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Sabine Saurugger

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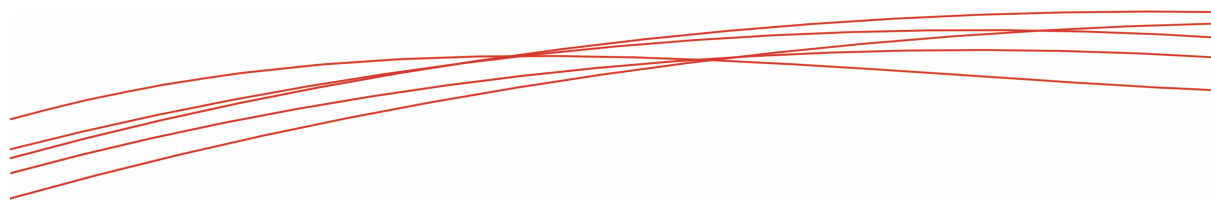
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**Is there a sovereignty problem in the EU?**

**Sabine Saurugger, Univ. Grenoble-Alpes, Sciences Po Grenoble, PACTE**

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Partners //



## **Is there a sovereignty problem in the EU?**

Sabine Saurugger, Sciences Po Grenoble, IUF  
[sabine.saurugger@sciencespo-grenoble.fr](mailto:sabine.saurugger@sciencespo-grenoble.fr)

*In the process of the European integration, the role of the state seems again to have become stronger over the last fifteen years: oppositions against treaty reforms were carried by national public opinions, framed by state borders; decisions with regard to rescue packages were decided on the basis of governmental debates and included much less than in the past supranational institutions.*

*This contribution aims at analysing the challenges state sovereignty – newly affirmed and old – poses to theoretical approaches of European integration. It does so in two parts. It discusses the question of sovereignty in the regional integration schemes more generally in a first part. In distinguishing between internal and external state sovereignty, my aim is to consider sovereignty not so much as a juridical concept than as a concept whose importance varies according to perception and construction by social agents. A second part will then develop a conceptual framework based on the usage of sovereignty by members state officials both at the EU and the national level.*

Work in progress

## **Introduction<sup>1</sup>**

Theorizing the European Union entails a number of difficulties. Amongst those, and not the least important, is without doubt the question how to deal with the state in this process. More specifically: how to take one of the state's core characteristics into account: its sovereignty?

The analysis of sovereignty in the European Union is not a particularly new idea. Most commonly, federalist perspectives have dealt with this question extensively and abundantly (Beaud 2007, Burgess 2006, Howse and Nicolaïdis 2001 to quote but a few), both from a legal and political science perspective. Amongst politics approaches, liberal intergovernmentalism is without doubt the best-known perspective for giving state sovereignty the role of the central independent variable in explaining policy processes in the European Union (Moravcsik 1998). Is it therefore necessary to add any new element to this, rather comprehensive, debate?

The aim of this article is not to develop a new conceptual framework to understand the sovereignty of the member states in the European Union (for such an attempt see Jessop 2004), nor to propose a new theory of the state. My main objective is to show that, while it is impossible to analyse European integration without taking state sovereignty into account, it is also impossible to understand this sovereignty without taking into account the usage that actors make of this sovereignty (see also Aalberts 2012). In other words, it is necessary to deal with sovereignty in action.

This contribution analyses the elements that enter into play when actors, both national as well as European, discursively refer to sovereignty in order to oppose or, on the contrary, to support European integration projects and policy processes more generally. Thus, my position is far from arguing normatively, as is common amongst eurosceptics, that European integration reduces state sovereignty, nor to put forward the idea that European integration has reinforced or transformed sovereignty over that last sixty years.

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<sup>1</sup> Paper prepared for the ECPR General conference, Bordeaux, September 2013

This article is based on the general assumption that the European Union is not a *sui generis* organisation in need of new theoretical approaches and theories. It is therefore not necessary to invent a new political, economic or law category in order to understand the place of sovereignty in European integration. Under no circumstances makes the European Union or the global system in general older theories developed to understand sovereignty obsolete.

On the contrary, the article aims at arguing that European integration has neither transformed nor diminished state sovereignty. State sovereignty is not a static object. Instead of starting this article with a clear definition of sovereignty, as I would usually do, this article argues that it is a concept that only acquires existence through its use and the interpretation offered by actors. Albeit sovereignty is, without doubt, a legal principle, only the use of this concept allows us to perceive the forms it takes in real life. This reflexion is by no means revolutionary: the strategic usage of sovereignty exists since the Treaty of Westphalia of 1648 (Aalberts 2012).

The aim of this article is thus to understand when and how sovereignty is actively used in the European Union, given that we are indeed confronted with a multilevel governance system in which state power is distributed unequally between policy-making levels. Political developments since the beginning of the European integration process, but in particular over the last twenty years – such as the debates surrounding immigration policies, the functioning of Economic and Monetary Union, the successive Treaty reforms, and the more and more politicised debates in the EU, make it necessary to analyse this issue anew.

A first part of this article will concentrate on the theoretical and conceptual perspectives, which deal with the question of sovereignty in the European Union. From a critical analysis of these approaches, a second part will then develop a number of research perspectives to deal with usages of sovereignty in the European Union.

## **1. Sovereignty in European Studies**

Schematically it is possible to distinguish between three specific perspectives dealing with sovereignty in the European Union. A first approach argues that state sovereignty

diminishes through EU membership, a second analyses the transformation of sovereignty through regional integration, and, a third, finally, discovers the disappearance of sovereignty as an object of study.

– *The disappearance of sovereignty as state attribute*

This specific feature in European studies finds its origins in Jean Bodin's definition of sovereignty (*Les six livres de la République*): those who are sovereign can under no circumstances be subject of another authority. In international relation theories, this approach is at the origin of Kenneth Waltz' neorealist theory (1979). In his understanding the State detains the capacity to decide, alone, how to deal with internal and external problems (external and internal sovereignty). Thus, if a State cannot assume his external and internal capacities, it has lost its sovereignty.

This understanding reminds us of very exclusive definitions by legal theories of the state, such as Hans Kelsen or Raymond Carré de Malberg (1962). In this context, state sovereignty is defined the supremacy of state power. By definition, this understanding refuses any idea that there might be a power beyond the state. The political as well as legal supremacy of the state is thought as the constitutive power of the state, but also as its omnipotence and the power of the state to keep unshared state prerogatives (Beaud 1994). As soon as a state shares these prerogatives, it loses its sovereignty. This absolute nature of sovereignty lead to an understanding of European integration as grave digger of state sovereignty. A member state of the European Union is no longer a sovereign state.

Thus, sovereignty understood in this sense does not structure any longer interstate relations in the European Union. The double sovereignty of the state – internal and well as external disappears. Internal politics, organised to allow the state to exert his authority over state territory (hierarchy), and its foreign policy, based on the formal equality between governments (anarchy) and allowing the state to act without external constraints can't be distinguished any longer.

This line of arguing can be found in the assumption that the British, Danish or Swedish opt outs of some aspects of European integration such as the Schengen agreement, the

Economic and Monetary Union or the social charter could be seen as reaffirmations of state sovereignty that should not have taken place. These opt outs are seen as political contradictions with the principles of an ever closer Union, because an ever closer Union would lead to an implicit federal state in which state sovereignty so much as disappears (Curtin 1993, de Burca and Scott 2000).

However, the European Union is not only an ever-closer Union. It is also a composite space. This composite character entails a number of limits for a clear-cut distinction between a sovereign and a non-sovereign state:

1. EU public policies are of different nature, either based on the classical community method, intergovernmental decision-making or the open method of coordination. The states thus can play with different interpretations of their sovereignty in different decision-making contexts.
2. Even if EU norms are legally binding, states can circumvent or oppose these norms. They are thus free to renegotiate the rules defined by the Economic and Monetary Union as well as those provided by Justice and Home Affairs policies in the framework of intergovernmental negotiations.
3. Finally, the introduction of the Open Method of Coordination, introduced in 2000 to allow the Union to deepen harmonisation of social and employment policies must be seen as an enlargement of potential tools to play with state sovereignty. This method has been transferred also to other policy fields. Several policy areas such as environmental policy, based on programmes as well as public and private partnerships (Halpern 2010, Holzinger, Knill and Shafer 2006, Jordan, Wurzel and Zito 2003), regional policy (Bache 2010), or security (Balzacq 2008) or foreign and defense policy (Menon and Sedelmeier 2010) have equally developed non-legally binding policy tools, often without the perimeter of the open method. One of the objectives of the Open Method of coordination is to avoid direct resistance of member states, but to allow for further deepening integration in certain areas through a method mainly based on a learning process. This method would make the circumvention or the opposition of member states to existing rules less visible. In this debate, state sovereignty would be entirely maintained because no legal constraint, leading to a control by a supranational court – in our case the European Court of Justice – would be used as a threat.

– *The transformation of state sovereignty*

A second group of scholars assumes that state sovereignty is only transformed through European integration. They argue that the European Union can simply not be treated without taking into account the intergovernmental character of the European Union. State sovereignty is a central feature of regional integration, according to these scholars. However, there are not a static fact, but a notion, transformed and retransformed through interaction.

Thus, the European Union is characterised as neo-medieval structure (Bull 1977, Waever 1995, de Wilde and Wieberg 1996) or post-modernist structure, based on « post sovereignty», « late sovereignty », « conflictual sovereignty», « competition sovereignty» or «mixed sovereignty » (Delanty and Rumford, 2006; McCormick 2002; Bellamy and Castiglioni 2002). Its features are overlapping authority centres and multiple loyalties (Bull 1977, Zielonka 2006)<sup>2</sup>. A similar interpretation is offered by Marlene Wind's analysis of sovereignty and law in the EU. Based on the idea of the EU as a polycentric community as proposed by Neil MacCormick (2002), she argues that the EU either already is (in legal terms at least) beyond sovereignty and therefore post-Hobbesian, or at least it will become so in the near future. What she means by post-Hobbesian is that the EU would be beyond the 'well-known Hobbesian dogma that for order to exist there must be a hierarchical coercive structure to keep man in awe' (Wind 2001, 80).

This is referred to as 'pooled sovereignty', negotiated by a large number of actors and their committees and controlled by the authority of regulations and judgements of the European Court of Justice (ECJ). Thus, most theoretical and conceptual approaches reject specific analytical tools of international relations when studying the European integration process, arguing that the conceptual tools used to study the State are

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<sup>2</sup> In his study, Zielonka presents a fundamentally different view from that advocated by researchers who analyse the integration process in terms of constructing a Westphalian state or a sui generis formation. Conversely, the author offers an analogy between the European Union and a neo-medieval empire, where the European Union acts as a meta-governor (p.190), acting as the mediator between a complex network of independent levels of governance, territorial units and democratic political blocks. This conceptualisation enables a position to be resolutely taken against static analyses of integration, only concerned with small-scale micro-sociological policy phenomena.



sufficient to fully understand the integration process in all its complexity (Hurrell and Menon 1996, 2003).

Sovereignty must thus be conceptualised not as a zero-sum game but as a dual concept: The state and the European Union possess both forms of sovereignty which are transformed through interaction and are constantly reinterpreted (Herschinger et al 2011). It is this understanding of sovereignty that is also at the heart of the idea developed in the second part of this paper: sovereignty can only be understood if we concentrate on the interpretation provided by the actors themselves.

However, albeit stimulating, this interpretation also seems to assume that there was such a thing as a golden age of state sovereignty. A period where neither globalisation, nor regional integration, nor internal debates questioned the sovereignty of the state. This however, is an assumption, this article does not share.

– *The disappearance of state sovereignty as an object of study*

Since the 1990s, theoretical and conceptual approaches have increased their explanatory capacities by adopting a ‘mainstreaming’ attitude. Thus, tools developed by public policy and comparative politics approaches, sociology and political theory used as theoretical and conceptual approaches to European integration have helped to minimise the exceptional nature of the process and allowed to compare the EU construction process with other political phenomena associated with the state. One of the implications of these European studies is that the European integration processes can no longer be understood by international relations analyses alone, the idea being that international relations approaches are primarily interested in inter-state or inter-governmental relations (Hix 1994, Pierson 1996, Pollack 2005).

It is in particular the theoretical framework of multilevel governance that allowed from the beginning of the 1990s onwards to understand the policy-making dynamics that took place in the EU after the Single European Act of 1987 and the Maastricht Treaty of 1992. The essence of MLG thus seems to describe « a system of continuous negotiations among nested governments at several territorial tiers (Marks 1993, 392). This system of negotiations, according to the same author, gives rise to arrangements in which « supranational, national, regional and local governments are enmeshed in territorially

overarching policy networks » (ibid. 402-403). This means that institutions are constantly adjusted and procedures are constantly tinkered with by the decision-making process themselves. Considered to be 'compelling metaphore', because of its perceived theoretical neutrality (Rosamond 2000), MLG considers the state to be under a three-fold pressure: from above, through other international organisations and norms, from below, through sub-state actors, such as regions or cities, and from within, through non-state actors such as interest groups or social movements. MLG is a catch-all phrase that indicates phenomena that take place at the level of politics (political mobilization), polity (state structures) and policy (policy-making arrangements). It describes two interrelated features. On the one hand there seems to occur an increasing territorial disarticulation of central states that can be seen through phenomena such as deconcentration, regionalisation, devolution and federalisation. On the other there is an increasing involvement of private or semi-public actors in policy-making activities.

Four general propositions summarize MLG main features (Piattoni 2010, 249). First, MLG argues that whenever the scale of political or economic activity is expanded from the sub-state to the European level, a qualitative change occurs to the actors that get mobilized at these levels. Second, the public-private dichotomy gets blurred when private actors acquire a public function, a phenomenon well known in the neocorporatist literature since the 1970s. Third, these transformations do not take place by chance but are actively searched for and put in place by actors. For instance by acting as 'private' interests, certain authorities can mobilize at levels, which are not contemplated within the existing institutional order. This blurring of dichotomies is thus not an accident but « driven by the agency of actors that find that the redefinition and simultaneous activation of these levels is a way to strengthen their own position and to pursue goals or defend positions that they consider important and legitimate » (249). Fourth, and last, MLG does not only consider the blurring of the public-private dichotomy, but also that of subnational-supranational distinctions and that of the domestic-international dichotomy.

While these features describe a large number of elements on which the EU political system is based, they evacuate and ignore the still important influence of state sovereignty. Attempts have been made, though, to link MLG to sovereignty schemes. These theoretical perspectives consider sovereignty either as an implicit or as an explicit aspect that must be taken into account in the theoretical reflexion. With regard

to the implicit aspect, Schimmelfennig, Rittberger and Leuffen (2012) further develop the notion of differentiated integration that emerged in the 1990 (for a review see Walker 1998). In stating that there has been a growing challenge to the principle of uniformity in the development of law and the institutions of the European Union, they implicitly argue that sovereignty became an issue after the Single European Act and the Maastricht Treaty, as the numbers of differentiated policy areas increased from 0 to 7% in 2010. While these authors, however, consider state sovereignty as one of the many aspects that must be taken into account when reforming the perspective of multi-level governance into what they call a theory of differentiated integration, other scholars close to a multi-level understanding of the EU have taken sovereignty explicitly into account.

Amongst those, Neil Walker (1998) most explicitly analyses the relationship between sovereignty and differentiated integration in the European system of policy making. He argues that the concept of sovereignty has sufficient analytical scope to be capable of illuminating more or less complex configurations of authority. Very close to constructivist accounts of the concept, discussed below, Walker starts from the assumption that the virtue of a legal threshold definition of sovereignty 'lies in the fact that it retains the sense of ultimate and categorical authority without imposing the impossible standards of absolutism' (Walker 1998, 358). His understanding of differentiated integration is based on the idea that state sovereignty influences the functioning of the EU political system more than any other factor. His definition of sovereignty as an idea does not lead to the well-known state-level/supranational level dichotomy, but allows for understanding another conceptualisation of the EU. Indeed, here, the EU is not a simple, undisputed legal order within a particular political space, but an entity in which exist various, and perhaps mutually disputed legal orders within a particular political space (Walker 1998, 361);

Except for Neil Walker's understanding, this new conceptual frameworks which compare the functioning of the European Union as if it were a state. However, focusing on approaches developed to study the state ('bottom-up mainstreaming') neglects the fact that a number of European integration phenomena take place at an intergovernmental level and refer to concepts such as sovereignty, national interests or the framing power of national political and economic structures more generally.

Member states continue to represent the institutional and cognitive reference that push the process forward or, conversely, cause the European integration process to stagnate. Furthermore, some of the processes occurring within the European Union cannot be understood without considering the environment in which they operate, including processes of globalisation, the creation of norms by other international organisations that influence the European Union, or comparisons between different regional bodies. These phenomena, however, cannot entirely be captured by mainstreaming approaches which have the study of the state as starting point. Conceptual frameworks stemming from international relations seem better suited to explain issues referring to the role of the EU as an international actor, the influence European integration has on third countries or the role of sovereignty in intergovernmental negotiations taking place in the EU arena.

This has been formulated by Stanley Hoffmann in the following terms: '[The state's] autonomy is either denied (the state thus becoming a mere receptacle and by-product), or limited to whatever is functionally necessary to defend the social order (the state as the guardian of the higher or long-term interest of the dominant class); or else the state is being reduced to a set of institutions somewhat decoupled from the rest of the society, yet still analyzed primarily as the target or victim of social forces (the besieged state). ... The theory overlooked the *differential impact*<sup>3</sup> on the various nations, of external countries (such as the two superpowers). Moreover it underestimated the ability of the actors, especially the major ones, to stage or slow down the building of a central political system (the role of counter-ideas, if you like) and the ability of national bureaucracies to resist the transfer of power to the new central one (the power of inertia). (Hoffmann, 1995, p.215-219)'.

We find in Hoffmann's quote the limits of an analysis that sees in the European Union, implicitly at least, the emergence of a new or quasi state. Whilst the premises of the mainstreaming shift are largely pertinent, insofar as they allow for conceptualizing the European Union not as a *sui generis* phenomenon but as a set of political and policy processes that can be compared to those taking place inside a state, they do bring a major challenge. By almost systematically omitting the intergovernmental nature of European integration, they make it practically impossible to reflect on an increased

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<sup>3</sup> My italics

integration of the European continent, the relative respect of national sovereignties that we still find when analysing negotiations within the European Council and Council of ministers of the European Union (Puetter 2012), as well as to conceptualise the role of the EU beyond European borders.

And yet, the European Union lies somewhere between an international system, which is different from the national system because its forms of regulation are imperfect and it has no political authority that overrides that of its members, and the State which, for the most part, has domestically legitimate power, however disputed that power might be (Alberts 2004, 2012). The question is: can the integration process be understood if the role of the intergovernmental characteristics of European integration is ignored and if sovereignty is to be 'pooled' away?

This paper aims to take a different look at the intergovernmental nature of the integration process, whilst showing how this understanding does not focus exclusively on the 'international' topics of European integration, such as foreign policy and common foreign and security policy (CFSP) and foreign trade relations. Indeed, the purpose of this chapter is to consider the intergovernmental nature of European integration in its largest sense. Accepting this idea however does not necessarily mean returning to neo-realists' conceptual tools and the premise of the centrality of the State in an anarchical global system.

The argument of this paper is somewhat different: I argue that state sovereignty is a resource that is used by states in a game of power and influence. Sovereignty is a strategic resource in national as well as international negotiations.

## **2. Conceptualising sovereignty in European integration**

The re-composition of the state is a process pointed out and analysed by a large number of scholars (Le Galès and King 2011; Genschel and Zangl 2007). While this process exists and can be linked in international relations to what is called the 'denationalisation of the state' (Genschel and Zangl 2007), it does not question the state's sheer existence. European states continue to have considerable resources to provide for public order,

defence and diplomacy. This, however, is not enough to understand the power and the influence a state has in European integration. The material attributes of a state do not systematically help us to analyse the role of the state in European integration: both its influence compared to that of European institutions and other actors and the role it plays in framing the debates at EU level. In order to capture the role of the state, we must analyse the states' action at the international level through its agents, but also through the ideas and myths promoted by those same agents or as Skinner argues, the idea of the state "in context" (see also Skinner 2009; Aalberts 2004, Adler-Nissen 2008, 2009).

Yet, at the same time, this reading remains too general, or even banal. Sovereignty is, without doubt a social construct, but a social construct that gives the agents that uses this notion a position of authority. Thus, sovereignty becomes a institutional fact to understand the structure of power in European integration (Walker 2003). Sovereignty is maintained as an existential value of political and legal life and becomes visible through practice. Political interaction produced meaning of the notion of sovereignty and becomes thus a reality that matters (Adler Nissen and Gammeltoft Hansen 2008, Jackson 1993).

This assumption leads to the hypothesis of this paper: sovereignty does not disappear with the deepening of European integration. As studies on differential integration show, individual EU member states have regularly opted-out from common rules, and non-EU member states have occasionally accepted EU obligations (Leuffen et al 2012). The 'implementation' of sovereignty takes new and innovative forms: states play sovereignty games, as Adler-Nissen and Gammeltoft-Hansen (2008) have so pointedly underlined. Thus it is not sovereignty that is new, but its usages. States use new sovereignty strategies and thus modify their own understanding of sovereignty.

To understand these usages and sovereignty strategies, we will not concentrate on IR objects alone, such as CFSP or external commercial policies. On the contrary, the aim of this article is to take the intergovernmental character of European integration seriously, without returning to the conceptual framework of realist or liberal intergovernmentalist

accounts which place the state in the centre of integration processes or the anarchical international system.

This subsection will analyse the question of sovereignty in European integration in three parts. A first part reflects on the structuring role of the state. This part aims at illustrating that state sovereignty has not disappeared: its structuring role is crucial for understanding the activities of other agents. A second part will then present the tools that help us to conceptualise the usage of sovereignty in European integration. A third and last part will illustrate these usages through a number of case studies.

### *1. The structuring role of the state*

Amongst the first constructivist studies on the role of the state in international affairs is Martha Finnemore's (1996) research on national interests in international society. Her approach goes beyond the opposition between ideas and interests and develops a conceptual framework to help us understand the interests and attitudes of states by analysing international structures through meanings and social values. States are part of transnational and international relational networks, which form state actors' perceptions of the world and shape the role these actors play. According to Finnemore, in the international context, states are socialised to defend certain interests and not others. The interests of governmental representatives are constructed through social interaction. Thus, far from being static, interests and values supported by international actors change in what are shifting normative contexts. This normative construction is greatly influenced by power games between the actors involved. Like Finnemore, Judith Goldstein and Robert Keohane (1995, 13) argue that norms and ideas<sup>4</sup> can be institutionalised as well as instrumentalised, thus reflecting the power of certain ideas and the interests of the powerful: 'These social structures may supply states with preferences and strategies for pursuing these preferences'. Similarly, Stephen Krasner (1993) argues that the origins of the international system show that certain norms or institutions – not unlike sovereignty – were initially institutionalised because they

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<sup>4</sup> The difference between ideas and norms is generally under-developed by the analyses cited. However, Martha Finnemore is more in favour of the sociological institutionalism movement than Goldstein and Keohane which defines norms as formal institutions (constitutions, norms, laws) and informal ones (methods, rituals).

served the interests of powerful actors, but have since become independent of those interests.

Several factors influence changes in the norms guiding the actions of actors, including, the legitimacy sought and expertise provided by these same individuals (Haas 1990, Finnemore and Sikkink 1998). Numerous studies on the European Union have implicitly or explicitly returned to this hypothesis. Applied to another empirical study, namely the World Bank, Martha Finnemore and Kathryn Sikkink show that expertise:

‘usually resides in professionals, and a number of studies document the ways that professional training of bureaucrats in these organizations helps or blocks the promotion of new norms within standing organizations [...] Studies of the World Bank similarly document a strong role for professional training in filtering the norms that the bank promotes. In this case, the inability to quantify many costs and benefits associated with antipoverty and basic human need norms created resistance among the many economists staffing in the bank, because projects promoting these norms could not be justified on the basis of “good economics” (Finnemore and Sikkink, 1998, 899-900).

Similarly, Nicolas Jabko shows that the divergence between actors seeking to promote the domestic market through different instruments must be seen as a resource for those actors seeking to reform the European system in the 1980s. Jabko’s premise is that ‘these tensions are very important for understanding institutional change, because they represent opportunities for reform-seeking actors. The existence of tensions creates room for the emergence of political strategies and, ultimately, for institutional change’ (Jabko 2006).

However, as Fritz Scharpf (2002) argues, it is also important to take account of the fact that certain political domains are, not surprisingly, much more difficult to integrate than others due to differing national interests. He enumerates the factors that have an impact on the national and European ability to solve public problems in different sectors of public policy. Having sequenced all sectors of public policy, it transpires that the areas least likely to achieve unanimity at European level are tax harmonisation, budget and certain areas of social policy. Any attempt at regulation in these domains comes up



against coalitions of divergent national interests, making it impossible to achieve broad agreement on common European rules. The author observes that:

‘over recent years (...), the European Council has increasingly often bypassed the Commission’s prerogatives in law-making by defining certain elements of the European political calendar during its summer meetings – elements which must then be developed through legislative channels or *ad hoc* intergovernmental arrangements. In all these instances, national governments can use their veto if they need to fiercely defend their narrow or short-term national (or economic) interests, or indeed common European interests or derive longer-term benefits from enhanced political cooperation and coordination’ (Scharpf 2002, 615-616).

To succeed, however, these countries must find a way of protecting democratic legitimacy, even if some of the above-mentioned adjustments come up against well-established interests. Thus, the national interest is not pre-determined; rather, it comes about through interaction and is presented as such during intergovernmental negotiations. The national interest, defended in the name of state sovereignty at the European level, is considered by sociological approaches as an institution: ‘Even our most enduring institutions are based on collective understandings,[...] they are reified structures that were once upon a time conceived *ex nihilo* by human consciousness [...] [which] were subsequently diffused and consolidated until they were taken for granted’ (Adler 1997, 322). Furthermore, in countries where institutions are fragmented and thus offer a large number of veto points, a successful change of political strategy requires a convergence of cognitive and normative orientations.

Tackling the interests of actors or nations using the sociological tools of international relations, allows the dynamics of, and opposition to, European integration to be interpreted. Hence, an interest becomes a social construct, just like a national interest – which leads us to Wendtian reflection on the construction of anarchy in international relations (Wendt 1999). The analyses of the effects of European norms take us even further, to some extent abolishing the distinction between the intergovernmental and domestic levels.

## *Sovereignty and power of the state in the EU*

Generally conceptualised as a set of capacities primarily beheld by the state, power is considered by sociological approaches of IR as a relation. This fits with the Weberian definition, where power is the capacity of an actor to encourage other actors to do what they would otherwise not do. Power, therefore, is not only a set of material capacities, but also idea-based capacities. It is profoundly relative and differentiated, according to historical periods and international actor constellations. Rather than being an all-encompassing thing, power is broken down into a series of dominant positions in diverse political sectors. Thus, power is observed when an actor can switch easily from a dominant position in one sector to a dominant position in another (Berenskoetter and Williams 2007). Susan Strange (1988, 1996) suggests looking at power in four areas – military, research and development, production and commerce and finance. Joseph Nye (1995, 2004) adds the power of cultural and ideological influence (soft power), though not in the ineffectual sense, since, as the author points out, it can give rise to a potential instrument of domination (Bially Mattern 2005). This differentiation makes the notion of power more dynamic and renders it adaptable to various conflicts and bargaining situations.

In the European integration context, it is arguably interesting to look at the power of states in broadening the notion of 'national interest'. The bargaining power of states is regulated judicially by the weight of their vote. However, this often means academics resort to a rather sterile analysis comparing major and minor states. Sociological approaches, on the other hand, look more closely at those factors determining of states – factors that change depending on the negotiations in hand. Given that decisions are generally taken consensually, despite the qualified majority voting (QMV) rule, the capacity of countries to influence their partners may be based on an infinite number of factors depending on the political issues at stake. Thus, the risk of analysing the political power relationships of the European Union through rational choice tools is that the power of the European Union is being conceived of as an attribute of equal actors, that is states.

It seems important, therefore, to look at how member state representatives in the European Union behave in negotiations arenas and forums. Jeffrey Lewis, in his work on the Committee of Permanent Representatives (COREPER) (Lewis 2000, 2005), analyses

the permanent representatives' socialisation process within the Council. Here, the notion of national interest is addressed sociologically, confronting it with actual discourses and attitudes during intergovernmental committee negotiations and debates. Lewis argues that national representatives share the conviction that they can be more influential if they can come up with common solutions. This idea is shared by Uwe Puetter (2006) in his study on the Eurogroup, demonstrating how a small circle of senior decision-makers shapes European economic governance through a routinised informal policy dialogue. Likewise, Rebecca Adler-Nissen argues that 'the very construction of a national position takes place as part of a struggle for distinction and dominance in a field where the stakes have already been defined' (Adler-Nissen 2009, 132). An example of this construction process can be found in the opt-outs of a number of member states, such as the British and Danish, who decided not to participate in European Monetary Union or cooperate in the field of Justice and Home Affairs. Yet, the 'consensus norm' which exists in the European Union prevents Danish and British officials from being totally left out from European negotiations. These countries have nonetheless influenced EU legislation in these fields and thus continue to informally participate in exchanges on these issues.

It is precisely in these contexts where we see how sovereignty is constructed, through the interaction of diplomats playing a particular role, but at the same time adjusting to outside pressures. In the sociological sense, sovereignty is understood as an historical concept and not as a timeless legal principle. It links authority, territory, population, and recognition in a unique way, and in a particular time (Biersteker and Weber 1996). In order to understand this social interaction, it is necessary to analyse both the transformation of the concept and the carriers of its meanings, i.e. actors, be they public or private. In other words: 'It may be that the 'speech-act' of sovereignty is more complex to perform in an era of globalization and constitutional pluralism, yet it remains an essential political tool in constituting the functional national and international legal orders in which power politics are played out' (Gammeltoft-Hansen and Adler Nissen 2008, 7; Walker 2003, 19-25).

Due to their heterogeneity and epistemological conception, sociological approaches to international relations propose a broad analytical framework to address the link between strength and power within the European Union insofar as they allow us to take

into account the discursive and not solely judicial criterion of state sovereignty as applied to EU negotiations (see also Walker 2003).

## *2. Usages*

The concept of usages helps us to develop a framework to understand the role of sovereignty in the European Union. It leads to concentrate on the resources of and means employed by agents in European integration.

The approach developed by Jacquot and Woll (2004, 2008, 2010) to understand national level change induced by European integration can be used to explain sovereignty games state actors play in more detail. In their approach, Sophie Jacquot and Cornelia Woll emphasise two dimensions of change: firstly, the role of actors in the practical translation of the effects of integration and, secondly, the qualification of reasons to account for actors' actions – or more specifically, the interaction between the micro level of the actor and the macro level of institutions. The authors argue that actors can 'choose' and 'learn' free from institutional pressures, but that any social action within the European integration process also requires an understanding of the environment and the context. To be able to act, actors need to be able to interpret European institutions themselves and comprehend / cope with the pressures that those institutions bring to bear on them.

This understanding of change is extremely useful to understand the strategic usage of state sovereignty. This sociological approach implies looking more closely at the role of actors as they interact, and recognising the importance of their mediation. A sociological lens is required here because we are analysing how the actor and his interactive behaviour are constructed. Through their actions, individuals constitute the dynamics of adaptation, be it from a national context to a European context, and vice versa. More specifically, the idea is to study how actors manage to translate their social positioning (their institutional situation, interests, world view) and the structures that frame their practices into power and influence.

The term usage, however, supposes voluntary action. Whatever the nature of opportunity (political, institutional, symbolic, financial), actors must seize it and

transform it into political practice. What makes this approach particularly interesting for the study of sovereignty is the observation that there can be conscious and deliberate action without the initial and final objective being identical, and without the final effects automatically being checked and controlled.

Three types of usage can be distinguished. Firstly strategic usage, comprising the most commonly studied examples: actors use opportunities provided by the European Union to either side-step the national level or to illustrate at the national level that their sovereignty is still intact. Secondly, cognitive usage, is part of an interpretation and persuasion framework where sovereignty needs to be interpreted in order to become an element of political debate. Finally, legitimisation usage is where actors use EU politics as elements to legitimise or de-legitimise political decisions at the domestic level.

Figure 1. **Typology of usages**<sup>5</sup>

<b>Cognitive usage:</b>	<b>Strategic usage:</b>	<b>Legitimation usage:</b>
Interpretation of context and dissemination of ideas as vectors of persuasion	Transformation of political practices into resources for action	European integration as a formal legitimation of public decisions
Definition of solutions	Decision-making processes	Justification

These three types of usage can be very usefully applied to the use of sovereignty – or sovereignty games – in the European Union.

The cognitive usage of sovereignty refers to sovereignty as competence, a number of rights and obligations, which concern both subjects as well as decision makers in a political system. The strategic aspect of sovereignty can be understood as control or power of states over economic, political as well as symbolic domains of policy-making in the European Union. Finally, the legitimacy aspect refers to sovereignty as resource used by the state to defend a specific position at the European or international level, particularly visible since the emergence of the democratic deficit debate at the EU level.

In order to capture the empirical usages of sovereignty, it is necessary to take two variables into account: the rules and agents of sovereignty. Rules or norms include legally binding rules, but also informal norms that structure the perception actors have

<sup>5</sup> Adapted from Jacquot and Woll, 2004, 20.

of sovereignty. The notion of agents of sovereignty refer to governmental representatives, speaking in the name of their government and can be heads of state, ministers, but also governmental experts in various sectors of public policy.

Figure 2. **Sovereignty usages in the European Union**

	<b>Cognitive usage:</b> Sovereignty as competence, a number of rights and obligations	<b>Strategic usage:</b> Sovereignty as control or power of states over economic, political as well as symbolic domains of policy-making	<b>Legitimation usage:</b> Sovereignty as resource used by the state to defend a specific position at the European or international level (in particular since the emergence of the democracy debate
<b>Agents</b>	Government representatives National experts	Government representatives National experts	Government representatives
<b>Rules</b>	Legally binding rules Cognitive frames	Legally binding rules Cognitive frames	Legally binding rules Cognitive frames
<b>Level of usage</b>	European Domestic	European	Domestic European

2. *Usages of sovereignty in European integration*

In the European Union, sovereignty can be used at the same time at the domestic level to protect the autonomy of the state, and at the European level in order to reinforce the influence of the state. This ‘sovereignty game’ (Adler-Nissen and Gammeltoft-Hansen 2008) is the basis of my main argument: the principle of sovereignty remains unchanged, it is at the heart of intergovernmental relations. It is its usage that changes, adapts itself und is constantly reinterpreted.

From a legal point of view, sovereignty was always a possible weapon to block or, on the contrary to reinforce European integration, particularly since the use of the French veto power during de Gaulle's Empty Chair crisis, or the German chancellor Helmut Schmidt and the French president's Giscard d'Estaing's idea to establish a European Monetary System in 1979. However, from the Single European Act of 1987 onwards, there is evidence of new sovereignty arrangements that allow for its flexible use. Thus Article 100a (4) of the EC Treaty allows Member States to opt out of single market harmonisation measures 'on grounds of major needs' relating to public morality, public policy, public security, public health, protection of the natural environment and the working environment, and a range of other public interest grounds. The 1992 Maastricht Treaty develops the theme of sectoral flexibility. Alongside the narrow 'case by case' flexibility exemplified by Article 100a(4), two other forms of flexibility are introduced: 'predetermined flexibility', where an area of flexibility is defined in advance; and 'enhanced cooperation', where Member States are empowered to make their own additional cooperative arrangements over a broad policy spectrum.

A comparison of these opt-outs illustrates how states use their sovereignty (Adler-Nissen 2008, Walker 1998). During the negotiation of the Maastricht Treaty, the UK and the Danish governments refused to participate in the Economic and Monetary Union as well as in Justice and Home Affairs. These opt-outs had two functions at the domestic level: they created on the one hand an image of national unity and established the idea of a unified public space despite the disagreements that exist in other domains. These positions allowed perceiving the state as an entity, which exercised a political-legal authority over its population, its territory and its money. On the other, these opt outs presented sovereignty as a state attribute, which cannot be removed. These understandings of sovereignty clearly refer to a legitimisation usage in a strategic context. In the field of Justice and Home Affairs, the UK negotiated an opt-out, with some possibilities for partial and temporal opt-ins. This allowed the government to maintain the control of its borders and to develop and later implement its own immigration policy. The Danish government, however, only decided to use the opt-out recognised by the Maastricht Treaty from 2001 onwards, when the liberal conservative government came to power. This new government replaced the Danish immigration policies, which

figured amongst the most liberal in Europe through a stricter and more severe asylum and immigration policy than could be found in other member states.

At the EU level, the Ministers of Home Affairs, however, participated and cooperated systematically in negotiations concerning JHA. The participation remained confined to the ministerial level. The population was not informed as it was perceived to be hostile to any European cooperation in this field. The Danish government, who had no legal possibility to join its European partners contrary to the British government, negotiated individual and bilateral agreements with the Commission. This allowed the government, at the same time, to use its sovereignty as a legitimation tool vis-à-vis its population ('see, we do not participate in this policy and are thus totally sovereign in this matter'), and to play a cooperation game vis-à-vis its European partners, while sometimes referring to sovereignty as a strategic tool ('here we will not continue to cooperate as these dispositions are contrary to our independence').

The implementation of the Stability Pact is yet another illustration where sovereignty games are played. The norms of the Stability and Growth Pact (SGP), albeit precise, were interpreted rather freely by a number of member states. Several targets of the SGP were indicative only (Hallerberg 2010). If a member state run a budget deficit in the medium term, the Council of Economic and Finance Ministers (ECOFIN) could issue a recommendation for corrective action. The member state, however, could not be excluded from EMU; it was not subject to a pecuniary fine, nor was under a legal obligation to follow the recommendation (Hodson and Maher 2004: 799). This flexible interpretation of the Pact gave more room for fiscal manoeuvre to states, but made it more difficult for ECOFIN to measure compliance. The German and French decision to allow a higher budget deficit and debts level, arguing that they remain sovereign countries, is an illustration of this case.

The Spanish government's position in the so-called "European semester" 2012 offers another illustration of sovereignty games. The European semester refers to a more integrated surveillance framework and governs the implementation of fiscal policies under the Stability and Growth Pact. Its aim is to strengthen economic governance and ensure budgetary discipline in the European Union. In the context of integrated



Guidelines outlined in National Reform Programmes, EMU member states develop plans for the implementation of structural reforms to ensure progress towards the agreed goals of the EU Strategy for Growth and Jobs ("Europe 2020"). In the negotiation of the 2012 European semester with the Spanish government, the Spanish prime minister declared that given the difficulties of the country's economy, Spain would not allow that the European Union to dictate its rules and its structural adjustment plans. Confronted with a legitimacy crisis at the domestic level, the Spanish prime minister used the reference to sovereignty at the EU level to reinforce its position at the domestic level and to argue in its favour at the European level. Thus, although member states sign agreements they use sovereignty discourses for reasons of legitimacy. This attitude is, indeed, similar to the analysis in terms of two level games' (Putnam 1988), in which governments play on two levels and use the argument of their responsibility with regard to the domestic constituency in international negotiations. However, the difference here is linked to the main argument developed by governmental representatives: instead of specific policy arguments, data and expertise, state representatives refer to the general principle of sovereignty as a strategic tool.

From a legal point of view, finally, scholars argue that the usage of sovereignty is less based on strategic or legitimation features, but on cognitive aspects. These cognitive aspects are long-term developments, as can be seen when studying Member states' constitutional courts rulings. The German Constitutional court handed down a decision in June 2009 on a challenge to German ratification of the Lisbon Treaty of 2008. The Court found that such a ratification would not per se violate German basic law. Mac Amhlaigh (forthcoming) argues here that, similar to the German Constitutional Courts' 1993 decision, the authority in the judgment was ultimately framed by the German Constitution's 'openness' to European integration. He states that 'In the reconstruction of post-war Germany, and particularly in the drafting of the basic law, the previous unhappy experiences with popular sovereignty were suppressed in favour of a strong assertion of the rule of law and the supremacy of the basic law over the political process' (Amhlaigh forthcoming, 12). This ruling shows the cognitive usage of sovereignty, embedded in a historical framework of understanding what sovereignty means in a specific national context. In France, the Constitutional Court has progressively accepted the European Court of Justice's jurisprudence and slowly abolished legal instruments it

had created itself to resist European law. The most spectacular decision was the Constitutional Court's 1989 Nicolo ruling in which recognised, for the first time, the supremacy of European law over national law.

Thus, state sovereignty is used for two publics: a national and an international one. At the national level, the sovereignty is used for legitimation purposes; at the international level, it refers to strategic or cognitive usages. At the same time, however, these two usages are intimately linked. They are used at the same time by governmental actors, but refer to two different discursive arenas.

It is precisely in these contexts that we see how sovereignty is constructed, through the interaction of diplomats playing a particular role, but at the same time adjusting to outside pressures. In the constructivist sense, sovereignty is understood as an historical concept and not as a timeless legal principle. It links authority, territory, population, and recognition in a unique way, and in a particular time (Biersteker and Weber 1996; Aalberts 2012). In order to understand this social interaction, it is necessary to analyse both the transformation of the concept and the carriers of its meanings, i.e. actors, be they public or private. In other words: 'It may be that the 'speech-act' of sovereignty is more complex to perform in an era of globalization and constitutional pluralism, yet it remains an essential political tool in constituting the functional national and international legal orders in which power politics are played out' (Gammeltoft-Hansen and Adler Nissen 2008: 7; Walker 2003: 19-25).

## **Conclusion**

Contrary to the three perspectives presented in the first part of this article, the state and sovereignty remain very present in European integration processes. Sovereignty does not disappear through European integration, nor does it transform itself into something new, and thus does not need new conceptual tools or theories to capture its significance. Nor is it possible to simply ignore sovereignty, as do MLG approaches concentrating on the state as one actor amongst others.

Understanding sovereignty as an institutional variable which structures power relations (Walker 2007, Biersteker and Weber 1995, Sassen 1995) and allows states to play strategic, cognitive and legitimacy games helps us to go beyond the understanding of the EU as a quasi state, and thus the disappearance of state sovereignty through European integration. Sovereignty continues to be an essential value of political processes but becomes visible only through its usage. While this is a political fact since the Treaty of Westphalia, in the European Union, sovereignty becomes an important element to understand both policy-making processes and outcomes, which are increasingly based on the usage of sovereignty in order to block or to slow down integration processes.

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