Chapter Four

BREXIT, SOVEREIGNTY AND THE END OF AN EVER CLOSER UNION

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‘Let’s not beat around the bush’, the German chancellor, Angela Merkel, said in response to the British decision to leave the European Union (EU), ‘today marks a watershed for Europe’ (Delecker 2016). For some six decades, and numerous setbacks notwithstanding, Europe’s path has been unidirectional: towards an ever closer and ever wider union. No longer. A series of crises that have seriously tested Europe’s unity – the eurozone crisis, the EU-Russia conflict over Ukraine, the refugee crisis – was followed in June 2016 by an event that will result in an EU that is smaller in its geographic scope and weaker both economically and politically.

Nevertheless, political earthquakes also create unique opportunities for conceptual clarity. Exceptional challenges show which structures and political constellations are viable and which are not. Will there be an EU in five, or ten years from now that resembles what we have now? Will there be a UK in five, or ten years from now that resembles what we have today? I am less confident about the former than the latter, but both political entities face key challenges in the years to come, and in both cases they are centred around the contestation of sovereignty. In fact, Brexit both illuminates, and has been shaped by, competing understandings of sovereignty.

How Did We Get Here?

The UK has been rightly described as a reluctant member of the Union, with its antiquated political institutions and a strong attachment to parliamentary sovereignty, which sit uneasily with the continental project of a European federation in the making. Both the Conservative and the Labour Party have had an ambivalent relationship with Europe. It was thus primarily a party political gamble that the then British prime minister, David Cameron, took when he promised a referendum on the UK’s EU membership.

Clearly, a referendum is a potent instrument of democratic control. It is also crude, because it can generate only simple results: ‘yes’, or ‘no’ are seldom satisfying answers in politics. What is more, resorting to the people as the highest arbiter of political conflicts is very much at odds with the distinctly British ideal of parliamentary sovereignty. And yet, it is hard to challenge its legitimacy in a constitutional monarchy that like all Western democracies conceives of the people as the ultimate source of power. The slogan of the
Brexiters, ‘taking back control’, was thus primarily about democratic sovereignty (however odious that slogan might have seemed to many of its critics).

The referendum was to be preceded by a reform deal, which should have made the EU more palatable to the British electorate by reducing its federalist impetus. While Cameron failed to achieve significant reforms, he secured an important symbolic victory. In February 2016, the EU Council accepted the British demand to be excluded from the EU’s founding ambition to forge ‘an ever closer union’. This was too little too late both for the UK and the EU. Less controversially, it was too little for the UK: the concessions failed to prevent the British from voting out. But it was also too little, too late for Europe as a whole. The limits of European integration should have been acknowledged by the EU’s leaders at the outbreak of Europe’s sovereign debt crisis in 2010 at the latest. As I argue in this chapter, its outbreak marked the collapse of the unique European experiment with postnational democracy. It exposed the fallacy of the theoretical construct underpinning this project: the idea that the age of sovereign nation states is over, and that sovereignty can and ought to be shared.

I contend that the celebration of the EU as marking ‘the emergence of the first truly postmodern international political form’ (Ruggie 1993: 140) proved premature. Europe’s attempt to ‘reinvent itself beyond territorality and outside of fixed frontiers’ (Maier, in Zielonka 2002: 13) has backfired, exacerbating political fragmentation, instability and economic malaise. The ‘unbundling of territorality’ (Ruggie 1993: 171) also reduced the EU’s ability to respond to external challenges – whether it was Russia’s imperialist ambitions towards its ‘near abroad’ (Auer 2015), or the influx of refugees from the Middle East. Europe’s ‘fuzzy borders’ (Zielonka 2006: 7; 2014: 81) appear attractive in good times. In times of crisis, the calls for (some) control over borders appear irresistible. Whether we like it or not, the fear of uncontrolled migration from within and outside the EU played an important role in the UK referendum and remains a potent source of euroscepticism in continental Europe.

**Sovereignty Obsolete?**

Sovereignty is an elusive concept. Like its sibling, the state, it is impossible to define. In fact, for many scholars of European integration (particularly in Germany), both national sovereignty and the nation state have become obsolete. In an increasingly interdependent world, so the argument goes, any talk about sovereign power located at the nation-state level is misplaced. In an age of globalization, Saskia Sassen argued, ‘sovereignty has been decentered and territory partly denationalized’ (Sassen 1996: 29–30). The doyen of EU constitutionalism, Joseph Weiler, spoke for many when he remarked that ‘to protect national sovereignty is passé’ (Weiler 2001: 63).

Defending his postnational vision of European unity, Jurgen Habermas, for example, remains defiant. An experiment that hardly started cannot be declared to have failed, Habermas argued shortly after the Brexit, advocating a more social Europe that would address concerns of EU citizens, rather than just serving the interests of its technocratic elites (2016). In a similar vein, Ulrike Guérot seeks to build on the federalist ideals of the EU’s founding fathers, such as the first European Commission president, Walter
Hallstein, who boldly stated that the ultimate aim of European integration was to overcome nation states. This, Guérot argues, cannot be achieved by nation states and their political representatives. What Europe needs instead is a new beginning, a European republic created by and for a truly European citizenry (Guérot 2016).

Drawing on the historical scholarship of Quentin Skinner, I challenge this view. The claim that sovereignty is outmoded is as fashionable as it is misguided. Ironically, the argument is not even all that novel. As Skinner (2010) convincingly demonstrated in his genealogy of the sovereign state, the prevalent conception of the state is seductively simple, but insufficient. A sovereign state is not to be equated simply with the government, or even the institutions of the state, neither can it be equated with the people. It is somehow related to both, but it is more than that too.

Consider Max Weber’s classic definition, which postulates that ‘a state is a human community that (successfully) claims the monopoly of the legitimate use of physical force within a given territory’ (1946: 78). In common understanding, this reduces the state all too often to the coercive apparatus of the government. In fact, as Skinner noted, the ‘terms state and government are in common parlance synonyms’. With such a minimalist, empirical description of the state it is plausible to argue that EU member states have not lost their sovereignty, for no supranational agency in Brussels challenges their monopoly on the legitimate use of violence. In fact, such a conception of the state does not prevent us from conceptualizing the ideal of sovereignty shared, which underpins much of the legal, political and sociological theorizing about Europe.

From the perspective of international law, when a state volunteers to share sovereignty it does not abandon its independence, but proves its ability to act independently. As stated in the notable Wimbledon decision of 1923, ‘the right of entering into international engagements is an attribute of State sovereignty’ (cited in Koskenniemi 2010: 226). This reasoning reflects one of the foundational doctrines of the liberal international system, the idea of ‘autolimitation’ (Jellinek 1880).

Brexit can be seen as a paradigmatic example of the idea of autolimitation applied to the EU. When a state agrees to subordinate its sovereign powers to a higher authority through an international treaty, it retains the final say – it can always withdraw that assent. In this way, British parliamentary sovereignty was never compromised because the act of parliament that enabled the UK to enter the European Community (EC) could have been revoked. Yet, the idea that the EU represents more than just an international organization – that it is a new and unique political entity largely created by the bold decisions of the European Court of Justice – was based on a widely shared assumption that the integration process would be unidirectional. Like the one who-must-not-be-named ‘for fear that it would actually emerge from the dark’ (Koskenniemi 2010: 228), the possibility of a member state leaving was never seriously contemplated by EU scholars. It was only recently, in the Treaty of Lisbon of 2009, that the right to withdraw from the Union was given legal form, and even then it was something of an afterthought. The EU has only ever expanded; that it would shrink seemed inconceivable. It is telling that more than six years after the outbreak of the eurozone crisis, there are still no legal provisions for leaving the single European currency, numerous speculations about Grexit notwithstanding.
Borderless Europe and Its Discontents

Whatever else it signifies, Brexit marks a serious setback to the ideal of borderless Europe, praised by EU enthusiasts as ‘a conscious and successful attempt to go beyond the nation state’ (Cooper 1996: 20). According to Robert Cooper, for example, European integration was meant to have given rise to ‘a new form of statehood’, heralding the emergence of a better, postmodern state system in which states ‘are less absolute in their sovereignty and independence than before’ (Cooper 1996: 7). In such a world, borders turn from nouns to verbs; they are seen as social constructs that are fluid, ever changing and contested. Thus, scholars working in critical border studies have advocated ‘a move towards a more sociological treatment of borders as a set of contingent practices throughout societies’ (Vaughan-Williams 2015: 6) and prefer talking about ‘bordering practices’ rather than borders. The very existence of the EU, on this account, has challenged old certainties about ‘fixed and unquestioned political boundaries between states’ (Agnew 2003: 2).

Indeed, from its early beginnings the project of European unity was about challenging borders. That is surely the practical meaning of the ideal of an ‘ever closer union’ spelled out in the Treaty of Rome of 1957. More recently, from the Schengen Treaty (signed in 1985, implemented in 1995) that sought to cement the ideal of freedom of movement for European citizens by abolishing internal borders between EC/EU member states, to the Maastricht Treaty of 1992 that further enhanced this project by creating conditions for a monetary union, Europe appeared to be moving towards this ideal. Up to mid-2015, the EU’s internal borders continued to lose importance, yet all the while its external boundaries remained largely impenetrable. Its liberal, universalist ambitions notwithstanding, the European project remained (mostly) exclusive to Europeans. To be sure, Europe’s borders continued to expand as the neighbours of yesteryear became fully fledged members, the collapse of communism in 1989 enabling the nations of Central and Eastern Europe to join in 2004, 2007 and 2013. And while the UK abstained from participation in the most ambitious aspect of a Europe without boundaries by opting out from the single European currency, it opened its borders to EU citizens from the new member states immediately after their accession in 2004 (with Sweden and Ireland as the only two other countries not seeking to impose temporary restrictions).

At any rate, freedom of movement for EU citizens is by now considered not just a major practical achievement of European integration but also as being indispensible for its self-understanding. Yet, whether and how it can be sustained is an open question. Brexit ought to serve as a catalyst for a debate that European elites need to have in order to maintain public support. Just as not all criticisms of Europe’s federalist project are driven by a nativist backlash, not all political initiatives directed against an ‘ever closer union’ deserve to be labelled as populist. In fact, the idea that a political community needs to be bounded to sustain its democratic practices is not all that controversial, and it has a decent, liberal pedigree. No lesser figure than Immanuel Kant argued that a world federation would sooner or later resort to tyranny, making the ideal of a world government undesirable. Europe is not the world, but in September 2015, its largest member, Germany, came arguably closer to living up to the ideal of a world without borders than any other Western country in recent history.
Germany and Its Refugee Policies: Exceptional or Exceptionally Universal?

‘If a just world had states, they would be states with open borders’ (Carens 2015: 287). According to Joseph Carens, the EU has created such a world, if only internally so far. In fact, Carens believes that the EU practice of free movement for its citizens exposes the fallacy of the ‘assumption that controlling borders is essential to sovereignty’ (2015: 271):

The fact that citizens of European Union states are largely free to move from one member state to another reveals starkly the ideological character of the claim that discretionary control over migration is necessary for sovereignty. No one can seriously doubt that the European states are still real states today with most of the components of state sovereignty. Indeed, every European state has a more effective actual sovereignty than most states elsewhere in the world. (Carens 2015: 272)

Though many aspects of Carens’s reasoning appear morally compelling, such as his demands on all major Western states to be more welcoming towards refugees, his vision has serious practical limitations. In particular, Carens appears to discount the importance of community, which is necessary to produce the civic virtues that make democracy work. There is a large body of political philosophy making this argument, spanning the likes of Jean-Jacques Rousseau, John Stuart Mill and Hannah Arendt. Specifically, Carens takes issue with the more recent restatements by Michael Walzer (1983) and David Miller (2016). ‘Bounded political communities that are able to sustain democracy and achieve a modicum of social justice’, Miller argues, ‘need closure to do this’ (Miller 2016: 93). Intriguingly, though, even Carens acknowledges that sovereignty ‘requires that states themselves be the ones to decide what their migration policies will be’ (2015: 273), something that no EU member state can effectively do, as Cameron was to find out in 2015–2016 to his own peril.

In fact, just as Carens’s long-awaited monograph on _The Ethics of Migration_ appeared, a Europe without borders began to crumble. This was partly caused by a dramatic turn in German policy towards refugees, predominantly from the civil war in Syria, a turn that deserves to be discussed in more detail.

By her pragmatic temperament, Merkel is an unlikely advocate of Carens’s radical prescriptions for a world without borders. She is an accidental cosmopolitan. In 2010, the German chancellor declared that the policies of multiculturalism ‘had failed and had failed absolutely’ (_Die Welt_, 17 October 2010). And as recently as in July 2015, Merkel argued in a television discussion with a group of high school students that Germany was in no position to accept all the refugees of this world. As Merkel sought to explain to a young refugee from Lebanon, who feared imminent repatriation,

It can be really hard in politics. And when I see you here in front of me, you are incredibly sympathetic. But you also know that there are Palestinian refugee camps in Lebanon with many thousands of refugees, and if we were to tell them all: ‘you can all come, and you can all come also from Africa, and you can all come.’ This, we cannot manage. [Das, das können wir auch nicht schaffen.] So we face a real dilemma.\(^5\)
This dilemma became more acute in September 2015 owing to a refugee crisis that unfolded in the Middle East and focused on Hungary. Tens of thousands of refugees found themselves stranded in Hungary, on their way to Germany (and other countries of Western Europe, such as Austria and Sweden). The Hungarian authorities appeared to be losing control – a situation exacerbated by the mixed signals that both the Hungarian government of Viktor Orbán and the refugees themselves were receiving from Germany. The official position of the German government was that all EU countries had to follow the provisions of the Dublin agreement, according to which refugees needed to be registered in their first country of arrival and were to be returned to that country. Yet, the director of Germany’s Federal Agency for Migration and Refugees (BAMF) issued a tweet on August 25 confirming the suspension of the Dublin rules with respect to Syrian refugees in Germany. As a result, no refugees were willing to register in Hungary. A few days later, many of them took the initiative in organizing a march to Germany that forced the hand of the Hungarian, Austrian and German governments. Having criticized the Hungarian government for inhumane treatment and for its attempt to resurrect borders, both the Austrian and German governments appeared to have no other option but to welcome the refugees. It was meant to be an exceptional measure in response to an exceptional humanitarian crisis, but it resulted in a radical turn in German migration policy that still divides both Germany and Europe. At the height of the crisis, thousands of refugees were arriving in Germany every day, totalling more than a million in less than a year. An investigative report about the events on 4 September 2015 published a year later in Die Zeit, a newspaper not known for sensationalism, was headed ‘The Night in Which Germany Lost Control’ (18 August 2016).

Merkel assumed a strong leadership position, mobilizing public support by a confident statement that attracted praise and scorn in equal measure: ‘Wir schaffen es!’ (negating her earlier, more cautious assertion to the young Palestinian refugee cited above). A swell of public support for the new policy earned Germans a great deal of admiration, but far less practical support, particularly when it came to sharing the burden across Europe. In fact, political leaders in Central Europe openly criticized what they perceived as Germany’s ‘moral imperialism’. By contrast, German media was overwhelmingly positive towards the new bold policy. However noble and generous the German response has been, it raises difficult questions about fairness identified by Walzer some time ago:

‘Once again’, Walzer acknowledges, ‘I don’t have an adequate answer to these questions’ (ibid.), only to make an observation that is directly relevant to the ethical dilemmas the German government found itself facing:

We seem bound to grant asylum for two reasons: because its denial would require us to use force against helpless and desperate people, and because the numbers likely to be involved, except in unusual cases, are small and the people easily absorbed. (Walzer 1983: 51)
How small is small will always be a point of political contestation. A rich nation of 80 million may well have the capacity to absorb a million every year. But what if there are more people than that in urgent need of protection? Who and how is to determine a fair number? The German government, at any rate, refused to stipulate the upper limit all the while it worked intensively on a European solution to the crisis that consisted of two aspects: redistribution of refugees across the Schengen zone and better protection of the EU’s outer borders. The former required EU-wide solidarity that was not present and the latter a determination to use force that no European and/or national authorities were willing to endorse. Out of this conundrum arose an uneasy alliance with Turkey, which, in exchange for significant financial assistance and a promise of expedited negotiations for EU entry, promised to better control its borders. In other words, the German-led EU subcontracted Turkey to do the unpleasant job of protecting its external frontiers. The policy significantly reduced the intake of refugees, but also complicated EU relations with Turkey.

These developments had a significant impact on the Brexit referendum. First, however insincere the EU promise to Turkey might have been regarding its prospects for full EU membership, it was difficult to disown by the UK government, which sought to reassure the British electorate. Cameron’s statement that Turkey would not become an EU member ‘in a hundred years’ lacked credibility. Second, the perception that the UK had ‘lost control’ over its borders was exacerbated by the images of massive refugee movements in Hungary, Austria and Germany. To be sure, the UK was not directly impacted by this as it never signed up to the Schengen Treaty provisions, but this fact was easily lost on British citizens who felt betrayed by the earlier promise of their government to greatly reduce EU migration. This was easy to exploit by the leaders of the Brexit campaign, who (apart from Nigel Farage) argued not so much against migration as such, but rather in favour of the British state regaining its ability to control it. Contra Carens, by 2015–2016 at the latest, control of borders became very much associated with the question of state sovereignty in the UK and beyond.

In this respect Germany remained exceptional, following its Sonderweg [special path] based on the conviction that it was indeed impossible (and undesirable) to protect national borders in the twenty-first century. Wolfgang Streeck might have gone too far arguing that German open-border policies exemplify what he termed the ‘Merkel system’ (2016), but they undoubtedly reflect some peculiar features of German political culture. Particularly problematic is the elite consensus that denies the very existence of German national interest, and through so doing simply conflates German with European interests. Streeck was adamant that the ‘ever changing positions generated by the system Merkel’, were not just baffling to many Germans but also had a negative impact on Germany’s relations with its European partners, amounting as they were to a ‘de-facto takeover of European and member state politics for the sake of German interests’ (ibid.).

To be sure, the political challenges brought about by large-scale migration movements, particularly when it comes to finding adequate responses to refugees, are ‘morally excruciating’ (Miller 2016: 163); there are no simple solutions to the problem. And the German government is to be commended for having mobilized public support for a
humanitarian gesture that appears unprecedented in Europe’s post–World War II history. Yet the costs are considerable too: as mentioned above, the policy proved divisive in Germany and even more so across Europe. The key challenge for European societies will be to maintain public support towards newcomers for decades to come. The experience from countries of migration, such as Australia, show that there is a troubling relationship between public acceptance of migration and the (perceived) porousness of the borders (Hirst 2016). Electorates are more likely to support migration when they feel that their government remains in control of the process. As Miller convincingly argued,

what is needed is a clear policy on immigration that can be set out and defended publicly, with all the relevant data about how the policy is working also in the public domain. It should cover the overall numbers being accepted, how different categories of immigrants are treated, the criteria of selection being used, and what is expected of migrants by way of integration. This needs to be accompanied by strong border controls, and rapid assessment of the status of those who are admitted provisionally, as asylum seekers or as temporary protection measure. (Miller 2016: 160)

Its self-understanding as a post-sovereign, deterriorialized state par excellence notwithstanding, less than a year after opening its national borders, the German government sought to implement policies that would very much follow from Miller’s prescription. As a ‘good European’, Germany found itself in an unenviable position: for any solutions to work, it would have had to be European, yet a common position amongst 28 member states was impossible to find. For example, Germany could only keep its borders open while making the external EU borders less penetrable: a challenging task left to a motley group of countries, such as Greece (in the Schengen area, but struggling owing to the eurozone crisis), Bulgaria (the poorest EU member state and outside of the Schengen area) and Turkey (which witnessed a turn towards authoritarian rule, after a failed coup d’état against President Recep Erdogan in July 2016). While Germany was no longer sovereign enough to control its borders, the EU as a political project in the making was not yet sufficiently sovereign to rule over its territory. Another point of contention was the idea of ‘burden sharing’. An agreement to redistribute refugees across all EU Schengen states was reached on paper against the vocal resistance of a handful of countries in Central and Eastern Europe (the so-called Visegrad Four: The Czech Republic, Slovakia, Poland and Hungary), but was never implemented. When faced with a crisis, the EU member states simply failed to live up to the EU’s normative ideal of supranational governance, underpinning the EU’s demoicracy (Nicolaidis 2013), that is, a democracy of democracies held together by a shared self-understanding as a community of fate.

Sovereignty Shared, Sovereignty Divisive: Whose Debt Is Sovereign?

At any rate, far from these exceptional challenges bringing Europeans closer together, they are pulling them apart, exacerbating the EU’s crisis of legitimacy. This would not come as a surprise to observers suspicious of quasi-utopian projects driven by lofty normative ideals. As Hans Sluga reminds us, ‘the precondition for the appeal to any norm is
a state of normality, but political conditions are only exceptionally normal’ (2014: 22). In fact, dealing with numerous crises concurrently is Europe’s new normal.

Which brings us back to the vexed issue of sovereignty. Following Carl Schmitt, to ask, ‘Who is in charge of Europe?’ is like asking, ‘Who decides on the exception?’, which is simply another way of asking, ‘Who is sovereign?’.

If we are to accept Neil MacCormick’s influential analysis of Europe’s ‘post-sovereignty’, our inability to address such basic questions is a mark of progress as it speaks to the possibility of complex political entities, such as the EU, being governed in a way that is ‘genuinely polycentric, without a single power centre that has ultimate authority for all purposes’ (MacCormick 2010: 151). In a memorable image, MacCormick compared the pooling of sovereignty with virginity: ‘something is lost without anyone else gaining it’ (cited in Kalmo and Skinner 2010: 21). Yet, it might be wise not to rush with abandoning sovereignty. As long as we do not have a better system of democratic governance than the one that arose over the last few centuries alongside the rise of the democratic nation state, sovereignty as a concept and a living political project has a lot going for it. Burying it may well hasten the demise not just of the nation state but of democracy itself. That is the reason why Brexit can and should be seen as the possibility for a new beginning in the UK and in Europe.

No less controversial has been the German and the EU handling of the eurozone crisis, particularly in relation to its peripheries in the South. Though the eurozone did not play such a prominent role in the Brexit campaign, the EU’s economic malaise certainly did, firstly, by increasing the push factor for intra-European migration, and secondly, and more importantly, by reminding the British electorate of the limitations of a post-sovereign and post-national Europe. Here too the key challenges are not just economic but also political: Who is in charge? Who decides what and in whose interest? These questions are particularly pertinent to the nations that found themselves at the receiving end of austerity policies. What is left of Greek sovereignty, for example?

Intriguingly, little has been written about the meaning of the ‘sovereign’ in the ongoing debates about the EU’s sovereign debt crisis and its management. For Skinner, by contrast, the very possibility of a sovereign debt serves as a perfect illustration of the complex meaning of the term and its enduring importance. The idea of sovereign state remains indispensible, Skinner argues, so that we can ‘make sense of the claim that some government actions have the effect of binding not merely the body of the people but their remote posterity’ (Skinner 2010: 46). When a government decides to incur a public debt, Skinner asks, ‘Who becomes the debtor?’ (ibid.).

We can hardly answer [...] that the debt must be owed by the sovereign body of the people. If the debt is sufficiently large, the people will lack the means to pay it. But nor does it make any better sense to suggest in commonsensical terms that the debt must be owed by the government that incurred it. If the government changes or falls, this will have no effect in cancelling the debt. (Skinner 2010: 46).

The only coherent solution to this puzzle, Skinner suggests, is to posit the idea of the state as a persona ficta, that is, the artificial and eternal ‘person of the state’, which is able to incur obligations that no government and no single generation of citizens could ever
hope to discharge’ (ibid.). In his reasoning, Skinner is following that very English early modern theorist of sovereignty, Thomas Hobbes, whose insights the EU was meant to have defied. Then for Hobbes, of course, sovereignty was meant to be indivisible. There is some sad irony to be found in the fact that the only aspect of Greek sovereignty that remains obdurately indivisible is its public debt.

Concluding Remarks: EU’s Sovereignty Paradox

Which brings me to the ‘EU’s sovereignty paradox’ (Scicluna and Auer 2016) that the UK may just manage to escape through Brexit. Both the refugee crisis and the eurozone crisis, which were the backdrop to the British referendum, highlighted the paradox that no amount of rhetorical flourish about multilevel governance, democracy or Europe’s experimental union can wish away: member states have ceded too much control to the supranational level to be able to set effective policies in important areas independently of each other and of the Union institutions. Yet, they retain enough initiative to resist compromise and thwart common solutions. As we have seen, the efforts of national and European leaders to deal with economic challenges and the unprecedented influx of migrants share certain features. These include the inability to agree on binding common policies, the unintended and unwanted elevation of Germany to the pre- eminent leadership position and a widespread populist backlash – particularly in those states in which a loss of sovereign control is most acutely perceived.

To be sure, sovereignty could move to a different level: from Greece and Germany to an EU that would be truly supranational. Consider the story of the United States of America.9 There, the debt crisis in the late eighteenth century turned a confederation into a federation, moving sovereignty away from the states to the centre. The debt was mutualized, making the United States truly united. The hopes for a similar process occurring in Europe have not been fulfilled. For there, unlike in the New World, the sentiments of nationality have remained strong. If you destroy them, you destroy the very fundament on which democratic governance has been based for some time now. In order to endure, democracy requires a demos.

In the words of a former judge of the German constitutional court, ‘Sovereignty’s most important function today lies in protecting the democratic self-determination of a politically united society with regard to the order that best suits it’ (Grimm 2015: 128). Brexit points to EU’s limits in its relentless striving to reach ‘a politically united society’. This simple insight had better be accepted not just in the UK but also in Europe at large. If the EU is ‘far more than merely a case study’, perceived as it is by its many proponents ‘as the future in the present, a laboratory for trying out new forms of government’ (Kalmo and Skinner 2010: 19), then its experiment with sovereignty shared should be seen as having failed. It has steadily eroded democracy in Europe and has not delivered the goods for its people. In response to Brexit, Europe’s political elites should stop chasing Arcadia – the promised land of postnational ‘democracy of democracies’ – if they wish to regain popular support.

The vision of the United States of Europe resulted in political fragmentation at both the national and the European level, within and between member states. From France
and Spain in the West to Slovakia and Hungary in the East, populist leaders benefited from Europe’s disarray whether they positioned themselves on the right (Marine Le Pen, Viktor Orbán), or on the left (Pablo Iglesias, Robert Fico). The European federalist project has been losing legitimacy, giving rise to euroscepticism that has steadily made inroads into the mainstream of national and European politics. Shortly before Brexit, some realism appeared to be reaching even Brussels: ‘I think that in the end too much Europe will kill Europe’, opined the Commission president Jean-Claude Juncker in an interview with the German Spiegel magazine. The judgement of the former Polish dissident, prime minister and the current president of the EU Council, Donald Tusk, was more damning still: ‘Europeans must depart from utopian dreams and move on to practical activities, such as for instance reinforcing the EU’s external borders’.

Reclaiming strong external and (some) internal borders may well be necessary to revive the fabric of democratic societies in Europe. Accepting the EU’s partial fragmentation would be preferable to the demise of the political communities that make democracy work. This is a challenge for the Western world as such. As Sluga reminds us, what we face today is ‘the possibility of a world with no political community and with only weak individuals, committed to no common vision of the good and no shared search for such a good’ (Sluga 2014: 4). It is the argument of this chapter, and the dictum of the British electorate resulting from the referendum, that national sovereignty will better serve the task of alleviating this danger than sovereignty fragmented.

Notes

1 As Carl Schmitt argued, normality (in politics and in life) is boring: ‘Precisely a philosophy of concrete life must not withdraw from the exception and the extreme case, but must be interested in it to the highest degree. The exception can be more important to it than the rule, not because of a romantic irony for the paradox, but because the seriousness of an insight goes deeper that the clear generalizations inferred from what ordinarily repeats itself. The exception is more interesting than the rule. The rule proves nothing; the exception proves everything’ (1985, p. 15).

2 When Lord Astor argued that ‘the EU referendum is merely advisory; it has no legal standing to force an exit’ (Financial Times, 6 June 2016), he was simply stating the obvious, but being Cameron’s father-in-law, he caused something of a stir. For a scholarly account of ‘the defence of Parliamentary sovereignty through the invocation of popular sovereignty’ as laying foundation for contemporary English nationalism, see Wellings 2012. The arguments that Wellings advanced in relation to the 1975 referendum gained more relevance in 2016.

3 ‘Hobbes and the Person of the State’, a lecture by Professor Quentin Skinner at UCD Dublin (University College Dublin), 18 November 2015, available: https://www.youtube.com/watch?v= bankrupting. See also Skinner, 2010, p. 27.

4 Lord Voldemort from Harry Potter springs to mind, but other images from high culture would be applicable too. Koskenniemi refers to the medieval concept of absolute power that required no further justification: potestas absoluta.

5 See the transcript in Die Welt, 16 July 2015. A short segment from the interview had a disproportionate impact on public debate in Germany and beyond. Under the hashtags #merkelstreichtelt and #primagemacht Merkel was ridiculed for being insensitive (see Spiegel Online, 16 July 2015), unfairly, I believe, as is evident from the entirety of the broadcast, rather than the unflattering segment that caused the twitter storm. In fact, we can cite Michael Walzer in Merkel’s defence: ‘if we offered a refuge to everyone in the world who could plausibly say that he needed
it, we might be overwhelmed. The call “Give me […] your huddled masses yearning to breathe free” is generous and noble; actually to take in large numbers of refugees is often morally necessary; but the right to restrain the flow remains a feature of communal self-determination’ (1983, p. 51).

6 ‘Until mid-August 2015’, The Guardian reported on 25 August 2016, ‘150,000 refugees had been registered in Hungary. After BAMF’s tweet, many refused to do so, reportedly holding up their smartphones displaying the message to police and border officers’. See also Die Zeit, 18 August 2016 and Der Spiegel, 24 August 2016, which writes about ‘14 days that changed German history’.

7 As Streeck put it, ‘This position is linked with a moral claim for acceptance by all other Europeans, which can only provoke resistance that is further enhanced by the erratic nature of a “one-woman-show” that passes for German government policies, which are indebted to the internal and party-political struggle at least as exceptional as that of any other country’ (2016).

8 Carl Schmitt’s richly deserved bad reputation for appalling political judgments should not prevent us from accepting his key insight on sovereignty (which is as pithy as it is wise): ‘Sovereign is he who decides on the exception’ (1985, p. 5).

9 For Skinner, a paradigmatic example of the meaning of the state as democratic republic as opposed to a monarchy, it marks the emergence of popular sovereignty.

Bibliography


