EU funds effectively limits the strength of Kaczynski's Eurosceptic discourse: although he challenges the idea of supranational sovereignty, he reiterates the need for European integration (cf. Vasilopoulou, 2018b).

Le Pen who leads a French opposition party wants to weaken her political opponents within the country while boosting the *RN's* political influence in France and in the EU in general. As a relatively marginal political actor, Le Pen is much freer in her choice of discursive instruments. This allows her to use harsher language and discursively construct a distinctly populist conception of sovereignty: she strongly condemns the corrupt elites that are in power in France and Europe, praises the innocent pure French people oppressed by the elites, and portrays the *RN* politics as the ultimate expression of the popular will (cf. Alduy & Wahnich, 2015). Le Pen constructs sovereignty as something that has already been lost and needs to be regained. Thus, her discourse on the European Union is visibly harsher as she effectively proposes to re-found the European project as a Europe of Nations where every nation is to regain its full popular and national sovereignty (cf. Vasilopoulou, 2018b).

Nonetheless, the two cases share many common features. Both Jarosław Kaczyński and Marine Le Pen consciously construct a concept of sovereignty where national sovereignty, presupposing that all legitimate decisions should be taken by the nation and not imposed from abroad, is merged with popular sovereignty, envisaging that all legitimate decisions should be taken by the people and not imposed from above. The construction of sovereignty (both national and popular) as a right attributed to the people allows claiming that the *PiS* and the *RN* promote an essentially populist model of democracy centred on the nation-state where democracy is conceived as a system of government in which all the legitimate decisions must emanate from the majority of citizens, the majority of citizens is equated with the people, and the people is perceived as the sovereign (cf. Alekseev, 2022; Debras, 2016, pp. 551–553; Mudde, 2007, pp. 150–155).

At the first glance, this scheme is devoid of any nativist or authoritarian elements. And yet, if we explore the concept of the people, the key concept performing the function of delineating the Self and the Other,[16] it becomes evident that its exclusionary definition renders the whole system exclusionary (Mudde, 2007, pp. 138–183; cf. Pelinka, 2013, pp. 6–9). This finding reflects a clear bias of the populist radical right towards "bounded" conceptions of sovereignty emphasising the principle of membership[17] despite apparent attempts to refurbish PRR political discourse and highlight the role of personal autonomy of the individual.

In the context of the European Parliament elections, the construction of the concept of sovereignty on the idea of a "monocultural and ethnocratic form of republican […] democracy that is guided by a romantic, culturally and ethnically homogeneous nationalist discourse […] founded on popular majority rule" (Nilsson, 2018, p. 109) allows the PRR to directly challenge the very idea of supranational sovereignty at the European level (cf. Borriello & Brack, 2019) and bring to the fore the opposition between liberal globalists (i.e., the corrupt elites) on the one side and illiberal nationalists (i.e., the people represented by the PRR itself) on the other (cf. Alduy & Wahnich, 2015; Kłosińska & Rusinek, 2019). These findings highlight the relevance of the multidimensional framework for the study of conflicts of sovereignty developed by Bickerton et al. (2022): the stark opposition of the people to the elites allows the PRR to discursively contest the foundations of political power within both in the European Union and in its individual member states (cf. Vasilopoulou, 2018a), and the opposition of the PRR to the current European integration project is discursively articulated as the intention to restructure the institutions of the European Union from within (cf. McMahon, 2022).

10.7 Conclusion

This chapter explores how references to rights and freedoms are discursively instrumentalised by the populist radical right to construct their conceptions of sovereignty in the EU context. In practice, it investigates particular discursive strategies—with a special focus on nomination, predication, and argumentation strategies—that contain references to right and freedoms and are utilised to construct the people and, with its help, the concept of sovereignty along populist radical right ideological lines.

The results of a comparative analysis of electoral speeches given by the leaders of two very dissimilar populist radical right parties from the European Union, the *Prawo i Sprawiedliwość* and the *Rassemblement National*, in the run-up to the 2019 European Parliament elections show that despite the historical and political differences between Poland and France, populist radical right visions of sovereignty constructed as a right share a common core. In particular, the right to sovereignty designates a similar constellation of referential strategies discursively attributed to the people and is used to designate the people's ability as the citizen body to exercise its collective will. The right to sovereignty is constructed as a

concept combining the features of popular sovereignty (the right of the people) and national sovereignty (the right of the peoples). The discursive attribution of sovereignty, conceived as a right, to the people allows the populist radical right to link its interpretations of national-popular sovereignty to the concept of democracy constructed along populist lines as a majoritarian democracy.

At the first glace, the people's right to sovereignty looks like an essentially populist tool in the discursive toolkit of the populist radical right, used solely against the elites and devoid of any elements of nativism and authoritarianism. And yet, if we zoom in on the concept of the people, an empty signifier performing the basic function of delineating the Self from the Other, it becomes evident that an exclusionary definition of the central element of any system renders the entire system exclusionary. The findings suggest the functional rationale behind the instrumentalisation of the references to rights and freedoms in the process of discursive construction of sovereignty: in electoral contexts, the appeals to defend the (allegedly threatened) people's right to sovereignty serve for political mobilisation through the articulation and eliciting of shared (negative) emotional repertoire. Finally, the findings demonstrate that, in the context of the European Parliament elections, the exclusionary conceptions of *national* and *popular sovereignty* centred on the nation-state allow the populist radical right to challenge the idea of *supranational sovereignty* in Europe discursively challenging the foundations of today's European project and as well as its current institutional configuration.

Notes

1. For a concise, yet thorough account of theoretical debates on conflicts of sovereignty, see (Brack et al., 2019).
2. The notion of instrumentalisation is used here in the spirit of the discourse-historical approach to critical discourse analysis (cf. Stögner & Wodak, 2014; Wodak, 2018, 2021) rather than in the sense of (Adler-Nissen & Gammeltoft-Hansen, 2008).
3. The concept of the populist radical right and its key ideological features are described in great detail in (Mudde, 2007, pp. 11–31).
4. Prawo i Sprawiedliwość. (n.d.). Oficjalny kanał Prawa i Sprawiedliwości oraz KW Prawo i Sprawiedliwość. *YouTube*. https://www.youtube.com/user/pisorgpl/undefined.
5. Rassemblement National. (n.d.). Chaîne officielle du Rassemblement National - Mouvement politique français, patriote et souverainiste présidé

par Marine Le Pen. *YouTube*. https://www.youtube.com/user/fnofficiel/undefined.

6. Prawo i Sprawiedliwość. (2019, 6 May). Jarosław Kaczyński - Wystąpienie Prezesa PiS w Pułtusku. *YouTube*. https://www.youtube.com/watch?v=K9RVHW8LzpQ.
7. Prawo i Sprawiedliwość. (2019, 22 May). Jarosław Kaczyński - Wystąpienie Prezesa PiS w Starogardzie Gdańskim. *YouTube*. https://www.youtube.com/watch?v=aODKCQsVmsw.
8. Prawo i Sprawiedliwość. (2019, 11 March). Jarosław Kaczyński - Wystąpienie Prezesa PiS na konwencji w Rzeszowie. *YouTube*. https://www.youtube.com/watch?v=Dg7GgETFn9c.
9. Prawo i Sprawiedliwość. (2019, 22 May). Jarosław Kaczyński – Wystąpienie Prezesa PiS w Słupsku. *YouTube*. https://www.youtube.com/watch?v=zDtlocax-OY.
10. Prawo i Sprawiedliwość. (2019, 1 April). Jarosław Kaczyński – Wystąpienie Prezesa PiS na konwencji w Gdańsku. *YouTube*. https://www.youtube.com/watch?v=A_m5GENHHXs.
11. Rassemblement National. (2019, 11 February). Réunion publique à Saint-Ébremond-de-Bonfossé (50): discours de Marine Le Pen. *YouTube*. https://www.youtube.com/watch?v=R8UlFgbnL54.
12. Rassemblement National. (2019, 14 January). Grande convention des élections européennes: discours de Marine Le Pen. *YouTube*. https://www.youtube.com/watch?v=cd63I-29z20.
13. Rassemblement National. (2019, 2 May). 1er mai 2019 à Metz: discours de Marine Le Pen. *YouTube*. https://www.youtube.com/watch?v=s7YZwCqF2XM.
14. Rassemblement National. (2019, 16 May). Réunion publique à Fessenheim (68): discours de Marine Le Pen. *YouTube*. https://www.youtube.com/watch?v=Jbp2jDWQr_c.
15. Rassemblement National. (2019, 6 April). Réunion publique à Bruz (35): discours de Marine Le Pen. *YouTube*. https://www.youtube.com/watch?v=knH9kg28Rjk.
16. Cognitive mechanisms behind the distinction of the Self and the Other are described in (Chilton, 2017, pp. 582–586).
17. For a clear and yet concise discussion on “bounded” and “open” conceptions of (popular) sovereignty, see (Goenaga, 2019, pp. 873–874).

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