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European Integration Between Political Science
and International Relations Theory:
The End of Sovereignty

THOMAS CHRISTIANSEN

EUI Working Paper RSC No. 94/4

European University Institute, Florence

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BADIA FIESOLANA, SAN DOMENICO (FI)

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Introduction

Attempts to identify the European Community (EC), now the European Union (EU)[1], with one or the other label which our vocabulary offers for political systems have always been fraught with difficulty. Part of the problem of theorizing about the nature of the Union has been its restless evolution. Not only has the Union frequently changed the rules of its internal workings. Additionally, such 'change' has not been linear, but

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[1] With the coming into force of the Maastricht Treaty on 1 November 1993, the 'European Community' has been extended to become the 'European Union'. There remains a distinction between the legal basis of the Community - the modified Treaty of the European Community - and of the Union - the Treaty of European Union which also includes 'pillars' governing the cooperation of foreign policy and interior and justice matters. This distinction is relevant particularly with respect to the limited powers of the Commission, the Parliament and the Court in those affairs of the Union that fall outside the Community Treaty (But note the critique of this dominant view in J.Weiler, 'Neither Unity nor Three Pillars - The Trinity Structure of the Treaty on European Union', in J.Monar, W.Ungerer and W.Wessels, *The Maastricht Treaty on European Union* (Brussels: European Interuniversity Press, 1993), pp.49-62). Yet, having noted this distinction, 'Union' and 'EU' are used here, for the sake of simplicity and in order to maintain historical continuity, to mean 'European Union' as well as 'European Community', both before and after November 1994. 'Community' and 'EC' denote specific historical or procedural references to matters based on the law of the European Community.

accelerated and slowed down at different times. Thus, the Union does not offer the analyst the kind of institutional stasis which both international organisations and states approximate. Theorizing about the Union under such conditions is seen to be futile: today's insights into the workings of the EU are likely to be outdated tomorrow - in the current climate of change sometimes literally so.

It is for this reason that the bulk of European integration theory has had as its unit of analysis the *process* of integration rather than the Union as such. The aim has been, in a sense, to turn the predicament of recurrent change into an asset and to identify the dynamics underlying the process of change. And while the process-based theories of European integration (functionalism and especially neo-functionalism) appeared initially to present comprehensive and effective analytical frameworks, they ran into difficulty during the late 1960s when their predictive powers were seen to be minimal. During the 1960s and 1970s, when the shortcomings of neo-functionalism were thoroughly debated, Haas himself admitted that one of the main problems with process-based theorizing remained the lack any notion of an end-product of the process. This lack made an assessment of 'change' practically impossible[2]. Even though Haas offered a range of possible outcomes of the integration process, and despite the fact that neo-functionalism has had a sort of 'comeback'[3], the problem of what exactly the Union is or towards what it develops has not been surmounted. The 1980s were marked by a general decline in theorizing about integration.

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[2] E. Haas, 'The Joy and Anguish of Pre-Theorizing', *International Organization*, 24 (1970).

[3] Cf. R.Keohane, S.Hoffmann, *The New European Community* (Boulder: Westview Press, 1991); J. Tranholm-Mikkelsen, 'Neo-Functionalism: Obstinate or Obsolete? A Reappraisal', *Millennium Journal of International Relations*, 20 (1991), pp.1-22; A.M.Burley and W.Mattli, 'Europe before the Court', *International Organization*, 47 (1993), pp.41-76.

2

Scholars turned to policy-analysis in accepting that for Puchala's metaphorical 'Blind Men' the study of individual policy-sector 'mice' was more promising than the analysis of the integration 'elephant'[4].

This paper will argue that the underlying reason for this frustration with theorizing is due to more than the often-cited 'unpredictability' or 'contingency' of the integration process. While some theorists have accepted that the Community is "more than a regime, but less than a federation"[5], even they have remained in the conceptual frameworks of the modern state-system. The Union has been viewed as a venture whose final destination was obscure, but obscure only within the range of the potential end-states which are currently on offer. To be sure, some authors have been more inventive[6], but the general discourse has remained firmly rooted in the attempt to locate the Union somewhere between the categories of 'intergovernmental organisation' (e.g. as a 'confederation') and 'state' (e.g. as a 'federation') - both models with are state-centred. This paper will try to show that any theorizing on this basis is flawed due to its inherent contradictions.

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[4] D.Puchala, 'Of Blind Men, Elephants and International Integration', *Journal of Common Market Studies*, 10 (1972), pp.267-283.

[5] W. Wallace, 'Less than a Federation, more than a Regime: The Community as a Political System', in Wallace, Wallace and Webb (eds.), *Policy-Making in the European Community* (Chichester: Wiley, 1983), pp.403-436.

[6] See esp. P. Schmitter, 'Representation and the Future Euro-Polity', *Staatswissenschaft and Staatspraxis*, 3 (1992), pp.379-405.

The European Union between nation-state and international organisation

It is clear to most observers that it is impossible to place the Union in either one or the other of the above categories. The Community started off as a formation of nation-states creating common institutions empowered to take authorative decisions within a narrow field. That is why the traditional approach in the study of European integration was to compare it with other international organisations in which states cooperated. But the novelty of the Community venture was noted almost immediately, and comparative studies with other regional or global inter-state bodies soon became futile. On the other hand, the Union clearly does not possess the attributes associated with the modern state. What remained, then, was to conclude that the EU is somewhere 'in-between', *'sui generis'* or a 'hybrid'. Or so it seems. For when it is clear that the Union can neither be identified as state nor as international organisation, it does not take much more to realize that it is equally impossible for an entity to be 'in-between'. 'State' and 'International Organisation' are not the two extremes of a spectrum on which political systems are located: they are the two sides of the same coin - both are based on the principle of sovereignty.

It will be necessary - subsequently - to clarify how this doctrine is understood here, but for the moment we may just accept that "state-sovereignty is the primary constitutive principle of modern political life"[7], something which traditional international organisations only serve to

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[7]   R.B.J.Walker, 'Sovereignty, Identity, Community', in R.B.J.Walker and R.Mendlovitz (eds.), *Contending Sovereignties: Redefining Political Community*, (London: Lynne Reinner, 1990).

4

confirm[8]. Consequently the discourse about the nature of the Union has turned to this question of sovereignty, and two[9] alternatives are offered. Some authors see the Union as the recipient of states' sovereignty which is gradually being transferred to the central institutions. The trend then is one of the Union increasing her own sovereignty. Others talk of pooling, sharing or merging of sovereignties, indicating that the Union is the place where sovereign nation-states meet to decide on joint policies. A good illustration is the debate in a recent publication on the "New European Community"[10], where the editors maintain that

The Union looks anomalous from the standpoint of traditional state-centric theory because it is essentially organized as a network that involves the pooling and sharing of sovereignty rather than the transfer to a higher level.(p.13)...Our use of the language of supranationality does not imply that Europe possesses sovereignty in any simple, unitary way. Quite to the contrary,

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[8] See Art 2(7) of the UN Charter: "Nothing contained in this Charter shall authorize the United Nations to intervene in matters which are essentially within the jurisdiction of any State or shall require the Members to submit such matters to settlement under the Charter." as well as Art.1(3) of the UNESCO Constitution and Art.3D of the Statute of the IAEA. This state of affairs is well documented in a lecture of a former Secretary-General: "when the United Nations is strong, the sovereignty of the people is reinforced. Sovereignty and international responsibility require support for the United Nations", 'Perez de Cuellar discusses sovereignty and international responsibility', *The Review of the International Commission of Jurists*, 47 (1991), pp.24-26. J.Herz, 'The Rise and Fall of the Territorial State', *World Politics*, 4 (1953), makes the same case with respect to international law in general: "International Law really amounts to laying down the principle of national sovereignty and deducing the consequences."(p.480)

[9] Paul Taylor recently offered a 'Third Way' which sees "integration preceding further without any threat to sovereignty" (p.73). But his argument is inconsistent: on the one hand he insists that integration has not affected sovereignty because the British parliament will always have the final say on decisions made in the Community, on the other hand he calls for a "claw-back of sovereignty in an area where the 'givens' have been moving against us" (p.80). P.Taylor, 'British Sovereignty and the European Community: What is at risk?', *Millennium Journal of International Relations*, 20 (1991), pp.73-90.

[10] R.Keohane and S.Hoffmann (eds), *The New European Community* (Boulder: Westview Press, 1991)

the European Community is an exercise in the pooling and sharing of sovereignty.(p.17).

Wolfgang Wessels disagrees in a chapter on "The EC Council":

[The Council] is more than a "pooled sovereignty" as this notion only implies close horizontal cooperation and common management of competencies and instruments still in the hands of national states...[T]he Council is not an "interstate" body (as Keohane and Hoffmann perceive it in Chapter 1) but a body at the supranational level...Thus the EC system has a state quality of its own that leads to a political game of two levels, both of which have sovereignty, though to different degrees.(p.137).

To which the editors answer back:

In his essay, Wolfgang Wessels questions whether "pooling of sovereignty" sufficiently takes account of the evolution of Community law. We regard this as principally semantic. What "pooling of sovereignty" means to us is the transfer of states' legal authority over internal and external affairs to the Community, although not to supranational organs as such.(p.35)

The crucial alternative which is seen to be involved in the integration process is demonstrated in James' clear-cut statement:

[In Western Europe] it may be that a slow but no less far-reaching development is under way, for it could be that a group of sovereign states is moving to the *abandonment* of their individual sovereignties in favour of a larger sovereign entity.[11]

This alternative between 'sovereign states' and 'larger sovereign entity' is displayed in the great divisions of European integration theory: in the divide between neo-functionalism and intergovernmentalism in terms of scientific analysis, and in the divide between federalism and nationalism in terms of normative discourse. These disagreements may be reduced to the

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[11] A.James, 'Sovereignty in Eastern Europe', *Millennium Journal of International Studies*, 20 (1991), pp.81-91 (emphasis added).

question of 'who has, or who should have, how much sovereignty'. But - and that will be the central argument of this paper - the real problem of integration theory lies not so much in the difficulty of finding an answer to this question, but in the acceptance of the philosophical foundations on which this question is based.

The European Union between political science and international relations theory

Something that is not as clear as the above mentioned dispute between intergovernmentalism and neo-functionalism - something that is in fact largely obscured by it - is the division between the disciplines of Political Science and International Relations. Both are concerned with the same questions - questions such as power, order, violence, legitimacy, equality, justice. But in the course of their development the two have to a large extent become divorced from each other. It is an academic division which mirrors the boundary of the state in the real world. It is evidence for the sanctioning of state-sovereignty at the intellectual level. What has become accepted, accepted to an extent where it is hardly ever questioned, is the difficulty of even referring in any meaningful way to international relations as a form of *politics*. To refer to international *relations* is to suggest that what goes on between states in principle quite different from what goes in within states. Relations between states do not offer the same basis of a centred political community for establishing a form of life that is subject to the guidance of established ethical principles. Rather, the lack of a centred community suggests ... either the difficulty or the radical impossibility of establishing ethical principles that are applicable to international relations.[12]

This problem is detected also by those who are more concerned with power or order rather than ethics:

World order still remains tied to the distinction between domestic affairs and relations among states. International and domestic legitimacy remain *distinct*, in conformity with the doctrines of 'realism' based on traditional balance of

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[12] R.B.J. Walker, *Ethics, Modernity and the Theory of International Relations*, (Toronto: unpublished manuscript, 1989) (author's emphasis)

power, which prescribe that states attempt to affect each other's external behaviour, but not the domestic conduct and institutions of political regimes.[13] International Relations is the discipline which tries to explain political activities across state boundaries...These political relations are seen as having *a unique nature*.., because there is no final central authority: power, the ability to influence others, is spread among various human organizations, in particular, states, which recognize no superior political authority. They are 'sovereign'..[14]

The way in which the principle of state-sovereignty has not only become generally accepted but also become the foundation of this separation of academic disciplines has certainly impeded the systematic study of the European Union. Both disciplines have utterly different concerns when they speak of 'regionalism'[15] or 'political integration'[16]. The fact that neither of the two disciplines has been able to come to grips with the nature of the Union has led to a realization that the study of European integration has to be 'interdisciplinary'. It is an approach by

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[13] Stanley Hoffmann, 'Delusions of World Order', *The New York Review of Books*, 9 April 1992, p.37. (emphasis added)

[14] Trevor Taylor, 'Introduction: the nature of International Relations', in Taylor (ed.), *Approaches and Theories in International Relations*, (London: Longman, 1978), p.1. (emphasis added)

[15] IR theory regards whole continents as 'regions', i.e. as parts of the *global* system in which such divisions are most usually effected by economic or security considerations, whereas political science views regions as parts of *states* which are defined through distinctive identity patterns or administrative units. On the IR-type of regionalism, see for example B.Hettne, *The Double Movement: Global Market versus Regionalism*, paper prepared for the UNU Symposium "Theoretical Perspectives on Multilateralism and World Order", at the European University Institute, Florence, 1992.

[16] For IR, integration is most usually between states or between significant subgroups within states - by and large it is an institution-building approach. Cf. C.Pentland, *International Theory and European Integration* (London: Faber, 1973). For comparative politics scholars, by contrast, the issue of integration revolves around social relations among mass publics. See, for example, J. Blondel, 'Legitimacy, Integration, Coercion and the Question of Leadership', chp.2. in *Comparative Politics*, (New York: Philip Allan, 1990), pp.14-60.

9

which is usually meant the exchange of knowledge between economics, law and political science[17]. But to call the study of European integration - a field which until recently has been dominated by international relations scholars - 'interdisciplinary' means to confirm rather then to question the continued division between the disciplines of international relations and political science. An alternative way of approaching the problematic of European integration - the way taken in this paper - would be to see it as a challenge to the continuing separation of international relations from political science in general. European integration challenges this separation for the same reason for which it defies classification as either 'state' or 'international organisation': The European Union has created a situation in which it becomes impossible to maintain the principle of state-sovereignty as the foundation of political life. In support of this hypothesis we will, firstly, establish the way in which the principle of state-sovereignty has been constructed, and, secondly, show how it has become obsolescent in the political life of the European Union.

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[17] Cf., for illustration, R.Dehousse, C.Joerges, G.Majone and F.Snyder, *Europe after 1992: New Regulatory Strategies*, EUI Working Paper in Law No.92/31 (Florence: European University Institute, 1992).

10

What is "Beyond the Nation-State"?[18]

To note that the Union has moved beyond the nation-state, as Haas did, or that is hasn't, as Hoffmann did, means to start the inquiry with the basic unit of the modern state-system: the nation-state. A first exercise in such an inquiry is to disentangle the two components of that term, and to emphasise that nation and state are not identical. Nation and state have become fused to the extent that it is now apparently inconceivable to think of a disconnection without images of crisis.

Nation-states are fairly recent creations, and the relationship between nation and state has not been untroubled. Still, they have proved a powerful, and successful, form of social organization. The mutually reinforcing connection between state and nation, between vast bureaucratic institutions and a dominant collective identity, makes it difficult the think of an alternative organization of human affairs. Discussing the nature of the Union in terms of nation-states and their practical and psychological staying-power we quickly reach the "limits of European integration"[19].

It is possible to reflect on the demise of the nation-state, as indeed many scholars have done. But much of that debate must remain speculative as long as nation-states remain in existence. Taylor, Hoffmann and other intergovernmentalists offer indisputable facts when they point to the continuing relevance of state power and nationalism.

But to disentangle nation and state is only the first step in the correct analysis of nation-states. Nation-states are not just based on the actual fusion of nations and states, but, perhaps more importantly, on the fusion

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[18] The central concern in E.Haas, *Beyond the Nation-State*, (Stanford: Stanford University Press, 1964); the same notion was discussed by S.Hoffmann, 'Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe', *Dædalus*, 95 (1966), pp.865-921.

[19] P. Taylor, *The Limits of European Integration*, (London: Croom Helm, 1970)

of two principles: the doctrine of state-sovereignty and the principle of national self-determination. These two principles, fused in the idea of popular sovereignty, form the philosophical foundation of the modern state-system. To assert that our system continues to be one of nation-states requires not just the continued existence of nations and states, it also assumes the continued relevance of state-sovereignty itself. It is with reference to the evolution of this principle that the discussion will have to turn, before we can return to the dilemmas of European integration theory.

The doctrine of state-sovereignty

Sovereignty is a term now in inflationary use and therefore requires some clarification. Recently, academic interest in a critical assessment of sovereignty has intensified[20]. Here the critical approach of this literature will be followed, even though only a brief conceptual history demonstrating sovereignty's adaptability to the developments in the real world is possible. The concept of sovereignty entered the political realm through the writings of Bodin and Hobbes, having until then only been invoked with reference to divine rights. Hobbes advanced the idea of a single authority - the Sovereign - that would create order, arguing that without strong and central authority the polity would be subject to disorder in the "state of nature" in which the liberty of the individual would not be safe. Locke, agreeing with the liberal tenet of Hobbes' philosophy, saw that this could only be realized through some form of active consent of the people. This realization then formed the basis for the notion of popular sovereignty which Rousseau espoused in *The Social Contract*. But, while in his thought The People are sovereign, the General Will has to be carried out through the institutions of the state, becomes the "bearer of [this] moral project"[21].

This is necessarily a very brief sketch which should emphasise the modification over time of the principle of sovereignty - from God via The

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[20] Cf. R.B.J.Walker, 'Sovereignty'; N.G.Onuf, 'Sovereignty: Outline of a Conceptual History', *Alternatives*, 16 (1991), pp.425-446; R.B.J.Walker, 'State Sovereignty and the Articulation of Space/Time', *Millennium Journal of International Relations*, 20 (1991), pp.445-461; M.J.Shapiro, 'Sovereignty and Exchange in the Orders of Modernity', *Alternatives*, 16 (1991), pp.447-478; C.Weber, 'Reconsidering statehood: examining the sovereignty/intervention boundary', *Review of International Studies*, 18 (1992), pp.199-216; 'L'Etat, C'est Nous: Sovereignty, Economic Integration and Subsidiarity', *Harvard International Law Review*, 33 (1992), pp.459-473.

[21] V.Pérez-Diaz, *Civil Society and the State: The Rise and Fall of the State as the Bearer of a Moral Project*, (Madrid: Juan March Institute, 1992)

13

Prince and The People to The State[22]. For our purposes we can turn to a contemporary definition of sovereignty which appears to be widely accepted: "there is a single source of authority within the state and none beyond it"[23]. It becomes immediately clear that this type of sovereignty is intrinsically linked with the state, it is state-sovereignty.

For clarification we might turn to the four foundations of the sovereignty principle offered by Mayall: a) mutual recognition among states of their equal status, b) agreements among states are either self-policing or policed by them separately, c) territory as the ultimate object of political life, and d) non-interference in the domestic affairs of other states[24]. This is what might be called the 'International Relations view' of sovereignty, for it defines the working of the principle against the outside. A 'political science' view might pronounce the principle differently - its working towards the inside -, but "single source of authority within the state" will feature there too. This might be Hobbes' 'Leviathan', Rousseau's 'General Will' or Weber's 'monopoly of legitame violence'.

But even from these diverse perspectives it is quite clear that while sovereignty can be, and often has been, transferred, it is inherently indivisible. Even for Rousseau the general will of the people required the

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[22] It is interesting to note that - alone in Western Europe - the notion of sovereignty in the United Kingdom leap-frogged the stage of The People: The 'Glorious Revolution' of 1688 removed the divine rights of the king and passed them to Parliament. Hence the notion of parliamentary sovereignty. This shows also that the question is not merely an academic or philosophical one. As Neal Ascherson has convincingly shown, there is a clear link between the absence of popular sovereignty, the operation of the institutions of the state and the quality of life. See especially N.Ascherson, 'Ancient Britons and the Republican Dream', *The Political Quarterly*, 57 (1986). The same point is made in R.Blackburn, 'The Ruins of Westminster', *New Left Review*, 191 (1992).

[23] J.Mayall, *Nationalism and the International Society* (Cambridge: CUP, 1990), p.19.

[24] J.Mayall, *ibid.*, p.19.

14

immediate construction of authorative institutions for its realization, albeit under popular control. The notion of a single legitimate source of authority within the boundaries of the state is, of course, an ideal type which reality only approximates. But for a number of centuries this approximation worked so well that up to the present any alternative form of governance has seemed inconceivable.

But since 1945 the problematic nature of sovereignty has become increasingly clear. Herz' article[25] was one of the first direct assaults on the conceptual foundations of the modern state. For Herz the fusion between state and territory was untenable in the nuclear age. But not all critics of the state agreed on the features of the state which were under threat by technology or 'modernization'. Other writers identified the domestic failings, especially in the economic domain, as indicators of 'the state' in crisis[26]. In international relations theory, the 1970s brought an abundance of interdependence writings which, too, conveyed the image of the state as being in terminal decline. If, so the perception, the state is gradually loosing its authority towards the inside (the phenomenon of 'ungovernability') and its 'hard-shell' towards the outside, what then could credibly remain of the concept of sovereignty?

And yet, the persistence of the doctrine in spite of such trends is remarkable. This is so because the structures and mental habits remain largely untouched by the secular trends which corrode the sovereignty of the state. A distinction between legal and political sovereignty, between 'the

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[25] J.Herz, 'The Rise and Fall'

[26] K.Deutsch, 'The Crisis of the State', *Government and Opposition*, 16 (1981), pp.331-343; G. Smith, 'The Crisis of the West European State', in D.Cameron, *Regionalism and Supranationalism*, (London: Policy Studies Institute, 1981).

15

principle' and 'the capacity' of the state to exercise its sovereign rights[27], allows authors to admit that the ideal type is hardly ever met, but that in some way there is a semblance of sovereignty which remains with the state and is shown through extreme manifestations of authority such as tax-raising, conscripting, imprisoning, etc.

Here is not the space to re-enter into that debate. The state may, or may not, gradually loose attributes of power which in the past have enabled it to approximate the image of a sovereign entity. But in terms of academic inquiry, one must be careful not to confuse legal concepts with political realities. As Bull has noted, the two-sided attack on state-sovereignty of 'interdependence' and 'overload' literature did just that[28]. Rather than falling into the same trap, this paper will examine empirically the *formal* and *legal* situation of sovereignty as it has materialized in the European Union of the early 1990s.

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[27] A distinction made by G.Goodwin, 'The Erosion of External Sovereignty', in G.Ionescu (ed.), *Between Sovereignty and Integration* (London: Croom Helm, 1974)

[28] H.Bull, 'The State's Positive Role in World Affairs', *Dædalus*, 108 (1979), p.112.

16

The European Union and the question of sovereignty

In order to substantiate the claim that political life in the Union has entered the post-sovereign phase, one might initially recall a previous citation of Alan James:

[I]t may be that [in Western Europe] a slow but no less far-reaching development is under way, for it could be that a group sovereign states is moving to the abandonment of their individual sovereignties in favour of a larger sovereign entity.[29]

Combined with an earlier, equally forceful statement of the same scholar, this can become the testing ground for our hypothesis:

[It is most helpful to treat sovereignty as an] absolute and not a relative concept. There may be marginal cases and obscure situations, making it hard to say whether or not a state is constitutionally self-contained, but in principle it can only be one thing or the other. If it is not separate and supreme in constitutional terms it lacks sovereignty. If it does enjoy these attributes, this is conclusive as to its sovereign status, no matter what its size or strength.[30]

Goodwin added that

[i]n diplomatic or legal convention there is a clear dividing line between being sovereign and not being sovereign. In principle, therefore, sovereignty cannot be eroded, it can only be extinguished.[31]

From the construction of these clear categories follows that sovereignty *must* lie either totally with the member-states or with the Union itself. The statements are quoted here to support what has already implicitly been advanced: Sovereignty is by definition indivisible, and the public discourse about the sharing, pooling or partial transfer of sovereignties only serves to

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[29] A.James, 'Sovereignty in Eastern Europe', n10 *supra*.

[30] A.James, 'The Contemporary Relevance of National Sovereignty', in M.Liefer, *Constraints and Adjustments in British Foreign Policy* (London: Allen and Unwin, 1972), p.18.

[31] G.Goodwin, 'Erosion of External Sovereignty', n24 *supra*, p.115.

17

obscure this fact. In the following we will analyse the European Union in the light of this aspect of sovereignty: either the member-states are sovereign, or the Union is sovereign, or else, if neither of the two can be found to possess sovereignty, it is time to view the Union in terms of non-sovereign political life.

A Union of sovereign states?

One might begin this exercise by recalling Mayall's four points about the effects of sovereignty:
- equality of status
- self-policing or separately policed agreements
- territory as the ultimate object of political life
- non-interference in states' domestic affairs[32]

It will be submitted here that none of these corollaries of sovereignty still applies to EU member-states.

Equality of status is formally kept in place by the rotating presidency, which every member-state holds for a six month period. But within the Council there is weighted voting which is the formal recognition of inequalities in size. The same rule applies to Parliament, Economic and Social Committee, the new Committee of the Regions and the make-up of the Commission in which the larger countries have reserved two posts for 'their' nationals. Recognition of equality of status is certainly under threat, especially since there are already plans for the abolition of the Presidency in favour of some stronger, elected President. If the presidency is gone, it is difficult to see through which formal or informal process the image of 'equality' can be preserved. Informally, the existence of what is variously called 'The Big Three', 'The Big Four', 'The Big Five' or the 'Franco-

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[32] J.Mayall, *Nationalism*, p.19.

German Duopoly' is not only acknowledged but well established, and institutional developments seem to confirm such hierarchies of status. The existence of distinct groups of 'small states' and 'large states' with different sets of interests has been the basis for the recent dispute over majority vote thresholds in an enlarged Union.

Union 'agreements', i.e. legislation in the form of Regulations, Directives and Decisions, are only to some extent separately policed. Obviously 'policed' is used here in a larger sense of administration and control, and it is true that most Union acts are under national administrative control. But there are important inroads into this sphere, for example in the field of competition policy where Commission officials execute Commission decisions against unfair trading practices or merger control. More importantly, the European Court of Justice acts not only as 'adjudicator', but also as 'implementor' of Community legislation and can in this capacity be viewed as 'policing' Community legislation[33].

The question of territoriality as the main focus of political life is arguable most clearly affected by Community action. Firstly, the Single European Act is meant (and expected) to abolish all barriers to the movement of goods, persons, services and capital. The legislative programme based on this Act included some 300 directives, and in so far constituted a huge experiment in the government, not of territory, but of the transnational flows of functions and people. The same can be said about Union policy-making in other areas. In the end, all policy-making has some

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[33] See F.Mancini, 'Towards a Constitution for Europe', in R.Keohane and S.Hoffmann (eds.), *The New European Community*, pp.177-194, for a recent and succinct account of the implementation role of the ECJ. On the relationship between Commission and Court in a process of 'litigation as negotiation' and on the general problems of compliance and effectiveness, see the comprehensive account in F.Snyder, 'The Effectiveness of European Community Law: Institutions, Processes, Tools and Techniques', *The Modern Law Review*, 56 (1993), pp.19-54.

territorial relevance, and be it to regulate for the whole of the EU territory. But governing territory, as opposed to functions or people, cannot any more be described as the ultimate object of political life in the European Union. Mayall writes that sovereign states cannot "surrender their territorial integrity."[34] But this is exactly what has happened in the EU, where policies are made, with considerable national input, at the Union level. Whatever national governments' leverage in this policy-making process, this mode of political life is the exact opposite of what could be described as territorial integrity. Territory and its changing relationship with state, society and market deserves a wider discussion for which this is not the space. Fundamental developments, or rather, a fundamental transformation of identity-authority patterns is taking place which goes beyond the significance of the European Union that is the central concern of this paper[35]. But the Union, and its own transformation, are part of this

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[34] J.Mayall, *Nationalism*, p.20.

[35] The most far-reaching account of these changes and their implications for territory and sovereignty is presented by O.Wæver, *Territory, Authority, Identity - The late 20th Century emergence of Neo-Medieval Political Structures in Europe*, Paper presented for to the European Peace Research Association in Florence, November 1991, in which the author offers a complete break with the way the politics ought to be analyzed in the post-modern age. With reference to the value of territory he maintains that

"the post-modern system of speed and acceleration is collapsing time and space into a new simultaneous, non-geopolitical politics where barriers can not be geographical. Power becomes informational, politics becomes 'chronopolitics' relating to the pace of exchange. There is a general move from place to flow. The basic unit become flows. To some extent this points also to the re-emergence of medieval notions like 'potentate', as describing any powerful person, company, city, or collective body endowed with independent powers...metropolises are emerging as the crucial points in the landscape as a kind of city-state, not linking up primarily as towns in the same nation or as mutual links among capitals, but rather as 'europolises'. This move towards the city-state is generated by two movements: the decreasing importance of territorial, national borders, and on the other side the emergence of a kind of immaterial territory in the form of tele-networks." (p.26), (author's emphasis).

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evolution, and a more far-reaching study will have to have a broader societal scope which captures this 'post-modern' sea-change. To quote from a recent article by Etienne Balibar, which supports well the main thrust of the argument presented here:

The point is rather to take a very long-term perspective for analyzing the evolution of the historical *forms* of the state institution, and to ask within that perspective what the state is tending to become, how it is behaving, and what functions it is fulfilling in the *European space* ... - a space which, in particular, cannot simply be reduced to the figure of a 'territory'.[36]

Turning lastly to the principle of non-interference in domestic affairs, which for Mayall is the most important entailment of sovereign statehood, we easily discover serious breaches in the political life of the Union. Union institutions interfere vehemently in the domestic affairs of member states, be it through legislative and executive functions or by entering into the political debate. With respect to the former, one may note Commission activity in the fields like state aids to industry, environmental damage assessments or regional policies. With respect to the latter, the political activism of the current Commission President Jaques Delors comes to mind. His address to the British Trade Union Congress in 1988 had a significant impact on how the British Labour Movement was to view the Community and the Single Market process in the following years[37]. Equally, the German *Länder* changed their attitude towards the integration process
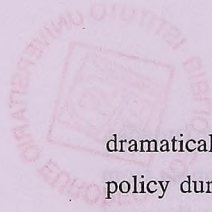

This certainly is an extreme view which is open to attack on several fronts: it is one thing to argue that territory has stopped to be the ultimate object of political life, but quite another to say that territoriality is losing relevance altogether. Wæver's argument is going too far to be analyzed in detail at this point, but it does support the case that the territorial integrity of the nation-state is deteriorating.

[36] E.Balibar, *'Es Gibt Keinen Staat in Europa:* Racism and Politics in Europe Today', *New Left Review*, 189 (1991), (author's emphasis).

[37] R.Blackburn, 'The Ruins of Westminster', p.24.

dramatically after Delors espoused the subsidiarity principle as Commission policy during a meeting with West German state prime ministers in 1989. Both instances are examples - unresisted or 'unresistable' by national governments - of how domestic political relations were profoundly shaped from 'the outside'.

Even greater than in domestic politics is the interference of Union organ's in national policy-making. Some years ago, Jaques Delors' dictum that eventually the European level would have a say in up to 80% of Member States' economic and social regulation came as a shock to many, demonstrating the ultimate reach of the integration project into many spheres of traditionally nation policy-making. Yet, by the time of German unification, when a host of re-regulation became necessary to adopt the former GDR to the legal framework of the Federal Republic and of the Community, it became clear that the figure of "80 per cent" was probably not even sufficient to desribe the extent of European influence on policy-making.

Thus, not much remains of the formal, 'constitutional' effects of the sovereignty principle at close inspection of the politics of the Union, but one can look at yet another authorative source with respect to the functioning of sovereignty who has maintained that if
an organization encroaches on the domestic jurisdiction of members to a substantial degree the structure may approximate to a federation and not only the area of competence but their very personality will be in issue. The line is not easy to draw, but the following criteria of extinction of personality have been suggested:

- the obligatory nature of membership
- majority decision-making
- the determination of jurisdiction by the organization itself

- the binding quality of decisions of the organization apart from consent of the member states.[38]

To the student of the European Union in the 1990s it will be clear that only the first of these is still questionable in the EU. Majority decision-making, the primacy of Community over national law and the 'direct effect' of Community Regulations and Directives are formally established[39].

What remains in effect for member-states to exercise their 'sovereign rights' is to leave the Union. Short of secession there simply is no way of maintaining that "there is no authority beyond the state". This relates to Brownlie's criterion of "voluntary membership". This is the crux of state-sovereignty in the Union of the 1990s.

The legal elaboration of this question has revolved around the indeterminate duration of the basic treaties, a fact which implies, in international law, that in the absence of a unanimous decision of all members no withdrawal from the treaty commitment is possible. In the Union, the dominant interpretation of the relevant article (Art. 240 EEC Treaty) is that unilateral withdrawal from the Community is not permissable and would therefore be 'unconstitutional'. The secession of Greenland, a self-administered territory under the Danish Crown, from the Community in 1985 is certainly no example for such withdrawal. Apart from being agreed to by the other Member States[40], it was simply the exclusion of part of a Member State's territory from the force of the Community's legal

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[38] I.Brownlie, *Principles of Public International Law*, 3rd edition (Oxford: Clarendon Press, 1979), p.291.

[39] On the last two points, see F.Mancini, 'Constitution of Europe', in particular the description of the Court's methods in creating a system of 'quasi-judicial review' of national legislation.

[40] See the relevant Council Regulations amending the Treaty published in *Official Journal*, No.L 29/1.

order, comparable to the status which the Channel Islands enjoyed since British accession in 1973, *not* the withdrawal of a Member State.[41]

Meanwhile, defection from the Union has become a practical impossibility as the Single Market is a reality and as Monetary Union has entered phase II. Simply too much has changed since the mid-1970s, when British withdrawal was considered and being campaigned for as a credible option. All that Union Member States today can do when they see their sovereignty extinguished is to prevent further entanglement - as the UK government has been attempting with respect to the Social Dimension and the Single Currency and the Danish with respect to the West European Union. There is no indication that a withdrawal from the Union remains within the range of policy-choices any Member State's government has left.

In arguing that British sovereignty is not affected, Paul Taylor writes that

[i]f the British Parliament made it clear, *without any ambiguity*, that it intended to nullify a particular decision made by the European Institutions, the British courts would follow the dictates of Parliaments...The doctrine of the primacy of Community law over national law rests upon the *willingness* of Parliament to accept the current situation and its implications...In normal circumstances, it is unlikely that a majority could be found in Parliament to negate a decision made in Brussels. This is a political impediment rather than a legal one.[42]

But clearly, "to negate a decision made in Brussels" - something that no member-state has ever seen fit to attempt - would mean to cause a constitutional crisis, which would have at the centre the question of continued Union membership. A case in point could be the Thatcher

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[41] P.Mathijsen, *A Guide to European Community Law* (London: Sweet and Maxwell, 1990), p.12-

[42] P.Taylor, 'British Sovereignty', n8 *supra*, p.74.(author's emphasis).

government's threat to withhold the payment of the British budgetary contributions during the re-negotiations of the British payment formula of 1984. The way in which the threat of such an action - widely seen as "illegal" - was ultimately doomed, testifies - especially when contrasted with the ease with which budget contributions to the United Nations are regularly withheld - to the inability to take 'sovereign' decisions of such kind. In every case in which a member-state's government or parliament considers to negate a Community decision, it will find itself considering secession from the Union. This kind of linkage - a *legal* linkage - is a powerful, and evidently effective, restraint. MacCormick has dealt with the legal and constitutional details of this very question: "Whether Parliament could, if it chose to unilaterally enact legislation directly revoking British membership of the European Community and have it generally obeyed in the UK"[43]. Finding evidence for the "habitual obedience" of parliament to Community legislation, and discussing the validity of rules that are external to the British legal system, MacCormick concludes - very much in line with the view taken here - that

from a jurisprudential point of view, there is no compulsion to regard 'sovereignty', or even hierarchical relationships of superordination and subordination, as necessary to our understanding of legal order in the complex interaction of overlapping legalities which characterises ... the European Community. (p.10). Where at some time past there were, or may have been, sovereign states, there has now been a pooling of a fusion within the communitarian normative order of some of the states' powers of legislation, adjudication and implementation of law in relation to a wide but restricted range of subjects. ... [I]t seems obvious that no state in Western Europe any longer is a sovereign state. (p.16).

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[43] N.MacCormick, 'Beyond the Sovereign State', *The Modern Law Review*, 56 (1993), pp.1-18.

This state of affairs prompts a discussion of the possible emergence of a 'Euro-sovereign': the question then becomes whether "sovereignty has shifted to the European organs"?[44]

A Sovereign Union?

There is not much material available which would allow the analyst to state that the Union is sovereign. This notion usually enters the discussion only in the form of forecasting. If, as some writers suggest - usually with strong normative bias -, the Union proceeds to become a 'supra-state' or 'super-state', it will assume the traditional attributes of statehood. But even conjecture of this kind is difficult to sustain in the face of the Union's obvious inability to hand down uniform rules or take authorative decisions.

The principle of mutual recognition, introduced firstly by the Court in its *Cassis de Dijon* Case[45], then by the Commission in its *White Paper on the Completion of the International Market*[46] and finally in the Single European Act of 1986, is an example of how the decision-making is removed from the national to the Union level without the emergence of a singular institutional authority. Mutual Recognition means that within minimum standards set by the Union, member states may adopt their own standards. But at the same time they have committed themselves to accepting products from other member-states even if these don't comply with the domestic regulatory regime. It is now widely accepted that this

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[44] N.MacCormick, *ibid.*, p.4.

[45] Case 120/78, *Rewe-Zentral AG* v *Bundesmonopolverwaltung für Brantwein* ('Cassis de Dijon') [1979], ECR 649.

[46] Commission of the European Communities, *Completing the Internal Market*, COM(85)310 final (Luxembourg: Office for Official Publications of the European Community, 1985).

new approach has contributed significantly to the success of the Single Market[47]. It is clear that a system of mutual recognition, based on a compromise between harmonisation and competitive rule-making, is only possible within the Union where a common regulatory framework and a transnational judicial system offer the certainties that markets require. But it is equally clear that Mutual Recognition is very different from, if not the complete opposite of, the kind of authorative rule-setting which is epitomised by the modern sovereign state. What kind of rules emerge is not under the exclusive control of either the state, or the Union, or the market. The three form a complex network in which there are no hierarchies and in which authority is diffused. To quote Wæver again:

What is really new is not the delegation up and down, but the fact that there is no longer one level which is primary...Our new times in Western Europe are thus different [from the political life of the medieval and modern epochs] ... in the absence of final power...Authority is not generally moved towards a bigger sovereign unit. The EC is not becoming an ordinary state.[48]

The only way to even begin to argue for some sort of sovereignty at the European level is to advance the notion that the Union is moving towards a federal polity. And, indeed, there are many instances in which the history of ideas in the Union as well as its actual political practices have approximated the workings of a federal system. Almost any recent work on the Union institutions and legal system feels compelled to compare the EU with 'other' federations, and in many cases such comparisons are deliberate

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[47] R.Dehousse, '1992 and Beyond: The Institutional Dimension of the Internal Market Programme', *Legal Issues of European Integration*, 1 (1989), pp.109-136; H.Schmitt von Sydow, 'The Basic Strategies of the Commission's White Paper', in R.Bieber *et.al.*, *1992: One European Market?* (Baden-Baden: Nomos, 1988), pp.79-108.

[48] O.Wæver, *Territory, Authority, Identity*, pp.18-19.

statements about the way the Union is taking constitutionally[49]. And for the Union to assume the status of a federal state would of course mean that is was to assume sovereign status as well.

In the literature on federalism, initial conceptual problems with the early mismatch between the classical theory of sovereignty assuming a 'unitary' rule and the constitutional reality of federal states are admitted[50]. But in the end the two can, and must, be reconciled. As King writes

We may stipulate a sovereign state to be a territorially defined unit which has established and coherent procedures for conflict resolution and decision-making within its borders, which is neither legally subject to nor substantially bound by any other entity external to itself, and which has designated agents to act on its behalf. Such a definition as this excludes any consideration of absolute, total illimitable or indivisible power as marks of sovereignty. It does not, however, exclude notions of rule-coherence, finality of decision, or political hierarchy. With such a definition, there remains no need for the concept of a 'unitary' state. A federation is merely one of many different, indeed innumerable, types of sovereign state which can be instanced.[51]

Even if we accept this - considerably more flexible - definition of sovereignty for our purposes here, we cannot confer sovereign status to the EU under these terms. It might be possible that the Union will eventually evolve towards a political system whose operation could be described in terms of 'coherence', 'finality', or 'hierarchy', but it is certain that, as yet, it cannot.

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[49] A good example for such 'progressive' comparative analysis is F.W.Scharpf, 'The Joint Decision Trap: Lessons from German Federalism and European Integration', *Public Administration*, 66 (1988), pp.239-278.

[50] P.King, *Federalism and Federation* (London: Croom Helm, 1982), pp.137-145.

[51] P.King, *ibid.*, pp.141-142.

Schmitter, who writes that the "Community lacks a singular locus of supreme authority", also dissects and dismisses other possible attributes of sovereignty of the Community[52]. Not only does the Union not possess the "monopoly of coercion", but in fact its "institutions are singularly devoid of any concentrated means for wielding violence, legitimate or not." In terms of territoriality, he notes that the "peripheral boundaries have remained ambiguous", and indeed the implications of the EC-EFTA agreement on the so-called European Economic Area (EEA) unravel a whole new set of questions about sovereignty. The EEA's arcane structure implies that either the EFTA members accept decisions taken in their absence or else that the Union accepts the participation of non-members of the polity for its rule-setting. One way or the other - and its seems, after the guidelines issued by the European Court of Justice[53] on the incompatibility of the EEA Agreement with the Rome Treaty, that things are going the former way - this agreement must be seen as a violation of the territoriality principle at the Union level in much the same way in which it is already violated at the member state level as noted in the previous section.

The case *against* Union sovereignty does not require much further devotion, since the case *for* it is hardly made. It is usually only invoked with reference to some distant future[54], not to the present which is the subject of discussion here. As of now, the Union must simply be called "non-sovereign".[55]

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[52] P.Schmitter, 'Representation and the Future Euro-Polity' , pp.20-24.

[53] Opinion 1/91, [1991], ECR 6079.

[54] See James' previously quoted statement (n 30 *supra*): "*it may be* that a *slow*...development is under way, for it *could* be that a group.." (emphasis added).

[55] O.Wæver, *Territory, Authority, Identity*, p.2.

What remains at this stage of a critical analysis is to recall the strong legalistic statements of James and Goodwin on the question of sovereignty and to conclude that *legally*, not politically, these conditions are not met by either member-states or Union. Inevitably this must mean that what is happening in the Union is not "the abandonment of states' sovereignty towards some larger sovereign entity" (James), something "which would in itself not change the system based on the territorial state (just create a bigger one)" (Wæver), but the emergence of what Schmitter has called the "post-Hobbesian order":

in all these forms of Post-Hobbesian order, there is no single identifiable sovereign - just a multitude of authorities at different levels of aggregation, territorial or functional, with ambiguous or shared competences at the head of overlapping and diverse organizational hierarchies. Policies are not definitely enunciated and vertically administered; they are constantly negotiated and indirectly implemented...there are several centres with differing degrees of coercive power - and not all of them are public and governmental...it becomes increasingly difficult to differentiate between public and private institutions, the State and the Civil Society.[56]

For Schmitter, this 'order' is emerging in western industrial societies in general, but the Union "is likely to be an extreme case of post-Hobbesianism", and at the end of our discussion of sovereignty it is easy to see why. The development of the European Union since 1985 has done to the principle of state-sovereignty what modernization, interdependence and governmental overload have already been doing to states' factual control since 1945. The formal end of sovereignty in the Union opens the way for a new *view* of the political system in Western Europe, and thus to be able to think about it as *politics*, not any more as international relations.

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[56] P.Schmitter, 'Representation and the Future Euro-Polity', p.13.

Conclusion: towards "politics *sans* sovereignty"?

What are the implications of this conclusion for the study of European integration? Where does West European politics go from here? This question is asked, in normative terms, in a recent article:

> The nation-state is a phenomenon that cannot be imagined or legislated out of existence...But we can try to tame and limit the demands of sovereignty; we can perhaps, move to what I am tempted to call a postsovereign politics...A politics *sans* sovereignty: is it possible? What would it look like? How would it forge civic identities in such a way that blood sacrifice, that of the self and of enemy others (whether internal or external), is not so pervasive a demand and possibility?[57]

Elshtain goes on to offer "practical morality" and "human responsibility" as the foundations of politics in the post-sovereign age, citing the political and personal writings of Vaclav Havel as examples of this kind of concern. Such humanistic considerations are remarkably close to a very similar idealism of the early pluralists. Thus Harold Laski, in advocating federalism, wrote in 1917:

> In fact, there is real *moral insufficiency* in any theory of the State which impresses upon its members the need for any consistent uniformity of outlook...Everywhere there is diversity, plurality...In a democracy, the surest guaranty of *civic responsibility* seems to lie in the gift of genuine functions of government no less to the parts than to the whole...No doubt, the dissipation of sovereignty will result in conflict. But even without it there will be conflict of a far more wasteful kind, since it in no way depends upon principle.[58]

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[57] J.B.Elshtain, 'Sovereignty, Identity, Sacrifice', *Social Research*, 58 (1991), p.560.

[58] H.Laski, 'Sovereignty and Federalism' (pp.272-273) and 'Sovereignty and Centralization' (p.283), in *Studies in the Problem of Sovereignty* (New York: Fertig, 1968 [1917]). (emphasis added)

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The end of sovereign political life in the European Union might indeed open up these avenues of normative discourse which have seemed so futile in `the past. After all, were these not exactly the concerns, if not of the Schumans and Adenauers, at least of the Monnets and Spinellis? Surely the current state of the European Union has gone a far way to eliminate the "pervasive need and possibility for blood sacrifice" which Elshtain condemns. In the same vein is Neal Ascherson's advocacy of European integration:

the best hope for a society which is more just, more modern, more prosperous and more democratic lies in being part of that Community as it extends influence over the inner workings of the nation-states.[59]

For Walker, too, the end of a discourse based on sovereignty offers the chance to establish the same kind of ethical principles of 'political community' which are so basic to 'domestic' affairs[60]. And MacCormick, after his conclusion "that at this moment no one can quite say where final sovereignty rests in Europe", asks

what about a sideways move? Can we think of a world in which our normative existence and our practical life are anchored in, or related to, a variety of institutional systems, each of which has validity or operation in relation to some range of concerns, none of which is absolute over all the others, and all of which, for most purposes, can operate without serious mutual conflict in areas of overlap? If this is as possible practically as it clearly is conceptually, it would involve a diffusion of political power centres as well as of legal authorities. It would depend on a high degree of relatively willing co-operation and a low degree of coercion in its direct and naked forms. It would create space for a real and serious debate about the demands of subsidiarity... Surely,

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[59] N.Ascherson, 'Our destiny beyond the mist', *The Independent on Sunday*, 26 November 1991, p.25.

[60] R.B.J.Walker, *Ethics*.

if that were possible, it would be better than either a European mega-sovereignty or a return to the polycentric sovereignties of Europe in the nineteenth and twentieth centuries.[61]

And yet, there are still limits to these normative visions in the here and now. In the same way in which Laski's embrace of the creative aspects of federalism has to come to terms with Scharpf's "joint-decision-trap"[62], Elshtain cannot account for the kind of power politics which continue to be the hallmark of the distributive struggles in the non-sovereign Union as much as they were in the sovereign states of the past. Post-sovereign political life contains the promise of idealism as much as it poses the threat of a new realism. Rather than dismiss them, we are forced to come to a new understanding of essential concepts like power, democracy and security which for so long have been thought of exclusively in nation- and state-centred terms. There are early warnings of the implications of new nationalism as a result of rising "societal insecurity" resulting from the separation of national sentiment from political structure[63]. The growing conflicts in a polity based on multi-culturalism as well as representative democracy - even a perception of incompatibility of the two concepts - are illustrations of these sobering aspects of post-sovereignty.

Clearly such a debate about the ordering concepts of a post-sovereign Europe goes beyond the limits of this paper. The purpose here was merely to show that such a debate is necessary, indeed vital, if the project of European integration is to escape the prison of an outdated constitutional discourse and to make some headway towards the resolution of the conflicts that are facing the continent.

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[61] N.MacCormick, 'beyond the Sovereign State', p.17-18,

[62] F.Scharpf, 'Joint-Decision Trap'. Indeed, Laski did become disenchanted with federalism, writing about its "obsolescence" in 1936.

[63] O.Wæver et.al., Identity, Migration and the New Security Agenda in Europe, (London: Pinter, 1993).

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