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## Sovereignty conflicts in the European Union

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**Sovereignty conflicts in the European Union**



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## Abstract

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Over the last decades, the incremental transformation of the EU has triggered a crucial question: How can the power pooled in a supranational union situated halfway between a federation and an international organisation be exercised collectively and democratically? In recent years, issues related to sovereignty have been at the forefront of EU politics, during the refugee crisis and the attempts to save the euro but also during the debates surrounding Brexit. This has triggered unprecedented levels of contention about the values underpinning the EU common policies and what is perceived by many as new sovereignty losses. In this paper, we argue that sovereignty remains a powerful concept to understand European integration. However, claims to sovereignty today have been exacerbated and politicized: they take the form of conflicts of sovereignty which are multidimensional and more divisive than ever. To contribute to this debate, this paper proposes a matrix explaining how, beyond the traditional contentious (re)distribution of competences between nation-states (national sovereignty) and the EU (and its embryonic forms of supranational sovereignty), new conflicts of sovereignty involve two other key types of sovereignty rooted in the democratic tradition, namely parliamentary sovereignty and popular sovereignty.

## Résumé

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Au cours de ces dernières décennies, la transformation graduelle de l'UE a soulevé une question essentielle : comment peut-on exercer un pouvoir partagé de façon collective et démocratique au sein d'une union supranationale qui se situe à mi-chemin entre une fédération et une organisation internationale ? Ces dernières années, le thème de la souveraineté s'est donc retrouvé, de façon latente ou explicite, au cœur des débats ayant secoué la politique européenne, que ce soit avec la crise migratoire, les débats entourant les plans de sauvetage de l'euro ou encore ceux relatifs au Brexit. Cela a entraîné un niveau de conflit sans précédent sur les valeurs qui sous-tendent les politiques communautaires et ce qui est perçu comme de nouvelles pertes de souveraineté. Dans le cadre de cette contribution, nous estimons que la souveraineté reste un concept fondamental pour saisir l'intégration européenne. Toutefois, les discours sur la souveraineté sont aujourd'hui fortement politisés : ils prennent la forme de conflits de souveraineté qui sont non seulement multidimensionnels mais aussi plus polarisants que jamais. Afin de contribuer aux débats sur la souveraineté et sa politisation, nous proposons une matrice qui permet d'expliquer comment, au-delà de la répartition controversée des compétences entre Etats nations (souveraineté nationale) et l'UE (et sa forme embryonnaire de souveraineté supranationale), de nouveaux conflits de souveraineté émergent en impliquant deux autres types de souverainetés ancrés dans la tradition démocratique, à savoir les souverainetés parlementaire et populaire.



# Sovereignty conflicts in the European Union

## 1. INTRODUCTION<sup>1</sup>

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Since the early days of the integration process, scholars have sought to establish how and to what extent integration and globalisation has transformed sovereignty both *de iure* and *de facto*. While the first theories of EU integration painted supranationality in contrasting colours, they only indirectly addressed the question of sovereignty. Regardless of its nature – either as a *sui generis* construction or as an international regime (Hoffmann 1988; Moravcsik 1993), a regulatory state (Majone 1994), a polity (Marks, Hooghe and Blank 1996), a territorially bounded constellation of institutions (Anderson 2002, 798) or a *demoicracy*, that is a polity of multiple *demoi* (Cheneval and Schimmeffennig 2013) – each approach has implications for the concept of sovereignty and its reconfiguration in Europe.

Sovereignty is a political construct whose origins go back to the Peace of Westphalia in 1648. Since then, two conceptions of sovereignty are opposed: one is the state-centred and puts forward that sovereignty is located at one particular level of power, the parliament and government emanating from it. At the opposite end of the spectrum, the post-sovereignist understanding conceives the concept in a multi-level approach., It imagines sovereignty through new lenses, arguing from the outset that the concept itself has become outdated, being challenged by globalisation and integration. From this post-sovereignist perspective, ‘the capacity and right of the existing states to exercise supreme authority within their territory, control access to it and speak for their citizens outside it, have all become harder to sustain’ (Bellamy 2003, 167). Globalisation, transnational commerce, culture and travel – to mention but a few – challenged the effective capacity of the state (Walker

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2003, 10). To accommodate these transformations, 'sovereignty is "pooled" or shared with other states' because 'states and their representatives are the prime actors within organisations such as NATO, the WEU, of the EU' and because 'their interactions and collaborations are so numerous and intense' that they have modified their independence of action (Bellamy 2003, 176).

The emergence of the European Communities and the incremental transformation of the EU has therefore triggered a crucial question: How can the power pooled in a supranational union situated half way between a federation and an international organisation be exercised collectively in a democratic fashion?

In the EU, 'the process of governing is no longer conducted exclusively by the state' but by a variety of supranational, state and non-state actors in a 'polycentric and non-hierarchical' system of governance (Jachtenfuchs 1995, 115). From this perspective, 'political supremacy appears to lie with neither the member states nor the supra-state organs of the EU, but between them all in different ways and combinations according to the policy area' (Bellamy 2003, 187). Over time, the EU has evolved into 'a unique system of multi-level governance' in which 'national governments are constrained in their ability to control supranational institutions they have created at the European level' (Marks, Hooghe and Blank 1996). Who decides and how is not always clear in a polity bringing together 28 member states, a wide range of institutions, organs, expert committees, national agencies and national institutions in constant interactions with their homologues at the domestic and international levels?

In the post-Maastricht era, member states of the European Union (EU) have proved increasingly reluctant to transfer further competences to the supranational level invoking their willingness to safeguard their sovereignty (Bickerton, Hodson and Puetter 2015). At the same time, however, recent crises in various policy areas, such as immigration, borders, monetary policy, trade, etc., have prompted decision makers to enlarge, though to a limited extent, the scope of action of the EU institutions. Not only the refugee crisis and the attempts to save the euro but also debates surrounding Brexit have been dominated by issues related to sovereignty. This has triggered



unprecedented levels of contention about the values underpinning the EU common policies and what is perceived by many as new sovereignty losses. Thus, the conundrum lying in the notions of ‘shared’ (Wallace 1999) or ‘pooled’ sovereignty (Peterson 1997) has come back at the forefront of the debates surrounding the legal, economic and political legitimacy of the EU.

Therefore, it is essential to re-assess the issue of sovereignty in the EU in the light of today’s challenges. Even though the notion of sovereignty has been central in the debates triggered by the ongoing existential crises of the EU, it remains strikingly under-researched in European studies. Grand theories do not tackle directly the question of sovereignty and tend to limit their reflexions to an opposition between national sovereignty and supranationalism. Institutionalism has mainly focused on the resilience of the EU and its institutions during various crises but has not come up with innovative ideas on sovereignty except for the recent work of Fabbrini (2015). He has dealt with how distinctive conceptions of sovereignty imply different visions of power relations between the EU member states and supranational institutions, and types of policies to be further centralized at the EU level. Some literature is also emerging on how conflicts of sovereignty can influence the legislative outcomes at the EU level (Winzen 2016) or how sovereignty issues have an impact on the revision of the treaties (Jachtenfuchs et al. 1998). On the other hand, some authors have investigated normatively the concept of sovereignty and its boundaries, discussing how it can be reconciled with European and global politics (Bellamy 2016). Postfunctionalism stresses the weight of domestic politics, including of mobilization on sovereignty-related issues, on the development of European integration and offers some avenues for research. However, while the contestation of the current EU institutional arrangements and policies is on the rise, work on sovereignty in the EU remains relatively limited so far.

This paper aims at tacking stock of the existing work on sovereignty in the EU and proposes a matrix which, we believe, contributes to shedding light on the ongoing crises and conflicts in the EU. We assume here that sovereignty remains a powerful concept to understand European integration but we argue that claims to sovereignty today have been exacerbated and politicized: they take the form of conflicts of sovereignty which are multidimensional and more divisive than ever. More






particularly, the matrix we put forward aims at explaining how, beyond the traditional contentious (re)distribution of competences between nation-states (national sovereignty) and the EU (and its embryonic forms of supranational sovereignty), new conflicts of sovereignty involve two other key types of sovereignty rooted in the democratic tradition, namely parliamentary sovereignty and popular sovereignty. And these are crucial to fully grasp the current multidimensional crisis the EU is facing.

## 2. GRAND THEORIES OF EU INTEGRATION AND SOVEREIGNTY

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With endeavours of new forms of regional integration, the end of World War II has opened a new phase for reconfiguring the boundaries of territories, political forces and institutional structures on the European continent. From the outset, this has triggered diverse political and scholarly debates on the subsequent reconfiguration of state sovereignty, with federalists arguing for the merging of former, and mostly bellicose, nation states into a European federation.

In the aftermath of the devastating World War 2, political actors and intellectuals alike devoted particular attention to the ways in which one day men might abolish war (Eilstrup-Sangiovani 2006). On the two sides of the Atlantic, academics sought to imagine how new forms of international authority can regulate state relations. Interwar and post-war ideas about Europe have given rise to political projects and to the first theories of EU integration, which sought to conceptualize (with strong normative and predictive claims) the will of Western European nation states to overcome their past divisions and to establish the European Communities to avoid war. Altiero Spinelli and Ernesto Rossi (1944), David Mitrany (1947) or Karl Deutsch (1957) created the basis of the first post-war reflections on the establishment of a 'Free and United Europe' or, alternatively, a 'Working Peace System'. Since the beginning of the 1960s, the first theories of (regional) integration crystallised thanks to the works of Ernst Haas, Leon Lindberg and Stanley Hoffmann, among many others. Each of them sought not only to conceptualize the process of integration in Western Europe but also to shed light on its dynamics and progressive institutionalisation.



Two main theories long dominated the debates on EU integration: neofunctionalism and intergovernmentalism. Both were interested in the same question: why do states cooperate through regional integration? In other words, why did states agree to give up their sovereignty in order to develop the European Communities ?

On the one hand, Haas defined integration as ‘the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities toward a new centre’ as part of a social process by shifting loyalties, as part of a political process through political activities at the European level and, ultimately, as part of an institution-building process by means of which new supranational institutions had been established (Haas 1968 in Eilstrup-Sangiovani 2006, 114). At the centre of his approach called neo-functionalism lies the idea of a transnational movement towards a supranational governance that implies transnational actors acting across borders. In Haas’ conceptualization, those who are ready to shift their loyalty to establish new forms of governance at the European level are in need of rules, standards and dispute resolution mechanisms (Haas 1968 in Eilstrup-Sangiovani 2006). Haas expected to see interest groups and political parties at the national level endorsing supranational action in preference to action by national governments; he expected to observe also actors organising their activities beyond the national level and developing ‘dual loyalties’; he projected the emergence of a new ideology – supranationalism – and a community sentiment among actors (Haas 1968 in Eilstrup-Sangiovani 2006).

On the other hand, criticising the integration approach, Hoffmann argued in favour of the logic of diversity, which seeks to limit the degree to which the spill-over process can reduce the freedom of action of domestic governments. While Haas reflected on how Western Europe can move beyond the Nation-State (1964), Stanley Hoffmann in contrast argued that nation states remain – *faute de mieux* ‘the basic units’, being inspired in his thought by August Comte’s maxim according to which “*on ne détruit que ce qu’on remplace*” (Hoffmann 1966 in Eilstrup-Sangiovani 2006, 135).



For intergovernmentalists, states are not surrendering their sovereignty, on the contrary. They remain the key actors and masters of European integration. At the end of the 1960s, Hoffmann was arguing that what has to be understood and studied is the transformation of national sovereignty, which ‘has not been superseded, but to a large extent it has been emptied of its former sting’ (Hoffmann 1966, 157). In his view, what had to be examined was ‘not only the legal capacity of the sovereign state, but de facto capacity at its disposal’ (Hoffmann 1966, 158). In so doing, the historian Alan Milward (1992) has famously and compellingly shown how ambitious post-national endeavours have rapidly dissolved into the firm restoration of European nation states. Following the crisis of the European Defence Community (1954), the Treaty of Rome founding the European Economic Community put the stress on liberalizing markets among autonomous states deciding jointly at the Council, the Community’s most powerful institution. The empty chair crisis further confirmed the powers of the member states in the European project and reinforced the intergovernmental logic of the integration process.

Against this backdrop, scholars argued that the nation-state survived transformed (Hoffmann 1966) and even empowered (Milward 1992). As noted by Schimmelfennig (2018), (liberal) intergovernmentalism does not have a specific theory to explain integration crisis, beyond stressing the relevance of national interest and intergovernmental conflicts in shaping the crisis outcomes. The results following a crisis are seen as the lowest common denominators between the Member states but (liberal) intergovernmentalist scholars have not yet developed a comprehensive framework to explain the crises or their diverging results and have not further theorized or empirically analyzed sovereignty in the recent period.

These debates between Haas and the supporters of neo-functionalism, on the one hand, and Hoffmann and the partisans of intergovernmentalism, on the other, nourished the reflection on European integration in the 1960s to be relatively abandoned in the 1970s in a context of stagnation and ‘euro-pessimism’. They re-emerged in a more diverse form than ever in the late 1980s and the 1990s when new treaties at the European level were adopted that led to the establishment of the single market and the development of a wide range of policies, including Economic and Monetary



Union (EMU), Justice and Home Affairs (JAI), External Action policies etc. Supporters of neo-functionalism saw in these evolutions proof of an integrationist impulse fuelled by the supranational leadership of the European Commission and the European Court of Justice (ECJ) (Eilstrup-Sangiovanni 2006, 181), both portrayed as supporters of integration advocating in favour of 'more Europe'. The re-launch of the integration process offered the opportunity to review the premises of old functionalism, which received the prefix 'new' to distinguish it from previous assumptions. The enshrinement in the treaties of a new series of policies confirmed Haas's supposition according to which integration in one field engenders integration in another (spill-over). In the 1980s, Jacques Delors' presidency of the Commission – and in particular his agenda and leadership for the establishment of the single market – gave rise to a rich body of research portraying the Commission as a supranational institution acting independently from member states and following its own agenda. Moreover, the 'audacious' interpretations of the treaties by the Court of Justice (Magnette 2000) were additional evidence to confirm the dynamics of legal integration with the support of a wide range of actors, not only judges and advocates general, but also community law professors who, according to Burley and Mattli (1993) 'played a critical role in bolstering the legitimacy of the court'. The logic of law (i.e. integration through law) created spill-over effects for the logics of political and economic integration and vice-versa.

Neofunctionalism puts the focus on the development of a new political community, which will superimpose over the pre-existing ones, i.e. the nation states. Indeed, integration is seen as the process by which new regional institutions will be created, and will gradually gain powers but also by which the activities and expectations of participating actors will change. Through the key concept of spillover, neofunctionalist scholars assume integration will progress further and further in an almost automatic fashion (although later developments would bring some nuance, such as spill-backs – see Schmitter 1970 - as well as the rejection of the automaticity of spillover – see Niemann 2006). But since neofunctionalism mostly concentrates on 'low politics', it has not developed much assumptions on conflicts related to national identity or sovereignty. Outside neo-functional scholarship, though, some scholars have reflected on conflicts stemming from interdependence and



their resolution in a way which seems compatible with neo-functionalism in the sense that conflicts of sovereignty are situated in a post-national, yet not federal, multi-level configuration. Christian Joerges, in particular, has theorized a possible conflicts law to address the practical and democratic issues arising from the negative externalities due to embedded legal orders and the loss of autonomy of national legal orders and their mutual embeddedness (Joerges, 2010).

And although the idea of crisis or conflict has been incorporated into the neofunctionalist framework as an intrinsic feature of the integration process (Schmitter 1970), the recent crises and their outcomes could not be fully explained by this grand theory. Neofunctionalist accounts of the Eurozone crisis can provide a convincing account for its outcomes. The strengthening of socio-economic governance through more stringent procedures provides a good illustration. Rather than the dis-integration of the common currency, we have witnessed an – admittedly limited – attempt to make the federalization of monetary policy with more centralized budget surveillance through the ‘hardening’ of the rules anchored in the Stability and Growth Pact. This has also been accompanied by a tighter – albeit still non legally binding – coordination of macro-economic and social policy through the so-called European Semester and its set of recommendations issued by the Commission and the Council for Member States to reform their socio-economic structures. With regard to migration policies, however, the neo-functional spill over does not seem to work. With a heavy identity dimension involved, national leaders have proceeded unwilling to accept the authority of the European Commission and truly Europeanised mechanisms and principles for managing the flows and circulation of migrants across Europe. The politicization of sovereignty and identity issues in particular remain inexplicable as it has led to public mobilization against rather than in favour of integration (Niemann et al. 2019; Hooghe and Marks 2019). The same is true for the Brexit, where complex dynamics made relating to socio-economic issues and identity politics have led to a form of disintegration which has affected the territorial integrity of the Union. For the first time in its history, the EU may shrink rather than enlarge.

Both of these grand theories can be combined in order to shed light on the recent crises of the EU. However, they haven't provided much development on the notion of sovereignty while it has been



at the heart of these crises. Both have a dichotomous vision of sovereignty as an opposition between the national level and the supranational level.

We believe that the discussions about how European integration affects sovereignty have become more complex, shifting from this original focus on state sovereignty vs. supranationalism to a multidimensional debate involving also the roles of parliaments and people.

### **3. THE RISE OF CONTESTATION, DEMOCRACY AND SOVEREIGNTY IN THE EU**

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#### **3.1 The post-functionalist contribution**

The transformation of the Economic Community into a political union triggered debates on how it was altering the nature of national sovereignty. Throughout the 1990s, scholars tried to grasp the emergence of a new European configuration and the transformation of the concept of sovereignty by introducing a wide range of metaphors pointing out that sovereignty is pooled, shared, divided, split or even marginal (MacCormick 1999). They also sought to understand the implications of the model of pooled or shared sovereignty were (Peterson 1997, Wallace 1999). Does the abolishment of national vetoes with the switch to qualified majority voting in most decision-making areas in the EU combined with a European top-down legal system mean the shift of Europe into a post-sovereign, post-national political order based on human rights (MacCormick 1999)? Or, should we rather conceive of it as a pre-sovereign configuration which ‘shares and distributes sovereignty in ways that remove the arbitrary power of any single agent or agency’ and where ‘unity is constructed via a dialogue amongst a plurality, with the one being continually challenged, renegotiated and reconstructed as the other evolves and becomes more diverse’ (Bellamy 2003, 190).

Moreover, this transformation led to the growing politicization of European issues in the public sphere. Europe can no longer be seen as an exclusively elite-driven process. As the postfunctionalist scholars have pointed out, the 1990s ended the permissive consensus and a constraining dissensus emerged: national governments have now to look over their shoulders when making European decisions and public discontent increasingly matters (Hooghe and Marks 2009). Neo-functionalism



as well as intergovernmentalism have a rather elitist conception of citizens which are conceptualized more as interest groups rather than constituencies or mass publics. While public opinion does play a role in Haas or Moravcsik accounts, it seems rather diffuse. In neo-functionalism, selected interest groups which have an interest in deepening integration are drivers of EU integration while publics are seen as progressively shifting their loyalty towards the new regional political centre. In liberal intergovernmentalism, “domestic societal actors” are essentially embodied by economic producers who contribute to shape States’ preferences and the “winning set” at their disposal in intergovernmental bargaining (Moravcsik, 1993: 482). This being said, postfunctionalism is the only theoretical approach which stresses the primacy of domestic politics and the possible downward pressures it can have on the level and scope of integration (Webber 2019). It also stresses the relevance of politicization of identity and sovereignty related issues, especially to explain crises. For instance, the migration crisis, the illiberal challenge and Brexit can at least be partially explained by the constraining effect of the politicization by political actors at the domestic level of identity and/or sovereignty related questions. These crises mobilized collective identities and were framed by some as a sovereignty question and any attempt to depoliticize these issues backfired (Börzel and Risse 2018; Hooghe and Marks 2019). Although postfunctionalism does not offer much development on the concept of sovereignty itself, it highlights the need to go beyond the binary opposition of national sovereignty vs. supranationalism and shows how crucial domestic actors and domestic developments are to understand EU integration and its crises. Eventually, post-functionalism goes hand in hand with an update of neo-functionalist assumptions whereby those assumptions, if not met, could become vectors of ‘spill backs’ rather than spill-overs. This is particularly true for the assumption that “the net benefits from this increase in regional interdependence will be positive, both for the economy as a whole and for the population at large. These benefits will be recognized and appreciated by those affected, and they will be (more-or-less) evenly distributed and shared across Member States” (Schmitter, 2015: 4). In a post-functionalist perspective, Peter Mair has taken a critical view on the way in which the sharing of sovereignty has hollowed out national electoral processes thus bringing about a major democratic deficit (Mair, 2013).



The table below is an attempt to grasp the logic underpinning the conception of sovereignty and the relate conflicts in the perspectives outlined above.

<b>Theory</b>	<b>Main locus of power</b>	<b>Main underlying principle</b>	<b>Dynamics reconfiguration of sovereignty</b>	<b>Effects on Member States</b>	<b>Resolution of sovereignty conflicts</b>
Federalism	European federation	Supranationalism	Re-foundation of Europe	Superseded	Constitutionalism
Neo-functionalism	European (con)federation	Supranationalism	Functional over/back spill	Superseded	Conflicts law
Intergovernmentalism	Nation States	Pooled sovereignty	Inter-state Bargaining	Rehabilitated	Veto
Postfunctionalism	Nation States	Pooled sovereignty	Elections/referenda	De-legitimised	Opt outs, exits

Drawing on these recent insights, we consider that the EU brings together a plurality of sovereignties, where member states are sovereign without an EU sovereign (Hayward 2012). And we should connect the theoretical debates on EU integration and sovereignty with the recent discussions on how to accommodate authority and power in the EU considering the rise of opposition to the integration process. Two forms of sovereignty need to be taken into account in that aspect: parliamentary sovereignty and popular sovereignty.

### 3.2 Parliamentarism in the EU

With the discussion on the so-called democratic deficit of the EU, the role of parliaments came to the fore. A consensus among scholars has emerged on the diagnosis pointing to the weakening of a further form of sovereignty conceptualised in democratic theory, namely parliamentary sovereignty.





Beyond theoretical contributions, there is now an important body of literature analysing the role of national parliaments in the EU multi-level decision making (a.o. Auel and Höing 2014, Auel and Christiansen 2015, Hefftlar et al. 2015, Winzen 2012). It converges towards the finding that, while the legislatures prerogatives and degree of adaptation to EU integration displays a great variation across the continent, their ability to participate in decision making or hold their government accountable for the decisions made in Brussels remains unsatisfactory with regard to democratic expectations, a trend which has been aggravated with recent reforms of EMU (Auel and Höing 2015, Crum 2018, Fassone 2014, Hallerberg et al. 2008; Hefftlar and Wessels 2013). A general trend exacerbated by EU integration has been the relative autonomization of European executives and strategies of blame shifting or by-passing of European actors allowing governments to pass unpopular reforms while partly escaping the national democratic debate (Bauer and Becker, 2014; Bickerton et al., 2015; Bressanelli and Chelotti, 2018). At European level, the key role of non-majoritarian institutions, mainly the European Commission and the European Central Bank, also contributes to maintain EU politics insulated from electoral cycles and parliamentary politics. For a number of reasons, mainly pertaining the quality of representation at EU level (Farell and Scully 2007, Brack and Costa 2013), the EP, in spite of the continuous strengthening of its powers, has by no means compensated for the loss of power of national parliaments. And the structuring of a genuine, effectively functioning multi-level parliamentary system associating national parliaments and the EP has remained elusive until today. To democratize, and first and foremost the Euro-area where, some scholars have called for the direct involvement of national MPs either through a 'Parliamentary Legislative Initiative' (Kröger and Bellamy 2016) or the creation of a new powerful parliamentary assembly (Beetz 2018, Hennette et al. 2017).

### 3.3. The rise of popular sovereignty claims



More recently, the debate has turned to the problem of locating popular sovereignty as such in the EU polity. Ever since the famous Maastricht decision of the German Constitutional Court in 1993, there has been a sustained discussion surrounding the ‘No demos thesis’. In their judgement over the Treaty of Maastricht, the German judges claimed that there was no pan-European demos underpinning a possibly fully democratic European polity. The main problem of popular sovereignty in the EU, then, is the impossibility to locate the sovereign which could empower the common institutions (Rose 2019). This argument was criticized for reflecting a - potentially specifically German - “organic” or culturalist (if not nativist) conception of the demos conflating citizenship and nationality, while a European demos could be rooted in a post-national sense of belonging to a common set of political principles and institutions (Weiler 1995). However, far beyond the German legal culture, the ‘no demos thesis’ seems to echo common sense arguments, as well as a number of research findings pointing to the difficulty of finding the necessary conditions for the emerging of a European demos expressing popular sovereignty in the EU political system (for a recent summary see Risse 2014). In addition to the continuously decreasing turnout for the European Parliament election, possibilities for direct participation remain very at best, dysfunctional at best or dysfunctional at worst. While public mobilization and protest can occasionally have an actual impact on decisions made at EU level (Parks 2015, Crespy 2016), they remain too occasional to sustain the presence of citizens’ interests in a genuine European public sphere or political space. The present evaluation of the European Citizen Initiative, now into force since 2012, suggests that the transnational organisation of voice is impeded by a number of structural factors.

Against this background, a group of political theorists claim that the EU should be grounded in the recognition of the plurality of the various European *demos*. A European *demo*cracy should therefore be defined as a ‘union of peoples who govern together but not as one’ (Cheneval and Schimmelfenning 2013). From the perspective of sovereignty, this means that national sovereignties derived from the national *demos* do not need to be merged, pooled, or shared, but that they need to be exerted jointly. As Cheneval and Nicolaidis (2017) explain, there are two sides of the exercise of joint sovereignty in a *demo*cracy. On the one hand, the fact that the various people remain distinct



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

#### 4. THE MULTI-CRISES OF THE EU AS CONFLICTS OF SOVEREIGNTY: A CONCEPTUAL MATRIX

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

First, state sovereignty refers to the autonomy of the Westphalian Nation-State to rule on a territory delimited by borders. Since WW2, this type of sovereignty has been increasingly constrained not only by EU integration, but also by a more general transformation of the State in the face of globalization. Second, supranational sovereignty can be understood as the capacity of the EU to make decisions and pursue policies in the name of the member states’ community as a whole only in the selected areas where competencies were granted to the EU by the Treaties. This involves essentially



the autonomy of the EU as a legally unified subject to act with exclusive competences both internally and externally. While the notion of supranational sovereignty has not been theorized and remains a political taboo, the idea of a ‘European sovereignty’ has been recently championed by the French President Emmanuel Macron especially in relation with trade, immigration or security issues. It has also been echoed by the current Commission President Jean-Claude Juncker (2014-2019). Third, parliamentary sovereignty is understood as the capacity of parliaments, whether at regional, national or EU level, to take part in the political process by virtue of the principles of election and representation. This dimension raises the issue of multi-level representation which is crucial if legislatures are to remain key actors in decision-making as opposed to a mere instrument of symbolic politics. Fourth, popular sovereignty refers to the basic principle whereby the body politic confers legitimacy to decision makers in a democratic system. The people is the ultimate lawmaking authority, its *pouvoir constituant* and the legislative, the executive and the judiciary are *pouvoir constitué*, having received their power from the people (Lindahl 2003, 91). This implies the right for citizens to give continuous feedback to decision-makers and to participate in the political process in different ways including through non-conventional participation.


While grand theories of European integration traditionally lead us to think of the opposition between nation-state and supranational sovereignty, today’s debates focus on the implications of EU integration with regard to parliamentary and popular sovereignty, both at the national and supranational level. Using this matrix to investigate conflicts of sovereignty (table 1), it is possible to examine how, in contemporary contentious debates, various categories of actors across the European multi-level polity conceive of various types of sovereignty and which types are strengthened or, on the contrary, weakened by the unfolding of these conflicts.

Conflicts of sovereignty can be explained in different ways.



For those embracing traditional legal arguments opposing in EU studies nation state versus supranational sovereignty, ‘as long as the nation state is the supreme authority’, there is a potential for conflict’ (Hoffmann 1966,158). Whatever sovereignty member states are willing to cede, ‘they will take it back legally or less legally if necessary’ (Menon 2008, 236). At a more general level, conflicts find their origins in different understandings of sovereignty which range from the state-centred views to post-sovereign conceptualisations. The tension is embedded in the conceptual structure of sovereignty itself (Walker 2003, 8), oscillating between legal and political registers, that is ‘between the idea of law as foundation of the polity and the idea of law as medium through which a non-legal or political foundation to the polity is given legal expression’. The concept of sovereignty suffers from a description fallacy, i.e. the idea that sovereignty ‘should correspond to, be measurable against and be described in terms of independent and objective reality’ (Walker 2003, 6), which denotes ‘the power or capacity of the state to exercise full control internally and to remain independent externally’ (Werner and De Wilde 2001, 285). An alternative view is that sovereignty neither corresponds to some state of affairs, ‘nor it is commensurable with other concrete articulations of the abstract concept of power’ (Walker 2003, 7). Sovereignty involves a ‘speech act’ (Werner and De Wilde 2001), that is a claim to ordering power. This understanding of sovereignty is key to comprehend new and old conflicts of sovereignty in the EU polity.

Sovereignty has been invoked in many ways, incessantly, selectively, self-servingly with consequences or not for the EU polity. According to Werner and De Wilde (2001, 286), sovereignty is not less important when the power of the state is diminished. On the contrary, they argue, strong claims to sovereignty are more likely to occur in times of competing claims to authority. From this perspective, there is continuity, as Walker put it (2003, 19). In contrast, we believe that discontinuity appears in the meanings and usages of the term (see also Adler-Nissen and Gammeltoft-Hansen 2008, Saurugger 2013) and in the forms taken by these conflicts at the domestic and supranational level, involving not only executive versus supranational institutions or national versus supranational courts, but also parliamentary and popular sovereignty versus domestic executive actors or supranational institutions (as illustrated in the matrix). The lines of conflict contain more layers



than in the past and this level of complexity is a sign of novelty and discontinuity. Not only normative positions, but also agents' self-interested strategies are bound to play a role in today's conflicts of sovereignties.

Research should therefore analyse how political actors attach their understanding of sovereignty to a specific vision of the EU in terms of power relations between member states and supranational actors and types of policies to be developed at the EU level (Fabbrini 2015). Each vision of the EU implies strengthening or weakening the state, as 'weakening of state sovereignty helps promote a cosmopolitan respect for individual rights and justice' (MacCormick 1999), while eroding state sovereignty implies 'to weaken the capacity of domestic electorates to control and influence how they are governed' (Malcolm 1999). As Bellamy put it, three main conceptions can be identified in this debate: ideas defending state sovereignty, ideas suggesting transfer of power to the supranational level in order to deal effectively with global challenges and, ultimately, ideas suggesting going beyond any form of state sovereignty (Bellamy 2016, 2). However, beyond these three maximalist positions, a range of intermediate positions exist as to how sovereignty ought to be shared or jointly exercised. To be sure, those positions are bound to vary according to the types of rules (constitutive vs. policy making) and/or the issue area at stake (external vs. internal policy, economics vs. identity, etc.).

## 5. CONCLUSION: SOVERIGNTY AND THE "DECADE OF CRISES"

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The EU has been facing a "polycrisis" over the past decade. And although it may seem that the EU is in a state of permanent crisis, this time, it is quite different as the European project had never had to deal with so many challenges simultaneously, for such a long period of time and with such a high price to pay in case of inaction. This context is thus new and four areas in particular have generated conflicts of sovereignty.

A first area relates to democracy and the rule of law. Over the last 10 years, some countries from Eastern and Central Europe have not only constantly contested the legitimacy of the EU and the



Commission to take action when at the domestic level governments adopt legal changes that put under strain the liberal constitutional order and the independence of their judiciaries (Coman 2017) but also, lately, they have challenged the duty of supranational institutions to safeguard the common values on which the EU is founded. These debates have given rise to fundamental normative, political and legal questions concerning the nature of the EU's political regime and its role in protecting common values and preventing cases when member states put said values under considerable strain. This is more than an empirical puzzle for scholars. It is an existential threat and a political challenge to EU integration. Therefore, it invites scholars to study how sovereignty is instrumentalized by political actors and how different understandings of the rule of law-sovereignty nexus shape the EU's action.

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



there was no alternative to austerity policy increased (Borriello 2017) and more generally, it fuelled the rise of mainstreaming Euroscepticism at both the national and the European levels (Brack and Startin 2015).

Migrations and border control is a further area which has become a bone of contention with numerous debates on the legitimacy of the EU's interference and conflicts among states as well as between the EU institutions and member states. In recent years, the so-called Schengen crisis made the headlines and triggered existential debates for the EU. Its survival has been put at risk by a series of unilateral decisions adopted by certain member states which – in the name of their sovereignty - reinstated controls at their internal borders. In addition, since 2015 onwards, the plan proposed by the Commission to relocate refugees from Italy, Greece and Hungary to other EU member states in order to develop mutual solidarity and shared responsibility has become a bone of contention at the EU and national level. A new concomitant conflict has erupted at the EU level about the authority and the locus of power where decisions about borders can be taken and how sovereignty can be maintained intact while in the same time conferring some powers to supranational institutions.

More broadly, sovereignty is at the heart of conflicts over membership, as Brexit has shown. While in the past the 'ever closer union' was the only way forward and taking sovereignty back was unthinkable and legally impossible, the Lisbon Treaty allows member states to withdraw from the Union in accordance with their constitutional requirements. To what extent leaving the EU allows to go back to the world of 'early sovereignty' is uncertain and from this perspective Brexit is an interesting case. Similarly, the conflicts within the UK on Brexit suggest a fundamental tension between different types of sovereignty, more particularly between popular and parliamentary sovereignty (Bickerton, forthcoming, Niblett 2016, Winzen 2016).

These crises evidence that conflicts of sovereignty take place at various levels, in different domestic situations and pertaining to different policy areas. While each case deserves attention, we argue in this issue that a comprehensive understanding of these multifaceted and multilevel conflicts of sovereignty is needed.





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## Appendix