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The European Union and Sovereignty

What happens to sovereignty?

Section I – Introduction

Sovereignty concerns

It is no secret that the Dutch leading figures of populist parties have been very skeptical towards the European Union. Emile Roemer, current leader of the Socialist Party (SP) for example stresses that they are not against European economic cooperation but against the spillover of European integration to other domains such as politics and security.[1] They fear that the European Union is expanding its authority which will lead to a European super state in which national states like the Netherlands would lose their sovereignty. This sentiment seems to be spreading among citizens and as a result, Dutch politicians seem more prone to take on a more skeptic position towards the European Union. Including Prime Minister Mark Rutte of the liberal People's Party of Freedom and Democracy (VVD) who recently stated that he does not want a European Union in which national sovereignty is transferred. Like the Socialist Party, he supports an economic union but clearly says he does not want a political union.[2]

The current concerns citizens and politicians have with the transfer of sovereignty from their national state to the European Union is what makes this an interesting and relevant topic for scholars. This research will focus entirely on this aspect of the European Union; the transfer of sovereignty. One of the goals of this research is to uncover how legitimate these concerns of citizens and politicians are. In addition, this research will provide us with more insights regarding the European Union, the concept of sovereignty and most importantly the dynamic between these two. The main question of this research to accomplish these goals is: **Is sovereignty being transferred from national member states to the European Union?**

In order to answer this question we must first define sovereignty. Like citizens and politicians, scholars also have different concepts and ideas about sovereignty. So it is imperative to first analyze the concept of sovereignty. Where sovereignty came from, different concepts of sovereignty and current debates are all of importance and relevance when forming a tangible

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[1] http://www.sp.nl/columns/673/europa_in_15_minuten.html

[2] http://www.nrc.nl/nieuws/2012/06/08/rutte-geen-europa-waarbij-soevereiniteit-wordt-overgedragen-vraag-is-hoe-je-de-brand-blust/

definition of sovereignty. Therefore the second section of this research will attempt to answer the question: What is sovereignty? This sub question is required in order to properly analyze the European Union and give an answer to the main inquiry.

The third section will analyze the European Union with the help of a definition of sovereignty. Since the European Union is a large entity which can be approached and analyzed from numerous dimensions, this research will focus on several key domains. This is required because each domain, like economy or security, have progressed and developed differently. Sovereignty within each domain shall be discussed in order to formulate an accurate answer to the main question.

The fourth and final section will contain my conclusions and an answer to the main question. It will also show that there still are many questions concerning the European Union and its sovereignty, demonstrating that there still is plenty of ground to cover in this field.

Section II – The Concept of Sovereignty

Stateless society and the primitive state

Sovereignty is a complex and very dynamic concept which to this day still has no universally agreed definition. Like the concept of state, it is a theoretical construction of man, or as Hinsley accurately describes it: "a fiction of philosophers, a myth".[3] Nonetheless sovereignty plays an important role in the rhetoric of politicians as illustrated by Roemer and Rutte but is also frequently used in the works of scholars. In order to gain some grip on the notion of sovereignty and to attempt to define it, we must first trace it back to its origin and context. According to many political scientists, its origin is closely tied with that of the state, simply because the concept of sovereignty cannot be found in stateless society. The state is thus a necessary condition for sovereignty to be present. For this reason we must first briefly look at the origin of the state.

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[3] Hinsley, *Sovereignty* (1986), page 2

All societies simply exist due to the mere fact that men live together. Each society has their own political institutions and structures. This means that societies develop differently and that not every society will eventually develop into a state, or ever will develop into a state. In this world, there still are stateless societies alongside the overwhelming amounts of nation states. One can think of certain tribes in Africa and South America. But how do these stateless societies look like and how do they differ from states?

Hinsley takes a look at Africa and there he observed and distinguishes two kinds of societies: stateless and primitive societies. Stateless societies are based on tribal and lineage relations. These relations keep society together but also keep it segmented. Authority is very diffuse and some scholars would consider calling this anarchy. This kind of structure has a direct influence on the behavior of people in these stateless societies. Hinsley observed that due to lineage relations, conflict is not as destructive and intense as we see between states. There also is an absent notion of defeat; like in the animal world, if a weaker segment is defeated or knows it is weaker, it will simply retreat and the stronger segment will not attempt to establish political dominance.[4]

The primitive state displays signs of a single central symbol or instrument of rule. This single headship is thus a key indicator of a presence of a state. Another indicator is the emergence of a hierarchical administrative organization which regulates the relationship between subjects and segments within a territory. Authority here is based on moral of psychological coercion. This changes the behavior of society and Hinsley observed that primitive states are likely to establish dominance over conquered territory and its authority is based on force.[5]

It is the transition from stateless society or anarchy into a form of state that reveals to us key elements of what defines a state but also sovereignty. In this way Hinsley defines sovereignty as an idea that there is "a final and absolute political authority in the political community".[6] This concept is a tool to aid us in answering the question: What is sovereignty? However key parts of this definition such as "final and absolute", "political authority" and "political community" have acquired different meanings and significance throughout time. This

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[4] Hinsley, *Sovereignty* (1986), chapter 1
[5] Hinsley, *Sovereignty* (1986), chapter 1
[6] Hinsley, *Sovereignty* (1986), page 26

dynamic, as we shall see, currently results in a complex and ever changing concept of sovereignty.

The Classical concept of Sovereignty

Now that it is clear why sovereignty is closely tied to the state, I move onward to see when and in what context the concept of sovereignty was first created. It is important to note this because the classical concept of sovereignty is a frequently used one in the field of political science.

Regardless of the early signs of sovereignty during Roman and Christian times, early philosophers had trouble creating and formulating a construct such as sovereignty. Not until the work of Bodin in 1576, came a first tangible conceptualization of sovereignty. As a response to the defiant Machiavelli and in the midst of civil and religious wars in France, Bodin set out to find a basis of ideas to restore harmony in the conflict torn French society. In his view, a certain power is essential to escape the situation of disharmony and enter into a secure situation. He argued that the existence of such a power in the interest of the community should be legally recognized as *souveraineté*. This sovereign could not perform the tasks the community requires unless it had the power to declare peace and war, stood above the law and be politically indivisible. The thought that sovereignty was limited or shared in these times was absurd even in the case of tyranny. For anarchy was considered even worse than tyranny by philosophers like Bodin, Hobbes and Locke.[7]

There were still problems with Bodin's concept of sovereignty due to the complicated relationship between the ruler and the people. There was popular sovereignty in which sovereignty was left with the people; double sovereignty in which the ruler and people are both sovereign and limited sovereignty in which the rights of the people limited the rulers' sovereignty. Hobbes successfully penetrated through these different concepts and invoked the idea of a contract in which all individuals agree to submit to the state; a covenant of every man with every man. Because the sovereign takes no part in this agreement, no contract can bind him. Thus the holder of sovereign power absorbs all public right. Thus the classical concept of sovereignty was born, also known as absolute or personified sovereignty. Even though this

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[7] Hinsley, *Sovereignty* (1986), chapter 4

concept of sovereignty was not entirely rejected, it did drive writers to find ways to retain sovereignty for the people, which in this Hobbesian concept have entirely been transferred to the sovereign. Consequently, philosophers came forth with ideas and concepts that political authority must be divided among different spheres. That legislature and executive power should both be given supremacy as long as it operated within the legislature's law. These concepts however, are in conflict with the Hobbesian concept of sovereignty due to the unitary, supreme and absolute nature of sovereignty.[8]

The first concept of sovereignty formed by Bodin was a reaction to the situation both Europe and France were in. They were in conflict and in a state of war. The predecessor of the European Union however, was also a reaction to this same problem. After the Second World War many politicians from different countries thought of ways to bring peace and stability to Europe. This wish was materialized with the creation of the European Coal and Steel Community (ECSC) in 1951. As Robert Schuman notes: "By pooling basic production and by instituting a new higher authority, whose decisions will bind France, Germany, and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace."[9] This process seems similar to the one sketched by Hobbes in which citizens pool their sovereignty into a sovereign and agree to a contract in which they submit to the sovereign state. One could argue that European nations now agree to the same thing but on a different level; a covenant of every European member with every European member. In which the ECSC is the sovereign, not participating in this contract.

The classical concept of sovereignty seems to have a few relevant points and insights when discussing the European Union and its sovereignty. However, some elements of this concept seem to not fit the European Union we see today and these elements are pointed out by opponents of this concept of sovereignty.

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[8] Hinsley, *Sovereignty* (1986), chapter 4
[9] Lelieveldt and Princen, *The Politics of the European Union* (2011), Page 6

Criticism on Classical Sovereignty

Since the writings of Hobbes and Bodin, relations between and within states have changed and with it our understanding of sovereignty. Many modern philosophers have expressed criticism on the classical concept of sovereignty given by Hobbes. Especially the indivisible, unalienable and unconstrained elements have received rigorous attention. Some even conclude that the concept of sovereignty is nothing more but an outdated concept and no longer of use. Morris perhaps represents this sentiment most accurately: "the history and nature of the concept of sovereignty and the claims that have been made about the state's sovereignty are essential to abandoning the notion".[10] It is important to review these criticisms in order to have a complete picture of sovereignty when discussing it in the context of the European Union.

According to Morgan (2007), sovereignty never was unlimited or unrestrained even during the days when it was personified; when a monarch wielded absolute power. In the time of monarchs, the king was responsible for maintaining the hierarchical ladder. He had to ensure that the rights of every segment or grouping in this hierarchy were respected so he could maintain social order. It was his duty to maintain these norms and this meant that kings could not change norms, rights, traditions and laws whenever he pleases. Additionally, kings were limited by elites on whom they depended for financial and military resources. Especially in medieval times it was common to loan troops and resources from other nobility, thus making nobility dependant on each other.[11]

This argument is valid if one would take the unlimited and unconstrained part of sovereignty literally and out of context, which I believe is not the lesson the classical concept of sovereignty teaches us. The classical concept attempts to characterize the relationship between subjects and ruler(s) in order to escape conflict and anarchy. The concept is not created with the aim to justify or grant a sovereign the power to do whatever it wants and when it wants; this is to confuse the concept of sovereignty with the freedom to act.[12] In order for a sovereign to be effective, it must have some form of superior power or authority that cannot be challenged or

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[10] Morris, *An Essay on the Modern State* (1998) Page 227

[11] Morgan, *"Sovereignty's New Story"* (2007).

[12] Hinsley, *Sovereignty* (1986), chapter 6

undermined by another institution from within a territory. The unlimited and unconstrained part is thus relative to other institutions within a territory.

Morgan also argues that all kinds of treaties, like minority and human rights treaties, are proof that sovereign power never was unrestrained. One example is the Treaty of Osnabruck, part of the Peace of Westphalia in 1648. This treaty secured religious tolerance for minorities and by the seventeenth century it became custom for new sovereigns to pledge respect for religious rights. Though it is important to note that there were strong states that violated these rights, it was nonetheless common practice to honor these treaties. Also, a few hundred years later these treaties were given a more imposed character forcing states to honor them. For example, when slavery was prohibited and outlawed in 1807, states that failed to live up to their treaty obligations suffered dearly. As was the case with Brazil, in which ships suspected in being involved with slave trade were being decimated in their ports by British and American naval forces. Since 1945 there was an explosion of these international human right treaties which resulted in an increasing number of legal restraints on state sovereignty. According to Morgan, over time these treaties have become largely voluntary; coercion has now become a matter of choice.[13]

There are several problems with this argument expressed by Morgan. First, treaties have been violated and sovereign states have withdrawn from treaties if a sovereign state feels that the treaty is in conflict with its interests. This completely undermines the idea that sovereignty is being limited. The second issue with this argument is that these treaties can only be signed by a sovereign power. This would mean that sovereign powers actively seek to limit themselves. This contradicts common belief and proof that sovereign powers seek to extend and maximize their power but never managed to achieve this.[14] These arguments seem to point out that sovereignty is not being limited but something else is happening such as a pooling, delegation or transferring of sovereignty. It is important to note that the European Union and its predecessors are actually a number of treaties which have been signed by sovereign states. The difference is that a neutral supranational institution has been given some authority to supervise the enforcement of the treaty. Enforcement of treaties would normally have been performed by a powerful state such as in the example of when slavery was prohibited.

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[13] Morgan, *"Sovereignty's New Story"* (2007).
[14] Hinsley, *Sovereignty* (1986), chapter 6

Finally Morgan argues that states depend on foreign loans to fund the high costs of war. Being aware that sovereign states may not repay their debts, foreign creditors have often violated the sovereignty of many countries, particularly in the Balkan, Latin and African areas. These creditors could force a sovereign state to a contract that gives external actors control over domestic activities or resources. For example Egypt in 1879, which at that time had hundreds of European supervisors on key posts, including ministers. According to Milner, Egypt was financially "tied hand and foot, unable to move, almost unable to breathe, without the consent of Europe". Though Morgan points to the high costs of war as a reason for foreign borrowing, one can of course imagine other and more recent causes such as bankruptcy and welfare spending.[15]

This argument provided by Morgan also seems to be the wrong path to take when defining sovereignty. To extend on the example of Egypt, as a result of this European influence the Egyptians revolted and conflict broke loose. The English violently subdued the revolt and took total control of Egypt, making it a colony. The main reason why the English were interested in Egypt and started to influence the country was the Suez Canal.[16] Not only war and violence can be considered as acts that violate sovereignty, but one could also consider such economical and political acts purely aimed to coerce a country as such. This type of coercion is still visible in politics today, even lightly within the European Union. Merkel for example recently stated that an economic and monetary union is not enough to ensure stability; Europe must work harder towards a political union. Considering that Germany is a large investor and actor in Europe, their demand weighs heavily on other member states.[17]

Morris also opposes the classical concept of sovereignty but extends his argument to challenge the entire notion of sovereignty. He does this in a quite unique way using the rational choice theorem designed by Arrow, which was originally designed to understand group decision making. Using Arrow's Theorem, he argues that power relations and authority can violate transitivity. For example, even if player x has more skill than player y, it can still occur that player y will win a game. This is even more so if players are being paired. If we translate this to the political world, where we assume that each political institution within a realm is the highest and supreme authority concerning a specific domain or dimension. We will also see such

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[15] Morgan, *"Sovereignty's New Story"* (2007).
[16] Morgan, *"Sovereignty's New Story"* (2007).
[17] http://www.nrc.nl/nieuws/2012/06/07/merkel-wil-dat-eu-stap-voor-stap-meer-bevoegdheden-krijgt/

violations of transitivity. In addition, when applying Arrow's Theorem on the political world; aggregating the authority of each individual and transitive political institution. We learn that it is quite possible a cycle will occur. This means that once authority is aggregated, transitivity and hierarchy is lost. Thus Morris concludes that assuming ordered or hierarchical authority or power relations is a misleading understanding of modern politics.[18] Morris expands on this argument by illustrating that there are multiple sources of authority. He uses the United States as a prime example, in which there is a strict division between the legislative, executive and judicial authorities. It also is a federal system in which authority is not unified in a single body but strongly decentralized. In addition to these two counterexamples, the Constitution is another unique example of an institution which has significant authority. Following up on his criticisms on the concept of sovereignty, he concludes that states are not nor need be sovereign and wishes to disentangle state and sovereignty. If one would ask Morris if states could exist without sovereignty, he would answer "only if sovereignty is not part of the idea".[19]

There are several issues with this way of reasoning. First, sovereignty cannot simply be dismissed or disentangled from the state because one claims that it does not have to be or should not be part of the idea. This would not be justified if we consider that sovereignty is experienced as something fundamentally important in a state by both citizens and politicians. Second, there are some fundamental errors in the examples given by Morris. A federal system does not mean that sovereignty is being divided or even limited. Most, if not all, federal systems still have a strong central authority and hierarchical organizational system. The multiple sources of authority also appears to be somewhat exaggerating. Across different institutional bodies one will always encounter coalitions that undermine the division of power. The United States seem to be the example Morris has in mind to defend his point of violated transitivity, but even in the American example and in general, Morris admits that man has not been able to construct a system in which authority is truly divided.[20] Finally, when aggregating authority of all institutions it is theoretically possible that a cycle will occur. The fact this can occur, does not mean that it does and perhaps also has little to do with sovereignty. Suppose we have a state in which this cycle occurs and authority structures appear to not be hierarchical and transitive. How would such a

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[18] Morris, *An Essay on the Modern State* (1998) Page 193
[19] Morris, *An Essay on the Modern State* (1998) Page 223
[20] Morris, *An Essay on the Modern State* (1998) Chapter 9

state look like? It would most likely be a sort of France in the time of Bodin, an ineffective state torn by conflict due to internal struggles for power and authority. It is quite unlikely that such a society would even be a modern state. This would sooner be a territory with no sovereignty; a stateless society.

Sovereignty Restated

Critics of the classical concept of sovereignty have pointed out some weaknesses and flaws. Several scholars have thus taken up the task to refine and restate the concept of sovereignty.

Hinsley also recognizes and mentions some of these criticisms but does not dismiss sovereignty; he even argues that the indivisible and unlimited attributes have little to do with the concept. Hinsley also argues that it is wrong to conclude that a decline in international freedom of action would diminish the use of the concept. The power and freedom of the state to act as it chooses has little to do with Hinsley's understanding of sovereignty at an international level. Sovereignty in this context is an absence of a superior authority over and above a state, so the state may claim independence. To associate sovereignty and the freedom to act in this way is to confuse a situation which states have always aspired but never achieved. This is also the reason why sovereignty is such a persistent concept. Claiming sovereign authority is an essential qualification to join the international community and it is precisely this that makes the concept very relevant and persistent. The Round Table talks in Eastern Europe after the fall of communist Russia and the decolonization process in many former colonies are just two examples that have led to many countries claiming sovereign authority to join the international community as equals.[21]

Another thing Hinsley points out concerns modern international relations. States realized that they are mutually dependant on each other when it comes to certain fields such as security and economy. In order to secure and preserve the interests of their own societies they created a new form of international relations; supranational organizations. The United Nations and European Union are examples of this and within these organizations state rivalry is still present

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[21] Hinsley, *Sovereignty* (1986), chapter 6

and intense. This supranational arena grants access to a toolkit that is in the interest of the participating state.[22]

Krasner sets out to explore the nature of sovereignty in the modern world by expanding more on this idea of Hinsley. Similar to Hinsley's observations, both point out that failing governance leads to various dangers such as disease, criminality, humanitarian crisis and terrorist threats that will no longer remain in the borders of the causing state. States thus realize that they must take action to safeguard the interests of their societies. The toolkit required to accomplish this, is the idea of shared sovereignty which is defined by Krasner as: "the creation of institutions for governing specific issue areas within a state, areas over which external and internal actors voluntarily share authority". Only a sovereign state can commit to this kind of arrangement and it must be voluntary. In addition, the arrangement must contain a win-win element for it to succeed. Using shared sovereignty arrangements countries can make it harder for local rulers to exploit resources. It can also promote stable monetary policy leading to a more enduring and healthy democracy.[23]

Lake also takes a deeper look at the fundamental nature of sovereignty and points out that sovereignty is a type of authority relationship. In this relationship, one commands and one obeys. This authority relationship has two faces: internal and external sovereignty.[24] Internal sovereignty relates to the highest authority within a state. It concerns a hierarchic relationship between a sovereign and subordinates. External sovereignty is the recognition of other similar recognized states. The equality between states at this level constitutes an anarchic relationship between states. Lake sums this up as: internal hierarchy and external anarchy. When looking at sovereignty, even theorists that support the classical view point out to a number of exceptions to certain classical principles. Hugo Grotius, Lake and Krasner have noted several exceptional cases within the international system that are not fully sovereign because of external restrictions and influences. Examples of these are the partial sovereign territories of Palestine, Taiwan, Hong Kong and perhaps after this inquiry the member states of the European Union. These exceptions point out that there are different degrees of authority relationships between actors, which are characterized by a weak or strong hierarchy. The lesson here according to Lake is that one should
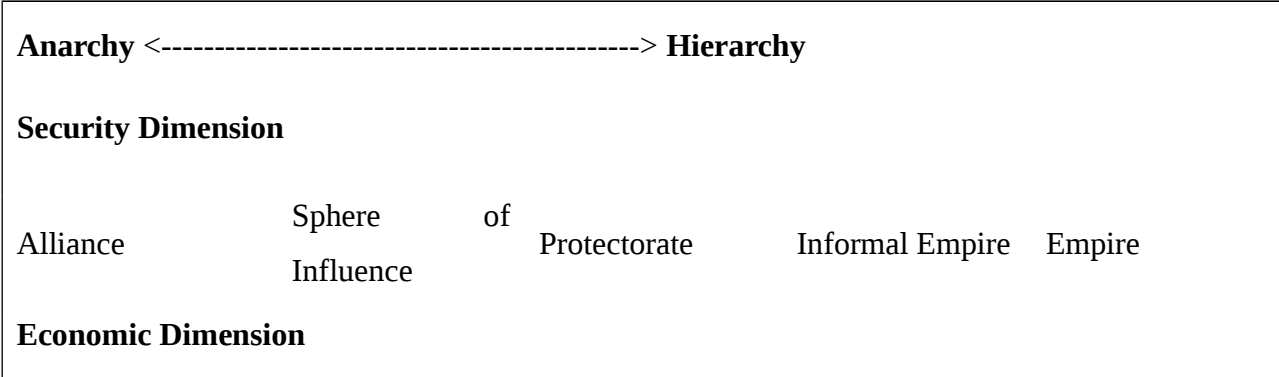
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[22] Hinsley, *Sovereignty* (1986), chapter 6
[23] Krasner, *"The Case for Shared Sovereignty"* (2005)
[24] Philpott,, *"Sovereignty"* (2010)

look at sovereignty as a continuum in which the degree of hierarchy defines sovereignty. The greater the number of areas of domestic sovereignty, the less hierarchic the relationship with the dominant actor; the fewer the number of areas of domestic sovereignty, the more hierarchic the relationship is.[25]

This view would analyze the European Union through an anarchy and hierarchy continuum. This can be split among different domains such as security, economy, law and politics. For example in the domain of European law, we see that this domain has a high degree of hierarchy in which the European Court of Justice is the dominant actor. In contrast to the domain of foreign politics, in which there is anarchy since all member states are dominant and rivaling actors of how they represent themselves and act within the international community. Lake identifies many hierarchic relations in different domains and has labeled them which is visible in figure 1. This figure displays that on the economic dimension, the highest form of hierarchy is an economic union. In contrast to anarchy in which there is no hierarchy, then we see typologies as alliances and market exchanges. These typologies are of interest because they may point out to several underlying and subtle reasons as to why citizens and politicians experience differences of sovereignty between states and organizations. For example, why the Dutch are concerned that the European Union is threatening their sovereignty but why they do not experience this as strongly with the United Nations. Lake might argue that this is because the European Union is becoming more hierarchical on the political dimension, shifting towards an imperium type relation. It is quite possible that there are more dimensions than the ones identified by Lake.

Figure 1: Lake's Anarchy to Hierarchy Relations Continuum

Anarchy <--> Hierarchy

Security Dimension

| Alliance | Sphere of Influence | Protectorate | Informal Empire | Empire |

Economic Dimension

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[25] Lake, *"The New Sovereignty in International Relations"* (2003)

Market Exchange	Economic Zone		Dependency	Economic Union
Political Dimension				
Universal Covenant	Mandate		Dominion	Imperium
State Formation Dimension				
Inter-Jurisdictional Functional Authority	League	Confederation	Federation	Union

What is Sovereignty?

So far many different views and thoughts on the concept of sovereignty have been presented in this research in order to answer the question: What is sovereignty? Even though there are many flaws, criticisms and weaknesses in the classical concept of sovereignty. It proves to be a persistent concept that is not so easily dismissed. This is because it touches upon a fundamentally important question concerning societies: the relationship between a sovereign and subordinates. This relationship has changed since the concept was first created by Bodin and so the concept has received attention by scholars who have refined the concept. All of the scholars discussed so far, even those that oppose the concept of sovereignty, have pointed out to one crucial attribute: hierarchy. The degree of hierarchy between actors changes behavior and authority relations. To analyze sovereignty within the European Union in this research, sovereignty should be understood and defined as: **authority relationships between actors which are determined by the degree of hierarchy.** The goal of sovereignty is to effectively regulate societies and pursue their interests. Sovereignty can have an asymmetrical nature; the strength of hierarchy and authority relations can differ per domain. It can also be pooled or transferred into a new entity. Using this definition, this research can move on to analyze sovereignty within the European Union.

Section III – Sovereignty and the European Union

The Beginning

Europe was left in a devastating state after the Second World War in which two major problems had to be solved. The first problem was the destruction left by the war; Europe had to be rebuilt. The second problem was to end hostility between major powers in Europe, especially France and Germany. Sovereign states had to find a way to bring peace, economic growth and prosperity to their societies. Bodin and Hobbes would argue that the only way to accomplish this, is for sovereign states to sign an agreement with each other in which they all submit to a higher authority. This higher authority would have indivisible, unalienable and unconstrained power.

Instead, six states signed the Treaty of Paris which led to the creation of the ECSC in 1951. It was nothing more but a treaty with one new unique feature: the creation of a neutral entity that would supervise the execution of the terms in the treaty. This was the first time a supranational element was implemented in an organization, all other organizations were intergovernmental. The ECSC received the highest authority over the contents of the treaty, surpassing the authority of the six national states.[26] This single treaty between a mere six countries does not seem so impressive; especially considering the very limited scope of the treaty and how easily it could maintain a win-win situation for all members. Due to these factors it is easily argued that The Treaty of Paris and the ECSC brought no influential change to a degree of hierarchy in Europe or changed authority relations.

As time passed, many more treaties were created: The Treaty of Rome, Single European Act, Treaty of Maastricht, Treaty of Amsterdam, Treaty of Nice and the Treaty of Lisbon. These treaties greatly increased the scope of this neutral entity; increasing its authority in the economic domain but also expanding towards other domains. In addition to this, many more countries voluntarily joined these treaties and submitted themselves to the neutral entity. The small ECSC has now grown into the European Union, counting twenty seven members states. This is quite impressive and has large implications on the degree of hierarchy in Europe and the structure of authority. However, the degree of hierarchy and authority relations has changed asymmetrically in Europe, depending on the domain of interest. With the help of theories discussed earlier, I

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[26] Lelieveldt and Princen, *The Politics of the European Union* (2011), Chapter 1

have identified five domains that be analyzed: Judicial, Economical, Domestic Policy, Foreign Policy, and Security domains.

The Judicial and Domestic Domains

The judicial domain has always been considered the most hierarchical and supranational entity within the European Union and it is closely knit with domestic policy. The highest authority and most dominant actor of law is quite easy to spot in the European Union; The Court of Justice of the European Union (CJ). The most famous rulings of the Court are the cases of van Gend en Loos in 1963 and Costa versus ENEL in 1964. The first established the principle of direct effect and the latter established the principle of supremacy. The principle of supremacy is of major significance; it implicates that all national law, even those in constitutions, are subordinate to Community law.[27] It is however misleading to assume that the Court has reached the highest degree of hierarchy and possesses all authority. Even though the structure and hierarchy is set, the Court and European Policy have important limitations. First, they have either been excluded or have been limited in certain judicial and policy areas at the request of some member states. Second, the Court and European Union both have no agency to enforce its rulings; it depends entirely on the cooperation of the member states.

The exclusion or limitation of European jurisdiction, law or policy can be seen by the phenomenon of opt outs. These are uniquely bargained positions of member states in the European Union often written away as protocols within treaties. The United Kingdom and Ireland for example, have managed to push through some opt outs in the Treaty of Amsterdam. These opt outs exclude or limit the European Union policy and Community law on their policies concerning visas, asylum, immigration and other policies related to free movement of persons.[28] This undermines the hierarchical and authority structure of the Court because it results in an *a la carte* European Union in which member states pick and choose the areas they wish to cooperate and are susceptible to Community law.

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[27] Lelieveldt and Princen, *The Politics of the European Union* (2011), Chapter 1
[28] Cini and Borragan, *European Union Politics* (2003), Chapter 11

Another example is the appearance of the so called "exit-clause" which has been ratified in the treat of Lisbon. It is the first such an "exit clause" has been mentioned and adopted in the European Union. Article 50 of the Lisbon Treaty specifies that any member wishing to withdraw from the European Union must notify the European Council of their intentions. The Council will then produce guidelines based on the withdrawal agreement negotiated with that member state. A qualified majority in the Council with approval from the European Parliament will conclude the agreement on behalf of the European Union.[29]

The famous "Luxemburg veto" is another addition to the intergovernmental toolkit to limit or exclude European power and authority. The veto can be traced back to the Empty Chair Crisis in the 1960s. When the French, led by Charles de Gaulle, saw their interest being compromised, they withdrew and "boycotted" the European Union. All European integration efforts had come to a complete stop for as de Gaulle said "our chair remains empty, every meeting is illegitimate".[30] The situation was solved with the Luxemburg Compromise of 1966, which states that "in the case of vital national interest of one of the member states the Council would aim to find a consensus solution, thus creating a de facto veto right".[31] The lesson of de Gaulle is that all European Union policy depends on the will of the member states and cannot be implemented against their will.[32]

The cooperation of member states is another limitation on the authority and power of the European Union. Although no boycott has occurred since the Empty Chair crisis, member states still have other means in which to gain leverage over the European Union and other member states. The 1996 mad cow disease crisis in the United Kingdom for example. The European export commission decided to put a temporary stop on the export of all British beef to the rest of the European Union. Though there was little scientific proof or reason to solely put the ban on British beef, concerned consumers forced a minority to uphold the ban. The angry English premier Major said: "We cannot continue business as usual with Europe when we are faced with the clear disregard by some of our partners of reason, common sense and British interests". As a result he ordered his ministers and representatives to block as many decision making processes in

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[29] Athanassiou, *"Withdrawal and Expulsion from the EU and EMU, some reflections"* (2009)
[30] Middelaar, *"De Passage naar Europa"* (2009), page 100
[31] Cini and Borragan, *European Union Politics* (2003), Chapter 2
[32] Middelaar, *"De Passage naar Europa"* (2009), page 119

the European Union as possible. By doing this the issue moved up the agenda and was resolved immediately, at the mere cost of approximately seventy European policy decisions.[33]

There has also been conflict between national courts and the European Court, a turf war so to speak. The German Constitutional Court has had issues with the idea that Community law would trump German constitutional law and wished to implement several restrictions to the priority and supremacy of Community law. Eventually the parties representing both sides grew towards each other. However the German courts still have some objections but are afraid to cause a political crisis.[34]

There are many examples of such events but they have the most impact and influence when it involves one of the bigger member states. Poland for example attempted to veto an issue concerning the sugar beet market but due to translation problems the veto never occurred and the new policy was implemented.[35] The Irish "no" to the Maastricht Treaty in 1992 and the Danish "no" to the Treaty of Nice in 2001, let to both countries being coerced to redo the referendum. The French "non" in 2005 concerning the Constitution of Europe could not be so easily coerced considering their size and power.[36] These experiences give strength to the argument of intergovernmentalists that the European Union is nothing more but an arena in which the dominant states do battle with each other in order to achieve or maximize their national interests. In this arena, some states are equal and others are not, thus the structure of authority and hierarchy are anarchic. The dilemma is that such behavior is logical and necessary; without them the win-win condition for all twenty seven members cannot realistically be maintained and further integration would not occur.

The Security and Foreign Policy Domain

An army of the European Union has been a very sensitive topic which can be traced back to the European Defense Community (EDC) of 1952. This agreement would have established an entity in which European troops would be put under supranational command and with it an entity that

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[33] Middelaar, *"De Passage naar Europa"* (2009), page 118
[34] Middelaar, *"De Passage naar Europa"* (2009), page 162-168
[35] Middelaar, *"De Passage naar Europa"* (2009), page 116
[36] Middelaar, *"De Passage naar Europa"* (2009), page 122

would be the face of Europe towards the rest of the world, the European Political Community (EPC). However, the agreement was never launched because in 1954 the majority of French parliament was against this plan and both EDC and EPC never came to be. The French were uncomfortable with the part of the agreement that West Germany would be rearmed and also supply troops to the EDC.[37]

There have been many attempts to create a common European foreign and security policy or entity. In 1992, a tiny step was taken when the Maastricht Treaty established the Common Foreign and Security Policy (CFSP). This institution remained highly intergovernmental; many members of the European Union did not want to see security and defense policy centralized. Integration was slow paced and even deteriorated with the invasions in Afghanistan and Iraq. These invasions caused a split between member states; England on one side supported the United States against Germany and France which opposed the invasions. A joint foreign policy seems further away.[38]

Nonetheless, different threats to Europe, such as terrorist attacks and trouble in the Balkan, gradually pushed Europe to adopt policies that improved European integration in the security domain. In addition to this, the French wanted to replace the NATO with a more European based defense organization while the United Kingdom set out to find policy areas in which to display pro-European cooperation, resulting in fruitful meetings concerning European defense. This process reached an all time high with the treaty of Lisbon which established two important institutions: the High Representative of the Union's Common Foreign and Security Policy and the European Defense Agency (EDA). The treaty makes clear that member states should make military resources available to support the EDU.[39] The task of this agency is to "to support the Member States and the Council in their effort to improve European defense capabilities in the field of crisis management and to sustain the European Security and Defense Policy as it stands now and develops in the future".[40] They are concerned with approved projects that improve defense and security of member states. Though this seems very limited, it is a big step forward in what is probably the most intergovernmental domain of Europe.

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[37] Cini and Borragan, *European Union Politics* (2003), Chapter 1
[38] Cini and Borragan, *European Union Politics* (2003), Chapter 15
[39] Cini and Borragan, *European Union Politics* (2003), Chapter 15
[40] http://www.eda.europa.eu/Aboutus/Whatwedo/Missionandfunctions

An army of Europe led by the High Executive is perhaps far away or will never happen. Nonetheless the security domain is gaining more hierarchy and authority, although these steps are small. The structure and hierarchy is clear and the foundations seem to have been laid for further integration in this domain. Taking the progress of the Lisbon Treaty in consideration, it is quite likely to expect even more authority to be given to these institutions. The foreign policy domain is a problem which is best described by Bismarck who found that nobody can speak on behalf of "Europe". The continent as a whole has no parliament, no currency, no bank, no flag and no government. Politically speaking, Europe does not exist. Though some of these things have changed, Bismarck does have a point that it is unlikely that the twenty seven members of the European Union are going to appoint an entity to speak on their behalf to the rest of the world.[41]

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[41] Middelaar, *"De Passage naar Europa"* (2009), page 31

The Economic Domain

The economic domain is the first and oldest domain within the European Union. Economic cooperation was the basis for the creation of this supranational entity. Sovereignty has been gradually pooled in this domain for over sixty years and so it is not surprising that this domain is actually the most hierarchical one. Besides major treaties that have profoundly changed Europe such as the Schengen Agreement, it is the creation of a single currency that is perhaps the most important change in this domain. The creation of the Euro and the pooling of sovereignty in the European Central Bank (ECB) and European Monetary Union (EMU) have created a very strong degree of hierarchy which is strong enough to fend itself from national interests. However, unlike opt outs and exit clauses the Lisbon Treaty provides, secession from the Euro in practice is not that simple.

It is quite possible that withdrawal from the Euro, though technically possible, is in fact a practically impossible feat. This would make the Euro a sort of fish trap, once entered there is no way to turn back. This is because there is a major problem when withdrawing from a monetary union. The problem is that the old currency must be restored of a new currency created. Restoration is rather unlikely since old currencies have been destroyed. The creation of a new currency and the restoration of the old currency can only be successful with the help of the European Union. Without the help of the European Union and without certain beneficial conditions, risks greatly increase for the new currency to fail. Risks such as a former Euro country to be "euro-ized" like how some Latin countries have become "dollarized". Companies and citizens continue their transactions in Euros because these will most likely be worth more than the new currency, in addition there is most likely no need to convert these transactions to the new currency. There are only a few monetary break ups from which we can learn like the break up of the Soviet Union Rouble. However, they do demonstrate that a monetary union is like a fish trap that leaves national member states with little choice.[42]

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[42] Scott, *"When the Euro Falls Apart"* (1998)

Section IV – Final Remarks

Conclusion

The main question of this research was: **Is sovereignty being transferred from national member states to the European Union?** States are still the dominant actors in the European Union; policy cannot be implemented against their will. The member states have made sure that complete or partial withdrawal is possible, thus avoiding a complete transference or pooling of sovereignty. The member states are currently pooling sovereignty asymmetrically in different domains. This means that some domains like the economic domain have a strong degree of European hierarchy and a dominant European authority. But in other domains like the foreign policy domain, the European Union has none to a weak degree of hierarchy and no dominant entity.

The European Union does have a strong structure of hierarchy that lays a good solid foundation for future transference or pooling of sovereignty should the member states be willing to take this step. The economic domain reveals something that should keep states wary. Some policy implementations are like fish traps; once implemented there is no turning back without large risks or repercussions. Fifty years ago the European Union was unimpressive, hierarchy structures were weak and the states were the dominant actors. But since then they have grown impressively and it is very likely that more fish traps will be implemented across different domains. Should the pace and speed of European integration continue as it is, then the European Union of 2060 would be one that is dreaded by intergovernmentalists like de Gaulle. A European Union in which each domain is dominated by an institution of the European Union. Perhaps the concerns politicians and citizens have are quite legitimate considering what the European Union can become in years to come.

It would be of interests to investigate each of the domains more thoroughly and perhaps structuralize the pace of the pooling or transferring of sovereignty so predictions could be made on how these domains would look like in the future. Is Europe heading towards a European super state? Will European member states ever decide to transfer all sovereignty into a single domain and if so which domain is most likely? It is also possible to do research on how European

sovereignty in relation to national sovereignty is experienced by politicians and citizens from different segments of society. It is my belief that national sovereignty is being subjected to more and more pressure from the European Union, making it all the more interesting.

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