

SOVEREIGNTISM MEETS POST-WESTPHALIAN SOVEREIGNTY: THE EU EXPERIENCE

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<https://doi.org/10.36169/2227-6068.2021.01.00008>

Abstract. *This paper examines divergent trajectories of sovereigntist politics and their clash with key premises of the EU's political order, taking as an example the evolving premises of EU membership for Poland and Hungary. The purpose of this study is to evaluate the importance of sovereigntism as a model of value substitution of the EU's post-sovereignty features. Has sovereigntism become so prominent as to affect the EU in systemic terms? Is it amenable to creating synergies with the individual preferences of EU member states for more autonomy in policymaking, as the EU itself has embarked on a road to acquiring strategic sovereignty in international relations?*

This paper examines sovereigntism as a phenomenon, anchored in the multi-level governance system of the EU, that strengthens the executive, maintains government-exclusive access to resources, and simultaneously makes the legitimacy of the national government dependent on EU governance action. It traces the evolution of sovereigntist interpretations of the boundaries of EU governance and the capacity of member states to selectively participate in policymaking and take geopolitical initiatives that affect the EU's systemic coherence. The paper concludes that sovereigntism has had a disproportionately high impact on the EU's normative unity and coherence as a regionalist project, preventing the EU's geopolitical consolidation.

Key words: *sovereigntism, post-Westphalian sovereignty, European Union, Eastern Europe, Poland, Hungary, multi-level governance*

Introduction

This paper examines divergent trajectories of sovereigntist politics and their clash with key premises of the EU's political order, taking as its example the evolving practices of EU membership in Poland and Hungary. While the sovereign integrity of EU member states is maintained through treaties and the EU legal order, EU member states have pooled and shared their sovereign powers for the purpose of policymaking and social justice. EU-style sovereignty therefore remains an organizing principle for membership and policymaking in the EU that is distinct and, at the same time, universalist enough for the projection of democratic values and legal principles in the international system. The veto power of the member states is reserved for exceptional cases in which their national interests are adversely affected. Cooper (2000) has argued that the EU is a post-modern system, as the character of European states has evolved beyond modern conceptions of order and government. National sovereignty is embedded in an EU-centered political order. The principle of mutual recognition, typical of the international application of

sovereignty, is mitigated and substituted by the concept of sharing, consensus, and reflected in sectoral unions, a common currency, multiannual budget, and common foreign policy. This post-Westphalian version of sovereignty maintains the democratic origins of the popular will. The principle refers to the internal and external aspects of sovereignty in a post-modern polity in which the “interior” and the “exterior” are no longer separate (Benhabib 2016: 124–125).

Similarly, Ruggie (1993) posits the EU as a post-modern, multi-perspectival polity in which member states define their national interests in terms of the interests of the whole. Without replacing nation-state sovereignty, EU-centered regionalism fosters the legitimacy of regional authority that projects the collective preferences of the members onto international competition. Such premises inform the conceptualization of EU sovereignty as a blend of pooled and shared member-state sovereignty inseparable from the autonomy of regional governance and policymaking. Any deviation from these principles represents a breach of the normative foundations of the EU legal and political order.

The opposite legal and political doctrine, that of sovereigntism, stands in sharp contrast to such collectivist notions of sovereignty by treating the regional and supranational levels as a residual to the national constitutional order. Sovereigntism is not a new concept or a recent development. It conventionally represents a legal construct anchored in the doctrine that international law is not self-executable (see, among others: Spiro 2000; Resnik 2008). Although sovereigntism is a broad and general term in international laws, and although it is present in US constitutionalism and the proposition of American exceptionalism (Spiro 2000), sovereigntist expressions in an EU context have specific features that defy conventional categorization. The cases of Poland and Hungary have emerged as prominent examples of sovereigntism within the EU that link the traditional conceptual clash between popular sovereignty and international law to the policy domain whereby member-state sovereignty rejects the shared value foundations of EU governance.

The purpose of the study is to situate sovereigntism as a perspective on EU membership and evaluate its significance as a potential value substitution of the EU’s post-sovereign features. Has sovereigntism become so prominent as to affect the EU in systemic terms? Is it amenable to creating synergies between the individual preferences of EU member states for more autonomy in policymaking in a variety of policy domains, as the EU itself has embarked on a road to acquiring strategic sovereignty in international relations?

The main argument of this paper is that sovereigntism has impacted the EU disproportionately and represents a form of systemic failure for the sustained application of EU-level sovereignty. Based on the case studies of Hungary and Poland, this paper demonstrates that sovereigntism in the EU is not an isolated phenomenon. As an illiberal, populist-authoritarian reaction to cosmopolitanism, regionalism, and universalism, it represents a trend towards reconceptualizing sovereignty in the post-modern world. While its manifestations are diverse, the anti-cosmopolitan meanings of sovereigntism drawn from international law are only one part of the phenomenon. This paper sheds

light on the political dimension of sovereigntism as a replacement of the evolving concept of sovereignty in a globalized world, whereby not only the domestic constitutional order is privileged to the detriment of international law, but also national-level executive decision-making fails to comply with the values, norms and templates of good governance embedded in international institutions.

The focus on sovereigntism as a political reaction to liberalism has remained under-researched in the international relations literature, while the legal dimension has been extensively studied across national and regional contexts in the case of US exceptionalism, sovereignty-based identity politics, and a variety of authoritarian and populist deviations from democracy, liberalism, and international norms (Alles & Badie 2016; Basile & Mazzoleni 2020; Benhabib 2016; Resnik 2020; Schiemann 2016; Spiro 2013).

This paper proceeds as follows. The next section explores the origins of sovereigntism as a legal construct and its political applications as anchored in the EU's multi-level governance system. The paper identifies the key features of sovereigntism in the EU as a form of executive dominance dependent on government-exclusive access to EU-based resources. Analysis then turns to examine how the political dimension of sovereigntism has affected the EU in systemic terms by tracing the evolution of sovereigntist interpretations of the boundaries of EU governance and the capacity of member states to selectively participate in policymaking and take geopolitical initiatives that affect the EU's systemic coherence. The empirical section demonstrates how governing elites in Poland and Hungary consolidate their power over the domestic political system by strategically using those resources to implement illiberal-populist measures that restrict democratic pluralism, selectively acting as gatekeepers against EU-level influence and pressures. These case studies demonstrate the broader regional implications of sovereigntism in the context of the 2015 refugee crisis (in which the Visegrad group of countries failed to adopt the EU's distribution of refugee quotas), Poland's and Hungary's opposition to the principle of political conditionality in the 2021-2027 Multiannual Financial Framework and the structuring of EU emergency funding, and their geopolitical initiatives that threaten to compromise the EU-centered model of regionalism in Europe. The paper concludes with thoughts on the capacity of sovereigntism to emerge as a stable feature of membership politics in the EU.

Legal and political dimensions of sovereigntism: approaches to application

Sovereigntism is a legal concept anchored in the doctrine of the primacy of domestic constitutionalism and national legal order, whereby international treaties are considered as residual and secondary to national law (see, among others: Madsen et al. 2017; Resnik 2008; Spiro 2000, 2013). Classical forms of sovereigntism are similarly defined as opposition to international law, observed, for example, in American exceptionalism (Spiro 2000) and as a form of identity construction (Resnik 2008). According to Resnik (2008: 36), two premises of sovereigntism are shared across its national contexts. The first, Resnik argues, is an affection for the nation-state, as groups found ways to join together by forging a distinct layer of affiliation as "citizens." The second is defiance for external legal and

treaty-based frameworks considered “foreign” and “invasive” (Resnik 2008: 39). According to Resnik (2008), any analysis of sovereigntism needs to distinguish among its various expressions, ranging from *exclusive* to *transnational* or *inclusive* versions. Sovereigntism is therefore a way to forge a distinct national identity and to bolster the legitimacy of the national government by claiming to belong to a cosmopolitan order (that in turn legitimizes the national constitutionally enshrined system of power).

According to Spiro (2013), sovereigntists associate the development of international and transnational treaties and the emergence of regional human rights courts with the weakening of nation-state sovereignty, which in turn poses a threat to democratic self-determination. Sovereigntism thus endorses the capacity to engage in unilateral action.

According to Benhabib (2016), sovereigntism is at odds with and undermines sovereignty in the EU in at least three important ways: by presenting a “post-Westphalian” objection, “ethnocentric arrogance,” and the “displacement of judicial process.” In line with this proposition, the application of EU law may be understood as a matter of national law. The powers of the Court of Justice of the European Union (CJEU) would be revisited (and revised) through the lens of national constitutional law, whereby the EU legal order is treated as a residual to national law (Resnik 2008). For example, in May 2021 the German Constitutional Court declared parts of the Quantitative Easing program of the European Central Bank - conducted for the purpose of keeping borrowing costs low for governments across the Euro zone - illegal in Germany for failing to respect the principle of proportionality. The Court determined that the German Central Bank should withdraw from the program, unless the side effects of the Euro zone-wide measures were taken into account for individual banks and stakeholders. The decision placed the German Constitutional Court at odds with policies and actions implemented under the jurisdiction of the CJEU, with the potential to undermine the supremacy and direct effect of the EU-based Court. According to the CJEU, questioning the validity of such acts by the courts of EU member states would “place in jeopardy the unity of the EU legal order.”¹ While the issue about the primacy of the national versus supranational legal order was resolved in substantive terms without recasting it as an instance of sovereigntism, the ruling of the German Constitutional Court demonstrates that, in a democratic polity, the boundary between nation-state sovereignty and international legal norms remains contested and susceptible to interpretation.

It may be argued that the legal version of sovereigntism is an important genre (however narrow the application of the concept) for the principles of government and sovereignty. Its political application is more diverse and comprehensive, directly affecting public policy and being amenable to political mobilization and discourse. Politically, sovereigntism is at odds with liberal norms and membership in democratic international institutions. Sovereigntism undermines liberal order through state behavior that is anchored in illiberalism, populism, economic sovereignty overriding globalization, nationalism recast

¹ The European Central Bank implemented a Quantitative Easing Program in 2015-2017 and then restarted purchases in 2019 to assist the economic recovery of the Euro zone by keeping government borrowing costs low (Deutsche Welle 2020).

as political self-definition, Euroscepticism, and the synergies among them (Basile & Mazzolini 2020).

It should be intuitive that, given its opposition to the primacy of the EU legal order and pooled decision-making, sovereigntism undermines the legitimacy of the EU. The intriguing question is how the process of value substitution takes place in institutional settings that remain anchored in democratic legitimacy and solidarity among EU member states. The political perspective on sovereigntism suggests that it is not only a reaction against the constitutionalization of regional order in the EU that has acquired primacy relative to the domestic political system. Sovereigntism represents a reaction against EU authority in policymaking and the underlying value consensus that informs the system of European governance.

It is a widely shared assumption that the EU affects the domestic political systems of its member states. The literature on Europeanization posits the effects of EU governance on domestic political orders. The enmeshing of political and governance premises is at the center of the complex and fragmented political order of the EU. The multi-level governance perspective on the EU, which posits the interdependence of national and regional policymaking, is compatible with a post-Westphalian, post-modernist conception of sovereignty as pooled and shared, and unproblematic for the reconciliation of national and supranational law.

Besides a multi-level structure, EU governance has a dual nature. It aspires to be apolitical at the same time as it fulfills public policy objectives and serves democratic values. European governance is based on shared norms of state behavior and a culture of reciprocity (Rhodes 2003: 65–6) that transcends sovereignty-based premises of autonomy and legitimacy. The emphasis is less on its non-hierarchical nature than on the objectives and substantive qualities of resource exchange. The principal value added of European governance is the opportunity to open the black box of EU policymaking as a process of competition, resource distribution, and allocation of values conducive to the differential empowerment of actors (Mair 2004). Governance also represents the EU's influence in wider Europe, and actual policymaking in the context of interdependence with an external system (Lavenex 2004: 685).

In a post-sovereign polity such as the EU, the higher political level should not be able to control the lower one. The issue of ultimate decision-making authority is not resolved through hierarchization, as it is in federal states, but through the transnationalization of governance. Sovereigntism emerges as a reaction against this transnational, flexible and multi-modal order of governance under the pretext of recapturing sovereignty and national democracy. But its disconnect with public preferences is striking. In fact, public attitudes across the EU are strongly pro-European. Historically, stable majorities - especially in the East European member states - approve of the EU membership of their respective countries. Positive views of the EU in Poland increased from 77% to 84% between 2016 and 2019, despite the sovereigntist agenda of the Polish ruling elite. A similar trend is valid for Hungary where public approval of the

EU has remained stable, ranging between 61% (in 2016) and 67% (in 2019)¹--at odds with the sovereigntist policies of the Fidesz government of Prime Minister Viktor Orbán. Sovereigntism thus cannot claim to represent the popular will for national sovereignty to the detriment of membership in a regional bloc.

By contrast, Habermas (2020: 12) contends that, from the point of view of EU citizens, it would be acceptable for them to seek to maintain a dual model of constitutional rights within the EU, incorporating both the national and the EU level, since EU governance follows an apolitical network-based pattern that is simultaneously based on principles of representation, delegation, and institutions of administrative power—all of which are responsive to democratic publics and civil society.

At the European level, while supranationalism, the community method of decision-making, and the principle of primacy of European law and acts of the CJEU over national jurisdiction may be regarded as a manifestation of authority above the state, the emerging hierarchy is not only a measure of consolidation of the supranational level - often at the origins of basic sovereigntist claims - but, more importantly, this order no longer depends on the self-determination of the member states. Furthermore, the legitimacy and performance of national governments depend on the regional level (Hamulák 2016; Krulic 2020). This second layer of sovereigntist thinking represents the main distinction between political sovereigntism and populism, as well as between sovereigntism and conventional isolationism/or unilateralism that simply denies the authority of the supranational level. Sovereigntism is concerned that EU governance affects national sovereignty in the direction of sharing, therefore weakening it. It is amenable to an understanding of EU supranational authority and national state sovereignty as competing projects (Hamulák 2016). In contrast to sovereigntist claims, Schiemann (2008) has argued that there are advantages in having different centers of power for decisions affecting differing matters. The co-existence of overlapping power centers and for sharing in decision-making provides member states influence and control beyond state borders. That argument, however, is usually omitted in sovereigntist thinking.

Sovereigntism in practice: European governance as an arena of contestation

In the EU context, while sovereigntism is a multidimensional concept with diverse applications, it is neither a random reactionary process, nor an outright rejection of the regional order. The argument presented here suggests that sovereigntism positions itself against the dependence of nation-state sovereignty on EU-level policy priorities and the structures of multi-level governance. It does so by seeking autonomy to pursue policy action and domestic legitimacy, while also drawing on EU financial resources in the selective adoption of executive action and policy templates designed to consolidate its domestic power position. Due to its diverse and consistent application across policy areas such as migration and budget management, across foundational norms and values such as rule of law, judicial/media independence, and political pluralism, as well as its ability for ad hoc coalition building among political actors with illiberal-populist leanings across

¹ See: Pew Research Center 2019.

the EU, sovereigntism has emerged as a systemic failure to maintain a balance between sovereign rights and participation in the EU's transnational legal order.¹

Bustikova and Guasti (2017) identify three conditions that allow sovereigntist reaction to take place: consecutive and repeated electoral victories of the dominant party in national elections, executive aggrandizement, and contested sovereignty that increases domestic polarization. In this sense, sovereigntism contextualizes conventional accounts of popular dissatisfaction with democracy in the EU, (conceptualized as populism and Euroscepticism) by positing resistance to EU norms at the level of domestic governing institutions - especially the executive - and deep polarization within the polity that tends to keep illiberal elites in power, despite their deeply flawed principles of government.

The governing elite then narrows the political definition of sovereigntism down to a *statist* phenomenon that functions to the detriment of universal claims of *national* sovereignty, since the former is based on executive dominance to the detriment of the popular will. That aspect of sovereigntism differentiates it from populism. The latter phenomenon captures general public dissatisfaction with the functioning of liberal democracy in the EU. Sovereigntism weakens and ultimately replaces the value consensus of EU member states with a transactional approach to regional integration, implemented as a blend of executive control over access to economic benefits and selective adoption of the tools of European governance, which in turn consolidates executive dominance. The consecutive electoral victories of the Fidesz party in Hungary under PM Viktor Orbán, and the repeated return to power of the Law and Justice party led by Jarosław Kaczyński in Poland (despite growing domestic opposition), demonstrates the capacity of the sovereigntist model to sustain itself. The broader implications of this approach, demonstrated in the case of Poland's and Hungary's disregard for EU norms in a growing number of issue areas, from asylum rights to budget rules, aggravates the East-West division in the EU as sovereigntist leaders increasingly rely on member-state veto power and ad hoc coalitions to block corrective action at the EU level.

The sovereigntism resource model

Since Viktor Orbán and the Fidesz Party² came to power in Hungary in 2010, the policies of the Hungarian government have defied the cosmopolitan, human rights-based policies of the EU, such as the right of asylum, freedom of movement, freedom of the

¹ The term "systemic failure" is borrowed from Krulic (2020) with regard to sovereigntism's complete rejection of the EU transnational cosmopolitan norms.

² Fidesz is the dominant center-right political party in Hungary, created as the Federation of Young Democrats–Hungarian Civic Alliance. The Federation of Young Democrats was founded in 1988 as an anticommunist party that promoted the development of a market economy and European integration. In 1995, the party appended the name Hungarian Civic Party to its shortened form (altered to Hungarian Civic Alliance in 2003). After eight years of Socialist rule, in 2010, Fidesz, capitalizing on Hungary's ongoing economic problems after the economic crisis of 2008, was brought into power as a result of the parliamentary elections of April 2010, winning more than two-thirds of the seats. Fidesz and its junior electoral coalition partner, the Christian Democratic People's Party, won the consecutive elections in 2014 and 2018, with party leader Viktor Orbán as Prime Minister of Hungary since 2010.

media, civil society, and the rule of law. After it took power following the 2015 parliamentary elections in Poland, the Law and Justice party (PiS)¹ passed a series of laws undermining the independence of the judiciary, including forced retirement of Supreme Court judges due to a controversial change of the retirement age and the appointment of judges that endangered judicial independence. An emergency interim ruling of October 2018 allowed the suspension of the law, whereupon a CJEU decision on the matter from June 2019 declared the law contrary to EU law (Krucic 2020). The PiS has consistently breached EU human rights and democratic norms through legislation limiting abortion and LGBT rights, steering Polish democracy toward illiberal principles.

Although the European Commission opened an infringement procedure against Hungary in 2015 for noncompliance of Hungarian legislation with EU law in the area of asylum, the systematic nature of Hungary's violations of EU law were not directly amenable to case-by-case treatment and represented a broader conflict with fundamental EU cosmopolitan norms and principles outlined in Article 2 of the Treaty on the European Union (TEU).

Hungary has systematically failed to implement CJEU decisions, the European Court of Human Rights (ECtHR) review of the Dublin Regulation that distributes responsibilities in the processing of asylum applications among EU member states, as well as cosmopolitan norms regarding the rights of refugees. Similarly, since 2015 when the PiS government came to power, EU institutional actors have expressed criticism of domestic legislation and policy actions that undermine the rule of law in Poland. In December 2017, the European Commission requested EU action due to Poland's rule-of-law violations. In 2018, the European Parliament initiated a TEU Article 7 procedure² against Poland for undermining judicial independence as a breach of fundamental EU values.

Along with other governments from the Visegrád Group (namely, the Czech Republic and Slovakia), Hungary and Poland have defied the September 2017 decision of the CJEU regarding the relocation of asylum applicants among EU member states. In 2017 and 2018, European Parliament and the European Commission launched legal procedures against Hungary, Poland and the Czech Republic due to their failure to comply with EU regulations on the distribution of asylum applicants. A CJEU judgement in April 2020 concluded that Poland, Hungary and the Czech Republic were noncompliant

¹ The Law and Justice party (PiS), led by Jarosław Kaczyński, projects a culturally conservative outlook drawing on traditionalist Catholic milieus in Polish society, economic reform focused on increasing social transfers (the "Good Change" agenda), and executive dominance to the detriment of judicial and media independence. Despite increasing parliamentary opposition, the party steadily erodes the rule of law by a combination of nationalist-populist discourse, policy actions, and socially conservative legislation (anti-LGBT measures, such as the "Family Charter" and anti-abortion laws), and control over civil society.

² The Article 7 procedure of the Treaty on the European Union (TEU) (European Union 2012) was designed to deter member states from advancing policies that threaten democratic institutions. The mechanism has so far been triggered against Poland and Hungary.

with the temporary mechanism for relocation of asylum seekers in the EU and in breach of their obligations under EU law.¹

In the process of negotiating the €1.8 trillion financial package of the 2021-2027 Multiannual Financial Framework of the EU, along with the agreed *NextGenerationEU* temporary recovery funding, Hungary and Poland imposed a veto on the spending plan due to their disagreement with the proposed conditionality mechanism linking access to EU funding to rule-of-law criteria. The two countries insisted that the EU budget and the rule of law should be treated as separate domains. In December 2020, the German EU Presidency was able to achieve a compromise, providing assurances for Hungary and Poland that politically targeted conditionality would be excluded by creating an explicit role for the CJEU in the implementation of rule-of-law conditionality for access to EU funding.

Although the unanimity of EU member states was preserved, the achieved depoliticization of the conflict by legal means has de facto recognized sovereigntism as a legitimate interest in the EU. At the same time, the sovereigntist governments of Poland and Hungary have emerged isolated in the process of generating a compromise, as the European Commission and EU member states prepared options to implement the budget and recovery package by sidelining a potential sovereigntist veto.

Spiro (2013) has argued that sovereigntism is a lost cause. As a result of massive change in transnational law in the context of globalization (Koenig-Archibugi 2003), sovereigntist defenses are overwhelmed and “incapable of stemming the tide” (Spiro 2012: 308). In the case of the EU’s sovereigntist opposition, civil society and the subnational level of government have claimed direct access to the resources of European governance, bypassing the executive branch. At least 249 local councils in Hungary and Poland approached the EU with requests to access recovery funds in the event that Hungary and Poland block the application of rule-of-law conditionality in the distribution of EU funds.

Sovereigntism and regional order

A political analysis of sovereigntism in the EU inevitably needs to include its broader regional impact. Although sovereigntism seeks the reversal of the post-modern, post-sovereignty identity of the EU as a regional system, it may be argued that sovereigntism projects an unsettled geopolitical identity. It is not isolationist but selectively defines its geopolitical vision at odds with the collective value consensus. In the EU’s case, sovereigntism questions the established and expansive system of EU positioning in the wider Europe. The question arises: Does sovereigntism represent a new model for the EU, or an instance of its disintegration? Occasional deviation from EU foreign policy consensus has not been excluded but has failed to materialize as a spill-over into the EU’s strategic positioning. It may be argued, however, that the geopolitical impact of

¹ Slovakia later granted temporary entry to 1,200 asylum seekers and was not included in the proceedings. See: Library of Congress – Law Library 2020.

sovereignism is gradual and cumulative, as it opens key mechanisms of the EU's external relations to domestic interpretation and selective engagement.

Since 2010, Hungary has implemented its own "Eastern Opening" policy, albeit with negligible results (Irimescu 2019; Végh 2015). It has pursued a vision of acting as a bridge between the West and influential partners in Eurasia by combining strategic engagement with Russia, maintaining high import dependence on Russian energy resources, and attracting Chinese foreign direct investment. Hungary emerged as a key partner under China's "16+1 Initiative" for Eastern Europe. China initiated the framework in 2012 to include 11 EU member states from Central and Eastern Europe (Bulgaria, Croatia, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia) and five countries from the Western Balkans (Albania, Bosnia-Herzegovina, Montenegro, North Macedonia, and Serbia). The framework is defined by limited institutionalization, as well as vaguely defined objectives and mechanisms of cooperation (see: Hillman & McCalpin 2019). The Initiative provides asymmetrical benefits to the partners by focusing on projects of technological innovation with EU member states from Eastern Europe and connectivity projects with EU non-members. Such open formats of cooperation advance China's interests on EU territory, offering an alternative model of economic cooperation, investment, and development to both EU member states and neighbors who are otherwise bound by the normative and regulatory criteria of EU governance (Ciurtin 2019). Although the EU has labelled China a systemic rival and economic competitor, Hungary has sought to expand trade ties and infrastructure projects with China, thus problematizing the priorities of EU membership and the traditional tenets of EU-centered regionalism. Similarly, Hungary sees itself as a bridge to Eurasian integration by participating in Russia's energy imports.

By contrast, Poland has been critical of the EU for insufficiently opposing Russia's efforts to destabilize the region and preserve domination in its immediate neighbourhood. Poland, along with Sweden and the Baltic States, was one of the initiators of the Eastern Partnership with Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine in response to the Color Revolutions, the Russia-Georgia war of 2008, and the energy disputes between Russia and Ukraine—all of which had developed due to the geopolitical position of Eastern Europe as a region spanning the EU neighborhood and post-Soviet space. Gradually, as a result of the sovereigntist turn of the PiS government since 2015, Poland has channeled its policy towards the Eastern Partnership into a selectively confrontational path, evoking historical grievances towards Ukraine that are enmeshed with questions about war reparations from Germany. Such developments have the potential to undermine the EU's consensus over the utility of the policy (Machitidze 2016; Wolchuk 2017) ultimately empowering Russia—an outcome that Poland's Russia policy would otherwise seek to prevent.

The Three Seas Initiative (TSI) marks a sub-regional grouping that adds a new North-South perspective to the traditional East-West division in EU politics, in which Poland and Hungary demonstrate the unsettled and diverse geopolitical leanings of sovereignism. The TSI is comprised of 12 Central and Eastern European countries located

between the Baltic Sea, the Black Sea, and the Adriatic Sea.¹ The aim of the initiative is to strengthen connectivity within this geographical region, which is otherwise heavily institutionalized along different institutional memberships. The central idea is to develop infrastructure for energy and transport along the main north-south axis, overcoming the legacies of a Cold-War infrastructure that sustains Eastern Europe's energy dependence on Russia (Thomann 2019: 34).

The TSI demonstrates that sovereigntist powers do not necessarily align according to their preferences for foreign policy autonomy. The interests of Hungary and Poland in the TSI are strictly opposite. While Poland represents the informal hegemon in the grouping, seeking to contain Russia while simultaneously attracting EU funding for its economic priorities (Thomann 2019: 37, 41), Hungary tends to pursue policies that seek to prevent Russia's isolation from political dynamics in Eastern Europe (Thomann 2019: 55).

The conflicting perspectives that Poland and Hungary maintain regarding the role of the TSI in pan-European cooperation and geopolitical clustering demonstrates that, while both countries have questioned the embeddedness of the domestic political systems in EU-level value consensus and shared policy preferences, they are not consistent in their opposition to EU policy priorities and therefore have only limited potential for stable coalitions. By joining institutional frameworks outside the principal EU bodies, the disruptive influence of sovereigntist actors is likely to gain long-term visibility and impact.

Conclusion

This paper has examined sovereigntism as a political phenomenon with regard to nation-exclusive notions of legitimacy and democracy, both of which posit the national popular will as the ultimate bearer of sovereignty to the detriment of the international commitments of the state. Applied to the European Union, this paper has traced sovereigntist reactions to the post-sovereign, post-Westphalian nature of EU politics in the case study of Hungary and Poland. Analysis has explored the sovereigntist backlash against the treaty-defined primacy of EU law as the foundation of legal order and the pooled and shared sovereignty that EU membership implies.

Further, this paper has argued that, through the system of multi-level governance, the political opposition of sovereigntism against EU-enshrined liberal values has found an expression not only in policy conflicts between the EU institutions and governing elites in Poland and Hungary with regard to the domestic application of fundamental norms and principles of EU membership (i.e., rule of law, judicial independence, human rights, media freedom, and civil society openness). Rather, sovereigntist opposition also has affected EU-wide policy deliberations in the context of EU asylum policies for the protection of the rights of refugees, the principle of solidarity in the EU budget process,

¹ Along with the 12 initial participants – Austria, Bulgaria, Croatia, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia – 15 other countries, among which notably Ukraine, participate in individual projects. The TSI was inaugurated in 2016 jointly by Poland and Croatia.

treaty compliance, and foreign policy action. While some of the clashes between the EU's liberal order and the sovereigntist values and policy preferences of governing elites in Hungary and Poland are being resolved in the direction of EU-wide exposure of the flaws of sovereigntism and its legal incongruence with the democratic norms and principles that inform EU treaties, sovereigntist actions have persisted thanks to majoritarian electoral politics, the executive dominance of illiberal Fidesz and PiS party elites, and polarizing discourses opposing domestic policy autonomy to transnational governance networks.

The long-term implications of the dynamics of rejection, compromise, and substitution associated with the international behavior of sovereigntist elites should not be underestimated. While noncompliance with EU-level decisions is not an extraordinary event in EU politics and does not extend beyond the infringement procedures implemented by the European Commission, the emerging pattern of repeated breaches of fundamental EU rule-of-law principles and policies on behalf of Hungary and Poland largely exceeds the scope of conventional gaps in the national implementation of EU governance rules. It represents a form of systematic elite resistance to EU-level policymaking and demonstrates that sovereigntism is statist and systemic in nature. It is thus relevant to the evolving distribution of power in a regional, cross-regional, and global context. Such an approach is distinct from the legal manifestation of sovereigntism in international law as a reaction against the growing constitutionalization of world politics, and the cosmopolitanism of human rights and related liberal norms.

It may be concluded that sovereigntist governments from Eastern Europe have had a disproportionately high impact on the EU's normative unity and coherence as a regionalist project. As Poland and Hungary selectively mobilize and reject the foreign policy tools of the EU's proximity relations, the EU risks isolating critically important partners in the European Neighborhood Policy, diminishing the EU's coherence vis-à-vis both Russia and China. Sovereigntism prevents the consolidation of an EU geopolitical identity and limits the EU's ability to acquire more weight as a normative power in international politics.

Bibliography:

- Alles, Delphine, and Badie, Bertrand. (2016). Sovereigntism in the International System. *European Review of International Studies* 3(2): 5–19.
- Barnett, Michael Andrew. (2017). *Quantifying Sovereignty: A New Way to Examine an Essential Concept*. Master's thesis, Harvard Extension School, <http://nrs.harvard.edu/urn-3:HUL.InstRepos:33825923> (accessed March 15, 2021).
- Basile, Linda, and Mazzoleni, Oscar. (2020). Sovereignist wine in populist bottles? An introduction. *European Politics and Society* 21(2): 15–162.
- Benhabib, Seyla. (2016). The new sovereigntism and transnational law: Legal utopianism, democratic scepticism and statist realism. *Global Constitutionalism* 5(1): 109–144.
- Bustikova, Lenka, and Guasti, Petra. (2017). The illiberal turn or swerve in Central Europe? *Politics and Governance* 5(4): 166–176.

- Ciurtin, Horia. (2019). The '16+1' Becomes the '17+1': Greece Joins China's Dwindling Cooperation Framework in Central and Eastern Europe. *China Brief* 9(10), <https://jamestown.org/program/the-161-becomes-the-171-greece-joins-chinas-dwindling-cooperation-framework-in-central-and-eastern-europe/> (accessed October 16, 2019).
- Cooper, Robert. (2000). *The post-modern state and world order*. London UK: Demos, The Foreign Policy Centre.
- Deutsche Welle. (2020). German Government endorses ECB bond-buying bid after courts clash. *Deutsche Welle*, June 29, 2020, <https://www.dw.com/en/german-government-endorses-ecb-bond-buying-bid-after-courts-clash/a-53987794> (accessed March 15, 2021).
- European Union. (2012). Consolidated version of the Treaty on the European Union and the Treaty on the Functioning of the European Union [2012]. *Official Journal C 326* (26.10.2012): 0001–0390.
- Habermas, Jürgen. (2017). An exploration of the meaning of transnationalization of democracy, using the example of the European Union. In *Transforming the Global Political and Economic Order*. Eds. Penelope Deutscher and Cristina Lafont. Cambridge and New York: Cambridge University Press, 3–18.
- Hamulák, Ondrej. (2016). National Sovereignty in the European Union: View from the Czech Perspective. *Springer Briefs in Law*, DOI 10.1007/978-3-319-45351-4_1.
- Hillman, Jonathan, and McCalpin, Maesea. (2019). Will China's '16+1' Format Divide Europe?" Center for Strategic and International Studies. *Center for Strategic International Studies*, April 11, <https://www.csis.org/analysis/will-chinas-161-format-divide-europe> (accessed October 15, 2020).
- Irimescu, Lisa. (2019). *Hungary's Eastern Opening: Political and Economic Impacts*. KKI Policy Brief E-2019/57. Budapest: Institute for Foreign Affairs and Trade.
- Koenig-Archibugi, Mathias. (2003). Introduction: Globalization and the Challenge to Governance. In *Taming Globalization: Frontiers of Governance*. Eds. David Held and Mathias Koenig-Archibugi. Cambridge: Polity Press, 1–17.
- Krulic, Joseph. (2020). Legal Cosmopolitanism and Political Sovereignism: European Asylum Law and Illiberal Policies in Central Europe. In *Cosmopolitanism, Migration and Universal Human Rights*. Eds. Chrom Jacobsen, Mogens, Berhanu Gebre, Emnet, Župarić-Iljić, Drago. Zürich: Spring International Publishing, 105–115.
- Lavenex, Sandra. (2004). EU external governance in 'wider Europe.' *Journal of European Public Policy* 11(4): 680–700.
- Library of Congress – Law Library. (2020). European Union: Court of Justice rules against Poland, Czech Republic, and Hungary for noncompliance with migrant relocation obligations. *Library of Congress – Law Library*, June 5, <https://www.loc.gov/law/foreign-news/article/european-union-court-of-justice-rules-against-poland-czech-republic-and-hungary-for-noncompliance-with-migrant-relocation-obligations/> (accessed March 16, 2021).
- Machitidze, Ivanna. (2016). The "Eastern Partnership" Project: Does Poland's Voice Still Matter? *CES Working Papers* (Centre for European Studies, Alexandru Ioan Cuza University) 8(3): 376–390.
- Madsen, Mikael, Olsen, Henrik Palmer, and Urška Šadl. (2017). Competing Supremacies and Clashing Institutional Rationalities: the Danish Supreme Court's Decision in the *Ajos* Case and the National Limits of Judicial Cooperation. *European Law Journal* 23(1–2): 140–150.
- Pew Research Center. (2019). European public opinion three decades after the fall of communism (Section 4: European Union). *Pew Research Center Report*, October 14, 2019, <https://www.pewresearch.org/global/2019/10/14/the-european-union/> (accessed March 15, 2021).
- Resnik, Judith. (2008). Law as affiliation: "Foreign" law, democratic federalism, and the sovereigntism of the nation-state. *International Journal of Constitutional Law* 6(1): 33–66.

- Schiemann, Konrad. (2007). Europe and the Loss of Sovereignty. *International & Comparative Law Quarterly* 56 (3): 475–489.
- Spiro, Peter. (2000). The new sovereigntists: American exceptionalism and its false prophets. *Foreign Affairs* 79: 9–22.
- Spiro, Peter. (2013). Symposium: Sovereigntism's twilight. *Berkeley Journal of International Law* 31, [https://advance-lexis-com.libweb.lib.utsa.edu/api/document?collection=analytical-materials&id=urn:contentItem:594T-W110-00CV-P0F0-00000-00&context=1516831](https://advance.lexis-com.libweb.lib.utsa.edu/api/document?collection=analytical-materials&id=urn:contentItem:594T-W110-00CV-P0F0-00000-00&context=1516831) (accessed March 15, 2021).
- Thomann, Pierre-Emmanuel. (2019). The Three Seas Initiative, a New Project at the Heart of European and Global Geopolitical Rivalries. *Rocznik Instytutu Europy Środkowo-Wschodniej* 17: 31–63.
- Végh, Zsuzsanna. (2015). Hungary's "Eastern Opening" policy toward Russia. *International Issues & Slovak Foreign Policy Affairs* 24 (1-2): 47–65.
- Wolczuk, Katarzyna. (2017). Abandoning the Eastern Partnership Would Be a Terrible Act of Self-Harm for Poland. *Chatham House*, November, <https://www.chathamhouse.org/2017/11/abandoning-eastern-partnership-would-be-terrible-act-self-harm-poland> (accessed December 7, 2020).