A European Republic of Sovereign States: Sovereignty, Republicanism and the EU

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This article defends state sovereignty as necessary for a form of popular sovereignty capable of realising the republican value of non-domination, and argues it remains empirically achievable and normatively warranted in an inter-connected world. Many scholars, including certain republicans, contend that the external sovereignty of states can no longer be maintained or justified in such circumstances. Consequently, we must abandon the sovereignty of states and reconceive popular sovereignty on a different basis. Some argue sovereignty must be displaced upwards to a more global state, while others advocate it be vertically and horizontally dispersed to units below, across and above the state. Each group offers a related vision of the European Union (EU) to illustrate their proposals. Both these arguments are criticised as more likely to produce than reduce domination because neither can sustain a form of popular sovereignty capable of instantiating relations of non-domination. This article proposes the alternative of a republican association of sovereign states that allows sovereign states and their peoples to mutually regulate their external sovereignty in non-dominating ways. It offers a more plausible and defensible means for sustaining the requisite kind of popular sovereignty in contemporary conditions, and a more appropriate vision of the EU.

The issue of state sovereignty lies at the heart of many debates about the democratic legitimacy of European integration. On the one hand, critics of the EU frequently

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complain it erodes state sovereignty and thereby weakens the capacity of domestic electorates to control and influence how they are governed (Malcolm 1991). On the other hand, defenders of the EU often argue either that shifting at least some sovereignty to the EU provides a means for increasing such control and influence given the global nature of many issues (Held 1995: 111-13; Morgan 2005: 142-54; Habermas 2012: 37-53); or that the weakening of state sovereignty helps promote a cosmopolitan respect for individual rights and justice (Pogge 1992: 58; MacCormick 1999: 128-9). If the first group defends the sovereignty of the member states, the second group seeks a transfer of sovereignty to the EU level, while the third group aims to go beyond any form of state sovereignty. What follows defends an alternative view of the EU as an association of sovereign states. Grounded in a republican theory of non-domination (Pettit 2010: 70-75), it lies in key respects midway between the three more familiar positions.

Sovereignty can be assessed in relation to many other values besides non-domination (Caney 2005: ch 5). However, non-domination captures a central concern of the sovereignty debate relating to the capacity for citizens to be free from alien control and influence (Laborde and Ronzoni 2015). Like sovereignty, non-domination is a quality realised through a certain configuration of political institutions (Pettit 2012: 22). Indeed, a central tradition of republican thought, to which this piece aligns itself, has associated the achievement of non-domination with sovereignty (Rousseau 1762; Kant 1797). Yet, republicans also have been wary of the potential for domination offered by certain conceptions of sovereignty (Pettit 2012: 14-15), with a number of contemporary republicans rejecting the notion entirely, often on grounds analogous to those of liberal cosmopolitans (e.g. Bohman 2004a). In fact, all three of the familiar positions outlined above have been justified by various theorists on republican grounds and offered as models of the EU (e.g. respectively Miller 2008; Marti 2010 and Habermas 1998: 106, 116-7, 150; and MacCormick 1999: ch 9, Bohman 2004b, Besson 2006 and Ladvas and Chrissochoou 2011). Exploring which configuration of sovereignty might best realise non-domination within the EU seems pertinent, therefore.

The account proposed here conceives the EU as a republican association of sovereign states that is designed to overcome the possibility for their mutual domination while providing a mechanism for their securing certain global goods and avoiding various global bads, not least through their reciprocal recognition of rights to

citizenship (Bellamy 2013). It seeks to combine the respective advantages of the other three positions while escaping their disadvantages. Like the state sovereigntists, I shall argue that popular sovereignty presupposes state sovereignty of a kind that has been already constituted within the member states. However, state sovereigntists risk ignoring the degree to which global interconnectedness can inhibit the capacity of states for self-government and creates or reinforces moral obligations of a cosmopolitan kind to uphold the right to citizenship of all individuals regardless of state borders. Like advocates of shifting sovereignty to regional or even global bodies, therefore, I shall contend that popular sovereignty can be enhanced rather than diminished through states cooperating within a regional organisation such as the EU. Yet, supra-state sovereigntists underestimate the normative loss incurred in dismantling already existing legal and political orders and reconstituting them to encompass a far larger and more diverse population. Even more than state sovereigntists, they also pay insufficient attention to the dominating potential of sovereignty within states and how these might be exacerbated in a larger unit. As the post-sovereigntists suggest, I shall maintain such a regional arrangement need not - and should not – be conceived as involving any transfer of state sovereignty to the EU. But it need and should not lead to a weakening or dispersal of state sovereignty either. Cosmopolitan supporters of dispersing sovereignty among a range of functional, local and transnational bodies above and below the state overlook how effective and equitable control and influence depends on individuals forming part of a people, capable of exercising collective oversight on the basis of commonly avowable reasons over the whole range of policies and forces effecting their shared interests. Moreover, outside such arrangements it may prove hard to obtain agreement on which rights to enforce, when and how, or to mobilise support for doing so (Bellamy 2012). Consequently, those agents and agencies seeking to uphold cosmopolitan norms risk being illegitimate and ineffective. By contrast, I shall show how a republican association of sovereign states allows citizens to regulate their external sovereignty in non-dominating ways consistent with cosmopolitan norms by creating supra-national institutions under their mutual control that uphold the rights of their respective citizens to self-government.

The argument develops in two stages. The first stage defines state sovereignty and defends it on republican grounds as necessary to establish a form of politics capable of instituting relations of non-domination among citizens. Section 1 defines

sovereignty as a political authority that possesses finality through being supreme and comprehensive. These qualities are then said to presuppose a territorially demarcated polity and a corresponding regime, both of which develop coevally with the constitution of a related people and an agent or agency enjoying the right to rule. Section 2 argues that sovereignty so conceived provides the context for institutionalising a form of popular sovereignty in which citizens can fairly and freely agree on public rules of justice in a non-dominating manner. The second stage, examines the possibility and justifiability of sovereignty so defined and defended once states and their peoples interact and become interconnected. In these circumstances, the external sovereignty of states has been regarded as not only promoting injustice (Caney 2005: 182; Pogge 1992: 58) but also impossible (Sassan 1996: 29, Slaughter 2005: 12), thereby undercutting internal sovereignty. Taking the EU as a response to this situation, these sections explore respectively whether sovereignty within the EU ought to be displaced upwards to the EU level, as supra-state federalist sovereigntists argue (Section 3); dispersed and divided, as post-sovereignty theorists propose (Section 4); or is best conceived as an international association of sovereign states and their peoples, whereby they accord each other equal concern and respect by delegating certain competences to supranational institutions that regulate their interactions while remaining under their mutual control (Section 5).

1. Defining Sovereignty
The defining features of sovereign rule are standardly given as finality, supremacy and comprehensiveness, in which the first depends on the second and third (Hinsley 1986: 1, 26). To possess sovereign authority is to be able to decide an issue. Hence the sovereign must have the final word. As such, a sovereign must be supreme vis-à-vis alternative sources of authority and have a comprehensive jurisdiction over the activities of those under its sway. Without the separation and supremacy of political over religious, legal, economic and other forms of authority and power, political decisions will be open to challenge by rival authorities and so cannot be final. Likewise, if sovereign authority does not encompass all social interactions it will be impossible to take into account the knock on effects of a decision in one area for those in other areas, thereby also making the finality of any decision open to question.

Sovereignty so defined has typically been associated with a sovereign state possessing the following four features: it forms a territorially defined *polity,* with its own system of governance or *regime*, its own *ruler* comprising the agent(s) or agency(ies) forming the highest and decisive organ within the regime, and its own *people* (the *demos*) (Troper 2010: 137-39). These four features interact in a variety of ways, with sovereignty being the product of that interaction. For a ruler and a regime to be sovereign, they must be supreme with regard to the social activities of the individual members of the people residing within a sovereign polity. Sovereignty so conceived has both an *internal* and an *external* dimension. Sovereignty implies being subject to no other authority at home and the equal of other sovereigns abroad. It also involves both a *de facto* and a *de jure* condition – it designates, respectively, the capacity to rule and the right to rule over those subject to the sovereign's authority. In addition, sovereignty may be understood both *negatively*, as freedom from other sources of power and authority, and *positively*, as freedom to act in self-chosen ways. Finally, sovereignty is an attribute not only of the agent(s) or agency(ies) that rule but also of the regime, the domain and the people through and over which and whom they rule: it refers not only to the sovereignty of the rulers but also of the regime whereby their rule is implemented and legitimated and the polity and the people to which and over whom it applies (Caney 2005: 149-50).

An externally and negatively sovereign realm or polity offers the context within which the internal and positive sovereignty of a regime and a ruler can be exercised, with the *de jure* right to govern of a given regime and ruler resting on their *de facto* capacity to preserve the sovereignty of the polity. Indeed, within the developing language of sovereignty claims, the sovereignty of the polity and its members and the sovereignty of rulers – be they princes or the populace – and a given regime became inextricably connected and coeval (Sheehan 2006; Skinner 2010). The status of sovereign rulers depended on their ability 'to maintain' the sovereignty of their state, as the polity came to be termed, with such maintenance involving not only the securing of the negative, external sovereignty of the polity but also the internal exercise of positive sovereignty to promote its well-being and prosperity. In other words, the sovereign right to rule involved an obligation to preserve and foster the sovereignty of the polity, and hence of its members, externally and internally, negatively and positively.

These four elements of sovereignty form a mutually supporting package, therefore. As I shall argue in section 2, they prove necessary for a government to be duly authorised to represent a people and their polity and be accountable to them. By supporting popular sovereignty they help secure the value of non-domination among individuals who acknowledge the importance of showing each other equal concern and respect. Yet, an appropriate configuration of internal sovereignty will not be sufficient to secure non-domination if the polity and regime do not possess external sovereignty and so can be dominated from outside. Hence the need to address the plausibility and desirability of sovereignty claims in an interconnected world, and to investigate how the dimensions of polity, regime, ruler and people might be reconfigured to achieve non-domination in such circumstances - the topic of sections 3-5.

2. Defending Sovereignty

The definition given above is essentially Hobbesian (Hobbes 1651; Skinner 2010: 34-37). Developing its reworking by Rousseau (1762) and Kant (1797), as analysed and advocated in a number of recent studies (Stilz 2009; Ripstein 2009; Flikschuk 2010), this section defends sovereignty so defined on republican grounds as necessary to secure non-domination.

State sovereignty and free persons

At the heart of the republican concern with domination lies a view of human beings as moral equals, each entitled to act on their own autonomous choices on the same basis to everyone else. Following Philip Pettit (2010: 73-5; 2012: ch. 1), non-domination can be defined as the absence of alien, non-deliberative control. Deliberative control, whereby others seek to persuade you via reasons you can accept or not, respects one's equal status as an independent reasoner and so involves no domination. By contrast, an agent or agency exercises non-deliberative control over your choices when they influence them either directly, be it through coercive interference or, more subtly, by manipulation or deception, or indirectly, without actual interference, through your simply fearing or anticipating their capacity to interfere and inhibiting your actions as a result of invigilation or monitoring, in ways that may lead to self-censorship or self-ingratiation. On the republican account, domination of both the interfering and the inhibiting kind results from a relationship of actual or potential mastery of one agent

or agency by another. It derives from a situation in which one is no longer an equal and independent chooser. Herein lies the link that a number of republicans sought to establish between non-domination and sovereignty. If domination arises from being subject to a master, then individuals will only be non-dominated to the extent they are free from mastery as a result of possessing sovereignty, which we saw by definition entails having no superior (Rousseau 1762: I.6, 7: 49-53; Kant 1797: 138-9).

Establishing a situation in which each individual possesses sovereignty poses a dilemma, as both Rousseau and Kant fully appreciated. If individuals could live entirely independently of one another, as self-sufficient units, without any interaction, then each could be sovereign over his or her choices and domain. Likewise, if all acknowledged the sovereignty of justice, then cooperation between individuals could be based on voluntary agreements that acknowledged their respective rights. However, given that social interaction proves both necessary and unavoidable, while the partiality of all individuals to their own interests and perspectives makes disagreements about justice inevitable, then - following Hobbes (1651: ch 13) – these authors argued that the need arose for a sovereign political authority capable of determining and enforcing collectively binding rules of social conduct. Without such an authority, then – again drawing on Hobbes ((1651: ch 17) – they contended each individual ran the risk of being dominated by, or themselves dominating, every other individual they came into contact with. In a situation where individuals unilaterally decide whether others have infringed their rights or they have infringed the rights of others, then – unless they all happen to agree on what is right – none has a duty to respect the view of rights held by others. They also cannot rightfully impose their view of justice on anyone else without similarly denying their moral equality as an equally authoritative judge of what justice demands. Therefore, sovereign authority becomes a precondition of justice because only such an authority can deliver a decisive and common process of adjudication capable of reliably and stably establishing objective duties on all. It provides this possibility precisely through being supreme and comprehensive, and thereby offering the prospect of replacing the unilateral will and subjective judgement of particular individuals with an omnilateral will in which each decides the same thing for all (Rousseau 1762: II.6: 66-8; Kant 1797: 137-8; Stilz 2009: 38-56).

The danger with this proposal lies in such a sovereign power also offering an unrivalled prospect for domination through becoming itself the instrument of a

particular will, a worry raised once more by Hobbes and his account of sovereign power, with its apparent rejection of republican fears regarding domination (Hobbes 1651: ch. 21). From a republican perspective, the fundamental challenge posed by the creation of such a sovereign authority was whether it was possible, in Rousseau's words (1762: I.6: 49-50), '*to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, while uniting himself with all, may still obey himself alone, and remain as free as before.*' As is well known, Rousseau's response was that the only way to meet this challenge was by locating sovereignty in the people's democratically constructed general will (Stilz 2009: ch 3). What follows extrapolates from that argument to offer a rationale for why a non-dominating form of democracy assumes the four dimensions of a sovereign polity, regime, rule and people outlined above.

Popular Sovereignty and non-domination
The attraction of a sovereign political authority rests on its providing a solution to the problem of individuals being dominated by the partial judgments and particular wills of others. Any single individual - however well intentioned and selfless – will have a partial perspective, in the sense of being inevitably limited in their ability to comprehend or even be aware of all other peoples' situations, interests and views, and likely – even unwittingly - to favour their own interests and point of view. Yet that means overcoming partiality cannot be achieved by deferring to arbitration by some self-styled impartial third party or parties. So conceived, a sovereign authority would be part of the problem rather than its solution, for it could not avoid acting arbitrarily towards those subject to it. Democracy proposes a solution to this difficulty by placing sovereign authority in an impartial mechanism that offers a public means for showing equal concern and respect to the views and interests of all citizens in determining collective policies. Such a mechanism aims to allow citizens to agree despite their disagreements by providing a way of making decisions all can accept as legitimate even when they dissent from a given decision (Christiano 2008: ch 6).

A democratic procedure consisting of majority rule based on one person one vote formally meets this requirement in being anonymous, neutral and positively responsive (May 1952). However, such a formal mechanism offers at best a necessary but not a sufficient condition to avoid domination. If a majority vote reflects the 'will of all' rather than a 'general will', then, as Rousseau (1762: I.3: 60)

noted, the possibility arises of certain groups dominating others because each will have voted with the sole objective of furthering their partial interests and perspective. For example, a consistent minority could be subject to the arbitrary will of a majority if the majority's partial interests can be furthered through the exploitation of the minority and the suppression of their views. Such worries lay behind the republican hostility to factions. To avoid this possibility, a democratic process must also incentivise citizens to justify their collective decisions to each other on the basis of commonly avowable reasons that acknowledge the entitlement of all citizens to be treated with equal concern and respect. Though many policies will benefit particular groups, they must do so for general reasons that are acknowledged as applying equally to all and that promote a shareable public interest. Therefore, democratic legitimacy will depend to some degree on whether those making the collective decisions for themselves relate to each other in ways that render such an equal and public process possible and appropriate (Rawls 1999, 23-4).

Two types of relations prove especially important in defining a *demos* among whom a democratic process for collective decision-making will be legitimate. As we shall see, the four dimensions of sovereignty provide the context for the emergence of both. First, there needs to be a high degree of interdependence between the members of a community and their most important interests must be more or less equally tied up in it, and be so over a long period of time – sufficient to care about the impact of current decisions for future generations (Christiano 2010: 130-32). Interdependence stimulates crosscutting cleavages that make interest groups less factionalised, ease trade-offs and diminish the possibility of consistent winners and losers. A rough equality of stake in the overall package of collective decisions gives citizens an equal interest in ensuring the basic structures of social cooperation are fair and equitable. It frames a commitment to promoting and sustaining investment in certain public goods that are conducive to their different projects, including collective schemes of social insurance and the maintenance of fair democratic procedures for deliberating on the public good. If some have less of a stake in these collective decisions than others, then it would not be legitimate for them to have an equal say because their interest in them will be partial by definition. They will be more inclined to underfund policies supporting a common good in which they do not share and to promote policies that support their sectional interests.

Second, and relatedly, citizens need to conceive themselves as a public and be able to act as such (Miller 2009: 212). Such a self-conception gains support from a shared public culture and sphere, themselves the product of a shared history, language and customs that create a feeling of like-mindedness and the sense of participating in a collective project.   A shared public culture provide a source of agreement on the kind of issues that can be raised and the values that can be appealed to, making it less likely interlocutors will view each other's points as mere personal opinions and interests that do not need to be addressed and responded to, thereby aiding compromise through focussing on common principles and priorities. A shared public sphere involving common media, discourse and language or languages allow citizens to address each other as a public and encourage politicians to do so by offering common forums through which to communicate with each other. Otherwise the danger is that politicians could simply play different groups off each other, saying different and even contradictory things to each. Citizens too will not be forced to hear the other side. There will be no incentive to develop only commonly avowable policies and principles that address shareable values and interests or mutually acceptable compromises. Such incentives oblige those seeking special privileges, such as a religious group seeking an exemption from certain common policies or a business asking for a tax break, to frame their demand in terms of a general principle or benefit applicable to the whole community and not just them. Again, the risk is that otherwise society will become divided into discrete and insular publics, with distinct views and interests on key issues. As a result, the possibility of partial decision-making favouring only given sectorial groups increases, as does the potential for persistent minorities.

A democratic process that operates subject to these conditions proves non-dominating. Mastery of a kind that leads to domination arises from an imbalance of power, dependency and arbitrariness (Lovett 2010: 119-20). If A has more power than B, then A can reliably alter B's choices but not vice versa. In this scheme, all have an equal power in making collective decisions and none can reliably control another. If B is dependent on A, then the cost to B of defying A may be prohibitively high. However, under this arrangement all are equally subject to and have an equal stake in collective rules and goods that are under their free and equal control. As Rousseau observed, 'each, by giving himself to all, gives himself to no one' (Rousseau, 1762: I.6: 50). There is mutual but not personal dependence. Finally, arbitrariness exists if A

can will what B chooses according to A's partial judgment and interests, without consulting those of B. Here, though, collective rules must consult the commonly avowable judgements and interests of those subject to them.

Clearly, actually existing democratic systems operate with varying degrees of success in meeting these conditions and at best are 'nearly democratic' in the specified senses. To some degree, this variation depends on specific details of their political and social arrangements, such as the electoral system, which cannot be explored here. However, they will also be affected by the way sovereignty is arranged. Historically, state sovereignty has provided the context within which democratic mechanisms have been able to emerge within all the member states (Skinner 2010). How has state sovereignty helped give democratic decision-making these qualities?

First, as we saw supremacy and comprehensiveness supply a precondition for all policies being made by and applying equally to all. Unless a single authority has ultimate responsibility for the totality of social relations and is under the control of all subject to them, then collective decisions will not be those of and for the collectivity. They will reflect partial interests and perspectives. Second, these attributes of sovereignty arise from a sovereign ruling agent or agency being located within a polity with its own regime and people. State building typically created all four aspects simultaneously, and in the process formed a national economic system and political culture (Rokkan 1974). These developments typically came about coercively, invariably through armed force, and were further solidified by war. Yet, as a result citizens became part of a polity-wide scheme of social cooperation and could share a public sphere. However unjust their origins, they provide an environment within which citizens can establish justice by engaging in the collective practice of defining and upholding a fair scheme of rights.

Internal Sovereignty and the 'Mixed Constitution'

On this account, the self-determination of a sovereign people provides the 'right to have rights' (Arendt 1958: 296). Nevertheless, some contemporary republicans fear that having a single sovereign authority reduces the possibility for minority groups to contest majority decisions. They regard dividing sovereignty via a mixed constitution as favouring such contestation (Pettit 2012: 12-13, 220-25). As we shall see, similar considerations motivate advocates of a dispersal of sovereignty. However, such

mechanisms risk allowing groups to avoid offering a public, commonly avowable, justification for their partial interests, for example by vetoing decisions they claim infringe their rights. Yet, to be legitimate, rights claims need to be made in a way that shows equal concern and respect towards those being asked to uphold them. Otherwise they will be based on private judgements, and not morally obligatory for other citizens. As Rousseau (1762: I.7) remarked, that would involve individuals seeking 'to enjoy the rights of a citizen without being willing to fulfil the duties of a subject'. At some point, such claims need to be made in a way that involves an impartial weighing of the rights of the community as a whole. That does not invalidate having ways to ensure minorities are not unduly overlooked and their voices get an equal hearing, merely that fairness requires that ultimately they must be considered as part of a collective scheme that treats all as free and equal,

Hobbes' (1651: ch. 29: 228) objections to 'mixt government' notwithstanding, a sovereign agency of rule need not be indivisible nor a sovereign regime unitary. Sovereign rule can be shared between different bodies with distinct roles or that must act concurrently, such as an upper and a lower house. Such divisions may help promote a balance of power between citizens. Yet, sovereign power could still lie in a single joint agency, as in the British formulation endowing sovereignty in the Queen in Parliament, signifying a concurrence of executive and the upper and lower houses. Likewise, a sovereign polity can have a federal regime in which certain powers are devolved to sub territorial units as a matter of administrative convenience on the basis of rules and criteria decided at the federal level. Power sharing and devolution allow a regime to adapt to the diversity of a polity, such as the presence of socio-economic and cultural differences, while still remaining sovereign. There simply needs to be procedures or mechanisms capable of resolving conflicts between different bodies that constitute a single sovereign authority. Nevertheless, the more segmental the divisions within the polity become, the more the devolution of power to sub-territorial units is likely to give rise to separate peoples within a polity. To the extent that is the case, citizens of these different units will gradually cease to regard themselves as engaged as a public in making common policies. Rather, they will increasingly wish their political representatives to share power at the federal level and represent their right as different peoples to collective self-government. Their aim will be to secure fair terms to do so alongside other peoples within the polity and even negotiate secession (Dahl 1989, 258-59). In so doing, they will move towards a republican

association of sovereign states of the kind described in section 5 – one reason why the EU can facilitate the political empowerment of minority nations.

External Sovereignty and Free States

The argument given above contends that a sovereign democratic authority provides the basis for non-domination among citizens, not how many such authorities there should be or where they ought to be located. Yet for a sovereign state to secure the context for free persons through a non-dominating form of popular sovereignty it must be a free state, not dominated by other states, agents or agencies (Laborde and Ronzoni 2015). Many scholars believe such conditions no longer hold because global interdependence has challenged the external sovereignty of states and with it their internal sovereignty. New technologies have brought polities and their peoples closer together and rendered them more interconnected than ever before. Borders are not just more open to conventional and unconventional forms of armed aggression, with terrorist attacks penetrating the defences of even the most militarily mighty states, but also have been made progressively permeable by the globalisation of production, property ownership and finance as well as trade, and are increasingly tested by the migration of people. These global processes diminish the capacity of a sovereign polity and its regime to act as a supreme authority capable of securing the physical and economic well being of a people. A sovereign people risk being dominated and interfered with by the decisions and actions of different kinds of externally situated agents and agencies – be they other polities, wealthy financiers, multinational corporations, armed groups, or poor migrants (Pettit 2010: 77-9). Likewise, it has become ever harder for polities to reap the benefits of any positive externalities resulting from their activities or to protect themselves from the negative externalities of the activities of other polities. For example, their clean environmental policies may benefit neighbouring states but be unable to counteract the pollution stemming from poor environmental controls of these same neighbours. At the same time, many argue that the continuing exclusions created by sovereign institutions involve unjustly dominating individuals who happen to have been born into poor or failing states and find themselves unable to leave or forced to take huge risks to do so only to end up in migrant camps.

Polities cannot tackle these problems effectively on their own. A system of autarchic states is not an option. In greater or lesser ways, they need to cooperate to

regulate their interactions and secure certain global public goods in ways that are equal and fair. The EU has been seen as a test ground of possible responses in this regard. As we saw, some republicans argue that it enables a shift towards a regional federal union that could resolve the problems associated with the erosion of external sovereignty, on the one hand, and unjust exclusions, on the other, by including all within a larger sovereign polity (Marti 2010). Others suggest that it allows for the dispersal of sovereignty and the move towards a post-sovereign political system that avoids the risks associated with concentrating power in any single agency (Bohman 2004b). In examining both proposals below, I shall argue that neither can sustain a form of politics capable of avoiding domination of the kind described above. As an alternative, I shall propose a republican association of sovereign states

3. A Sovereign EU?: Sovereignty Displaced and Diluted

The ideal of a sovereign federal Europe predates the EU and animated some of its earliest proponents, while still remaining a goal for many (Burgess 2000). As we saw, dividing and devolving sovereignty do not in themselves undermine the possibility of a sovereign authority. Consequently, the governance structures of a federal European polity could be complex, requiring agreement between bodies representing both EU citizens and various sub-federal units, such as member states and regions, and involve a considerable degree of subsidiarity to these lower units, yet still possess sovereignty. However, unlike current arrangements, within such a federal EU the division of competences between the levels would be decided at the EU level rather than via agreement between the member states, and the legitimacy for doing so would come from citizens directly debating and endorsing European level policy making, even if those policies were mediated by agencies operating at various lower levels, with these also retaining competences in many areas.

A federal EU would potentially provide the polity sovereignty necessary to construct a basic political structure at the EU level. However, to be non-dominating, even a highly differentiated federal EU would also need, at least for certain purposes, to possess a European people willing and able to identify and act as a popular sovereign capable of ensuring the sovereign EU regime and its rulers operate under their equal influence and control to advance their commonly avowable interests. Section 2 defined a people in the political sense as possessing the capacity to deliberate in a public way about the public interest. As we saw, this capacity is

facilitated by citizens possessing interconnected interests and a roughly equal stake in collective decisions, and sharing a public culture and sphere. Proponents of the 'no-demos' thesis contend these social and cultural conditions have so far failed to develop at the EU level (Weiler 1998: 246, Scharpf 1999: 8- 9). Social and economic divergence, on the one side, and cultural and linguistic diversity, on the other, remain robust. Even if the ideological and policy preferences of citizens are no more diverse across the EU as a whole than they are within most member states and similarly cross-cutting (Hale and Koenig-Archibugi 2016), there can still be segmental divisions between both regions with highly divergent levels of socio-economic development and different national groups who conceive themselves as distinct peoples. Such divisions already exist within many of the member states and drive calls for devolution in Scotland and Catalonia, for example. Across the EU they would be even stronger. Only 2% of EU citizens view themselves as 'Europeans' pure and simple, with a mere 6% regarding a European identity as more important than their national one (EB 83 Spring 2015).

In such conditions, a high risk exists of dominating decisions deriving from unequal stakes, a lack of incentives to address issues of common concern in a public manner, and the likelihood of consistent and isolated minorities (Christiano 2010: 132-36). Such problems are exacerbated by the way the very size of the EU decreases both the representativeness of the European Parliament (EP) and the capacity and willingness of citizens to become informed about complex matters on which they can make little impact. After all, if constituencies were of equal size, then each of the 751 MEPs in the EP would represent around 675,000 voters against an average of 10,000 for every MP in a national parliament such as the UK. In fact, given the over representation of smaller countries, most constituencies are far larger. Meanwhile, trans-European interest groups and parties, which might offer cues on EU matters to electors, barely exist except as EU funded coalitions of national groupings within European institutions. Unsurprisingly, elections to the (EP) consist of second-order national elections (Hix and Marsh 2011), with electoral turn out steadily decreasing from the high of 61.99% in 1979 to the low of 42.61% in 2014 despite as steady an increase in the powers of the EP. Little wonder that decision-making at the EU level is perceived and criticised as monopolised by unaccountable elites.

It can be countered that large, socially and culturally diverse democracies exist, such as India. However, as I noted, such cases of state building occurred

through war and were accompanied by extensive and invariably coercive processes of nation building – in India's case two centuries of armed occupation and colonial rule. Today such processes would be deemed unacceptably illiberal and dominating. Indeed, those member states that employed them in the past to incorporate other political nations are now experiencing a resurgence of minority nationalist demands for greater political autonomy. Consequently, the legitimacy of EU level decision-making depends to a high degree on there being multiple checks and balances for the different peoples of the member states, with most decisions within the EU requiring a consensus or a super-majority of states and citizens (Moravscik 2002). Yet such multiple veto points not only reduce effectiveness and efficiency but also can impair the equity of decisions by favouring the status quo and vested interests (Scharpf 1998). They may be justified to preserve the equal entitlement to self-government of the various EU's peoples but not as mechanisms for collective decision-making among a European people. In the former case, it will suffice to seek only Pareto improvements between the member states beyond securing to each a minimum level of socio-economic well-being sufficient to sustain a capacity for self-government. In the latter case, it would be important for individuals to seek a common framework of social and civil entitlements, and in this case counter-majoritarian checks and balances could lead to deficiencies and inequalities in provision if their origins lie in a lack of collective solidarity and identification (Bellamy 2010).

Sensitive to these issues, some advocates of a federal EU suggest EU bodies should only decide those limited matters that require European solutions, so that current polities will retain most of their functions, albeit constrained by a supranational framework that regulates their interactions and promotes EU public goods (Habermas 2012: 38-41). This dual federal scenario, where federal and state units are responsible for different policy areas, differs from the unitary federal arrangement explored above, where states would possess powers that are devolved downwards from the centre and enforce federal policies. It does not conceive the participating polities as part of an overarching sovereign European polity. Rather, states would pool certain sovereign powers at the EU level in areas that lie beyond what each could handle individually.

The crux of his proposal is that individuals possess a dual citizenship as citizens of their member state and of the Union (Habermas 2012: 29). Therefore, individuals would still need to form a EU people and their representation be relatively

diluted, with all the attendant difficulties noted above. However, Habermas suggests the reduced scope of policymaking he envisages could be achieved among a people only united by the thinner bond of 'constitutional patriotism' as the basis of a common 'post-national' European citizenship (Habermas 1998: 153, 159, 161). True, the abstract rights that figure in the European Convention of Human Rights and the EU Charter of Rights are shared by all the member states. Yet, most are embraced by democracies worldwide – after all, they are largely acknowledged as universal. That different peoples have these rights in common, though, does not mean they should automatically believe it legitimate to deliberate about them as a common people and be subject to a common sovereign authority for their interpretation and implementation. For all the aforementioned reasons, they may believe these tasks will be better achieved within a polity where the pre-conditions for impartial collective decision-making pertain and that can more appropriately realise the fundamental right to self-determination.

Creating an EU polity and regime in the hope it might generate the conditions for a European people proves not only impractical without an unacceptable degree of domination but also unjustifiable and unnecessary. Unjustifiable, because it rests on a mistaken domestic analogy that assumes the citizens of member states can be likened to individuals who lie outside any constituted sovereign political order. However, citizens are already constituted as peoples within a sovereign polity, which are capable of offering them valuable ways of living that possess moral worth. Nor are these states to be regarded as relating to each other in the manner of individuals in the state of nature. As juridical orders, they can act as moral agents with regard to each other, as the development of international law indicates. Unnecessary, because the required task is not so much to offer individuals a basic political structure at the EU level capable of securing justice for them in a legitimate manner, as to ensure the existing structures of the different member states prove mutually supportive rather than oppressive, and can cooperate in non-dominating ways that enable their citizens to live on free and equal terms with each other. I return to both these points in section 5 below. Before doing so, I wish to explore the arguments of those who reject sovereignty altogether.

4. A Post Sovereign Europe?: Sovereignty Divided, Discrete, Dispersed and Dissolved

Post-sovereigntists also view state sovereignty as practically and normatively untenable in a globalising world but regard the displacement of sovereignty upwards to a federal EU or even a world state as equally indefensible, in part for parallel reasons to those given above. Instead, they propose the vertical dispersal of sovereign authority both above and below the state, with the result that individuals would be 'citizens of, and govern themselves through, a number of units of varying sizes, without any one political unit being dominant and thus occupying the traditional role of the state. And their political allegiance and loyalties should be widely dispersed over these units: neighbourhood, town, county, province, state, region, and world at large' (Pogge, 1992: 58). Once again, the EU gets presented as an opportunity and a model. Its alleged multilevel governance structures are said both to allow citizens to participate in a variety of different sub-state, state, trans-state and supra-state political organisations and bodies, forming in each case a member of a different demos. These bodies are not necessarily hierarchically organised and depend often on voluntary compliance and consensual agreement between the various parties involved – be it in standard setting bodies such as the Open Method of Coordination (OMC), the comitology processes for devising EU regulations, or the ordinary legislative procedure of the EU that requires agreement between the EP and the Council of the European Union, thereby involving an agreement between the representatives of states and of citizens in bodies that themselves generally operate by broad consensus. As a result, through membership of the EU the member states are losing sovereignty without transferring to any other body within the EU itself (MacCormick 1999: 126).

The descriptive accuracy of this picture of the EU is deeply controversial (Morgan 2005: 120-24). Even if accurate, though, its normative coherence remains questionable. Republicans have taken up the post-sovereignty thesis and related it to the republican theory of the mixed constitution (MacCormick 1999: ch 9; Bellamy 2003 – a position I now reject; Bohman 2004a: 348-49; 2004b; Besson, 2006; Ladvas and Chrissochoou 2011). They take inspiration from what Pettit (2012: 12) has called the Italian-Atlantic tradition of republican thought rather than the Continental tradition of Kant and Rousseau defended in Section 2 (Bohman 2005: 299). Just as the authors of *The Federalist* argued that a large and diverse republic rendered republican liberty more secure than in small republics (Hamilton et. al ('Publius') 1778, 10: 44-6), not least when combined with the separation of powers, on the one side, and a territorial division of powers, on the other, so these cosmopolitan republicans consider

an even more radical horizontal as well as vertical dispersal of sovereign authority as favouring safeguards against domination rather than otherwise (Bohman 2005: 300). They concede that a single EU (or ultimately global) demos overlooks the divergent impacts of and interest in common policies of different groups of people across the EU, despite their being interconnected to various degrees (Bohman 2005: 339). As a result, they argue one should conceive the EU as consisting of different demoi. However, they contend these demoi are not simply or primarily the peoples of the different member states, but increasingly the members of various subnational, and especially transnational associations of different kinds – not only regions and cities, but also CSOs and interest groups - that are functionally as well as territorially organised (Bohman 2005: 298).

Like earlier republicans, they conceive the key risk in democratic politics as factionalism, with the problem no longer that of one part of the demos dominating the other but of different demoi dominating each other. Whereas the Rousseauvian solution had been to create a coherent public among whom collective decision-making would be possible, they adapt the Madisonian reasoning to advocate the dispersal of sovereign power so that different demoi may each check and balance each other. However, the republican post-sovereigntists dispute the need for either supremacy or comprehensiveness. Instead, they argue that decisions must be shared among, and challengeable by, a range of different power centres and *demoi.* Moreover, decisions will necessarily be discrete, operating in specific areas and relating only to those people(s) with an equal interest in it. The focus in this account is as much on the democratic qualities of deliberation and contestation as on those of authorisation and accountability in order to secure responsiveness. The aim is to reduce the capacity for any one demos to dominate others through having to contend with multiple levels of power and authority (Bohman 2004b; 2005: 306). Yet sovereignty is not necessarily incompatible with this goal. Indeed, it may be necessary to its achievement.

Though sovereignty implies a degree of unity among the people and their system of governance, section 2 indicated how it need not involve homogeneity or uniformity. The regime advocated by Publius was purposely that of a sovereign *United* States. And though they proposed a strong separation of powers and a bicameral legislature, each power has finality in its own domain and operates at the federal level, while a *Supreme* Court oversees the legal system, emerging as the body

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capable of resolving disputes between the federal and state governments regarding their competences. In other words, a prime rationale behind dividing power so that different groups could check and balance each other was to nudge them away from pursuing purely sectional interests towards public deliberation and negotiation on the public interest. However, this was only achieved to the extent the Federal system was itself both comprehensive and supreme, forcing citizens, albeit mainly indirectly through their representatives, to converge as a collectivity on a common decision.[1] When a regime enjoys supremacy and comprehensiveness within a given polity it can function as a community of communities for its members. The polity wide regime both obliges and enables local and other discrete communities to take into account the effects of their decisions on non-members as well as other aspects of their members lives, providing a mechanism through which those involved can negotiate these relations in an equitable and public manner as a people possessing multiple memberships. These mechanisms also allow members to leave a given sub community and join others should they so choose.

In the absence of any such comprehensive mechanisms, the dispersal of sovereignty among a multiplicity of discrete regimes would risk degenerating into a chaos of conflicting and partial polities, each self-reflexive and incomplete. No such incentives to give equal concern and respect to all citizens necessarily exist in an entirely dispersed and non-hierarchical system (Miller 2008: 141-47). They would only be likely to arise if interconnectedness was so symmetrical that individuals belonged to crosscutting groups. But if the divisions are segmented and asymmetrical, as cosmopolitan republicans concede is likely, then the rich and powerful may ignore or dominate the poor and powerless. In the absence of any basic political structure through which they might impartially establish mutually acceptable just relations, individuals would be divided in themselves and from each other (Thompson 1999). Of course, some critics of state sovereignty claim that the relations between states within an interconnected world operate in precisely this chaotic and partial fashion (Slaughter 2004: 186). The issue is to see if this situation can be avoided.

5. A European Republic of Sovereign States? Sovereignty Delegated and Domesticated

It was argued above that for a popularly sovereign polity to incorporate under a supranational or transnational sovereign authority, even of a partial character, would be self-contradictory and a denial of the moral values the existing systems instantiate for their members. Yet, it would likewise be a contradiction in terms - both morally and for self-interested reasons - for such popularly sovereign polities not to accept an obligation to respect and uphold the moral equality of other popularly sovereign states or the rights of those subjects and individuals denied citizenship of such bodies to enjoy that status. To do so would involve a failure to accept the moral status and obligations of sovereign authority as the means through which we can achieve justice in a manner consistent with non-domination.

The third proposal, therefore, takes as its starting point that a supranational political structure must uphold: 1) that individuals can live as free and equal citizens of popularly sovereign polities; 2) that these popularly sovereign polities can be free and equal with regard to each other; and 3) that to achieve 1) and 2) involves not just non-interference but also, given they interact and are interdependent in many ways, ensuring that the regulations governing their interactions and mutual dependency treat the polities involved with equal concern and respect (Pettit 2010). The three elements are linked. Only if 1) is met will polities be likely to make agreements of the kind specified under 3) and so secure 2). They suggest a double form of delegation, whereby citizens exercising popular sovereignty at the domestic level delegate their respective representatives to make agreements with each other at the inter-polity level, including delegating and devolving authority upwards to appropriate regulatory bodies, so long as these remain under their joint and equal control.

This double delegatory process means that such associations can be regarded as the product of a form of two-level game that can be termed 'republican' intergovernmentalism (Bellamy and Weale 2015; Bellamy 2013). In other words, politicians within in such an association must show each other equal concern and respect as the authorised and accountable representatives of their citizens, aware that any agreement among themselves must also be capable of being agreed to among their respective peoples. The net result of this double delegation is to preserve both popular and polity sovereignty of the contracting states to any international agreement, including one – like the EU – which involves the creation of supranational institutions. The upward delegation and devolution of power to the supranational level works in this respect in a parallel fashion to its downward counterparts at the

domestic level. In both cases, the sovereign authority of the people remains in the last analysis final, supreme and comprehensive with respective to themselves (Troper 2010). Yet they obtain the facility – albeit mediated through their representatives – to cooperate with other peoples so as to support their mutual capacity for non-dominated rule. In this way, polities and their peoples preserve their internal sovereignty by agreeing on mutually agreeable institutions and laws for the regulation of their external sovereignty - including the movement of citizens between their respective states (Cohen 2012: 317-18, 322).

The resulting arrangement can be termed a supranational association of popularly sovereign polities. To a degree, such arrangements can be likened to a form of federation of states that does not involve sovereignty at the supranational level while modifying the exercise of sovereignty at the member state level (Kant 1797; Cohen 2012: ch 2). However, from the perspective outlined here certain proponents of this view go too far in considering that state sovereignty itself has been undermined by this arrangement (Forsyth 1981: 7, 207). Its very purpose and legitimacy depends on that not being the case. By contrast to Habermas's two-level Federation, we need not regard the EU as an independent constituted order with a direct relation to citizens, in which EU institutions make laws that the Court of Justice of the EU then applies in a hierarchical, top down manner as the product of a self-standing, superior legal order. Habermas's attempt to constitutionalise the EU misunderstands its rationale (Weiler 2001: 66, 68-70). Rather, as post-sovereigntists note, it is an order that states and their peoples have given and implement themselves not to supplant their sovereignty but to regulate its exercise with regard to each other.

Such an association seeks to promote and be compatible with the possibility for all individuals to live in representative states that possess democratic systems where collective decisions are made in ways that show them equal respect and concern through being under their equal, public control. Four criteria guide this arrangement. First, it presupposes a commitment to the values of representative democracy, and their equal enjoyment by all the associated peoples. Second, if the legitimacy of popularly sovereign polities stems from them offering reasonably effective, public mechanisms for the identification and equal advancement of the interests of their citizens, then the legitimacy of supranational organisations stems from them doing likewise through being in their turn under the shared and equal control of the signatory polities acting as the representatives of their respective

peoples. Third, citizens of different peoples ought not to be discriminated against in their interactions. The mutual concern and respect that operates among sovereign polities ought to apply to the citizens of those polities in moving and trading between them. Finally, membership of such international systems should be voluntary. Not all polities will have an equal stake in collective arrangements on a given issue, and many will not have equal bargaining power. Voluntary arrangements allow sovereign polities to tailor their commitments to the interests of their populations and ideally to negotiate the terms of their adherence accordingly.

Analysts of the EU from a *demoi*-cratic perspective have noted how many of its current structures can be assimilated to such an association (Bellamy 2013, Chevenal and Schimmelfennig 2013), which better corresponds to the aims of the main state actors involved in their creation than the aspirations of the so-called founding fathers (Milward 1993). Indeed, Article 4.2 of the Treaty on European Union states:

The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security.

Intergovernmental arrangements remain crucial in deciding the scope of the EU, with Treaty changes requiring unanimity, while (again, contra Habermas 2102: 44) the European Council has become an increasingly key actor. Meanwhile, this intergovernmentalism has taken a republican turn through the increased powers accorded national parliaments that enable them to influence and control the negotiation positions of their Ministers and align them to domestic electoral preferences (Kröger and Bellamy 2016). True, the powers of the EP have grown. Yet, even it can be regarded as representing the EU demoi more than its demos. Constituencies are allocated on a national basis employing degressive proportionality, thereby allowing each member state to be represented by a range of parties, with European parties essentially parliamentary coalitions of national parties. Such a structure involves states delegating power upwards rather than downwards, but as with such delegations within a sovereign polity still keeping these competences under their joint and equal influence and control. The normative legitimacy of such a

supranational delegated authority involves its policies according equal concern and respect to each of the contracting states as popularly sovereign polities and so being capable of obtaining the long-term endorsement of their peoples.

Conclusion

The EU is currently subject to three apparently opposed political demands: calls for a return of sovereign powers to the member states; advocacy of the transfer of sovereign power upwards to the EU level; and support for a dispersal of sovereign power across multiple levels and different kinds of demoi, including minority national groups within member states desiring ever more devolved power. Each of these demands reflects a different evaluation of sovereignty that can be related in certain key respects to a republican argument for non-domination. I have suggested all are right in some respects and wrong in others, and proposed an alternative vision of the EU (and of the international order more generally) as an association of sovereign states that draws on all three. Such an association has as its constituent parts sovereign states that provide the context for popular internal sovereignty. Yet, they create external supranational institutions with certain federal seeming features with the capacity to enable their mutual regulation of their external sovereignty given global interconnectedness. However, this supranational order is in itself not sovereign over them. As a result, it is not itself a source of domination but rather a mechanism for the member states to avoid the possibility of any one of them dominating the others. In this way, it answers to the demand to provide a response to the pressures on external sovereignty in an interconnected world, on the one hand, and the potential injustice perpetrated by a sovereign authority on those who are excluded from membership, on the other, without giving up on internal state authority as the context for a popular sovereign regime capable of sustaining a non-dominating legal and political order for its citizens.[2]

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[1] Notoriously, the US system of government has failed to operate as Publius hoped, yet in most respects this results from an excess of checks and balances that weakens popular sovereignty. See Dahl 2001.

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