# Book reviews

Neil Walker, ed. *Sovereignty in Transition* Hart Publishing 2003. pp.556.

*Reviewed by* Samantha Besson*

## 1. Introduction

Recent books and articles on sovereignty abound and so do its new denominations: "post-sovereignty,"[1] "late sovereignty,"[2] "sovereignty in conflict,"[3] "competitive sovereignty,"[4] "cooperative sovereignty,"[5] "mixed sovereignty,"[6] "pooled sovereignty,"[7] and so forth. Never has sovereignty been so much discussed as it has been since its

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[1] Neil MacCormick, *Beyond the Sovereign State* 56 MODERN L. REV. 1 (1993). *See generally* NEIL MACCORMICK, QUESTIONING SOVEREIGNTY (1999).

[2] Neil Walker, *Late Sovereignty in the European Union*, *in* SOVEREIGNTY IN TRANSITION 3 (Neil Walker ed., Hart Publishing 2003).

[3] Samantha Besson, *Sovereignty in Conflict*, *in* THE SOVEREIGNTY OF STATES AND THE SOVEREIGNTY OF INTERNATIONAL LAW (S. Tierney & C. Warbrick eds., 2004).

[4] Miguel Poiares Maduro, *Contrapunctual Law: Europe's Constitutional Pluralism in Action*, *in* SOVEREIGNTY IN TRANSITION 521 (Neil Walker ed., 2003).

[5] PAUL MAGNETTE, L'EUROPE, L'ETAT ET LA DÉMOCRATIE 161–66 (Editions Complexe: Bruxelles 2000); SAMANTHA BESSON, *La souveraineté coopérative en Europe*, *in* LA SUISSE SAISIE PAR L'EUROPE 5 (T. Balmelli ed., Editions Interuniversitaires Suisses: Fribourg 2003); Samantha Besson, *Post-souveraineté ou simple changement de paradigmes? Variations sur un concept essentiellement contestable*, *in* LA SOUVERAINETÉ AU XXIÈME SIÈCLE 7 (T. Balmelli & A. Borghi & P.-A. Hildbrand eds., 2003), Samantha Besson, *From Integration to Integrity: Should European Law Speak With Just One Voice?* 10 EUR L. J. 257, 271 (2004).

[6] Richard Bellamy, *Sovereignty, Post-Sovereignty and Pre-Sovereignty: Three Models of the State, Democracy and Rights within the EU*, *in* SOVEREIGNTY IN TRANSITION 186 (Neil Walker ed., 2003).

[7] *See* Pierre Pescatore, *L'apport du droit communautaire au droit international public*, *in* CAHIERS DE DROIT EUROPÉEN 501 (1970). *See* Bruno De Witte, *Sovereignty and European Integration: the Weight of Legal Tradition*, *in* THE EUROPEAN COURTS AND NATIONAL COURTS: DOCTRINE AND JURISPRUDENCE, (Anne Marie Slaughter, Alec Stone Sweet & Joseph H. Weiler eds., 1998).

explanatory and normative force came into doubt, and its knell tolled, in the European Union (EU) and elsewhere.[8] What makes sovereignty such a contestable concept is the paradox of sovereignty, where the high degree and diversity of criticism directed toward state sovereignty for the past fifty years,[9] on the one hand, confronts its remarkable resilience in political debate and legal discourse, on the other. As Neil Walker states in his introduction, "the idea of sovereignty cannot just be wished away. . . It is the very challenge to the old order that demands such urgent re-examination of the building blocks of that order."[10] And the key notion around which some common ground may be found for this necessary inquiry is precisely that of transition in the concept of sovereignty.

*Sovereignty in Transition* gathers together an impressive range of scholars from law, legal philosophy, legal history, political theory, political science, international relations, and the history of ideas, under the expert supervision of Neil Walker. It provides a cross-disciplinary assessment of the concept of sovereignty with a particular focus on contemporary developments in the EU. For a long time, sovereignty was regarded as the cornerstone of both national and international political and legal organization. Recently, however, it has been subject to growing challenges both in theory and in practice. With the shift in authority away from the state to new substate, suprastate, and nonstate entities, the question is whether the concept of ultimate authority or sovereignty is to be abandoned or retained and, if the latter, in which form. This volume brings together discussions of the practical and theoretical aspects of the transition of sovereignty in its regional and global dimensions. The twenty-one successive chapters of the volume are divided roughly into three main groups of ideas corresponding to the book's three parts: disciplinary perspectives (Part A), constitutional perspectives from the Member States (Part B), and constitutional perspectives from the EU (Part C).

In this review I shall concentrate on the theoretical dimensions of European sovereignty addressed in the book and, more particularly, on three essays: Neil Walker's opening essay, *"Late Sovereignty in the European Union,"* Richard Bellamy's "Sovereignty, Post-Sovereignty and Pre-Sovereignty: Three Models of the State, Democracy and Rights in the EU," and Miguel Poiares Maduro's concluding essay, "Contrapunctual Law: Europe's Constitutional Pluralism in Action." The common thread running through these three chapters is a shared vision of the future of sovereignty in the EU. Each of them is looking for an answer to the question of how to reconcile sovereignty with "constitutional pluralism,"[11] that is, the post-Westphalian order characterized by the coexistence of autonomous constitutional orders within the same political and legal community and territory. There are three common responses to this challenge: the continued insistence on absolute and unitary sovereignty, the alternative idea of authorities having pooled their sovereignty, and the idea that Europe has moved into a

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[8] *See generally* MacCormick 1993, *supra* note 1; MacCormick 1999, *supra* note 1.

[9] Interestingly, the issue of sovereignty did not raise much controversy in the EU before the early 1990s; the idea of mere delegation of the exercise of national sovereignty to the EU was largely predominant, and for a long time EU authorities were reluctant to express their own sovereignty claims. *See* De Witte, *supra* note 7, at 281–293.

[10] Walker, *supra* note 2, at vii–viii. *See also* Bellamy, *supra* note 6, at 179.

[11] *See* Walker, *supra* note 2, at 4; Maduro, *supra* note 4 at 511; Bellamy, *supra* note 6, at 186.

postsovereign world. Each of the three authors suggests a fourth alternative, under various names: Walker's "late sovereignty," Bellamy's "pre-sovereignty" or "mixed sovereignty,"[12] and Maduro's "contrapunctual" or "competitive" sovereignty."[13] Despite differences, all three approaches insist on the importance of mutual dialogue and adaptation among sovereign authorities. I will refer to this as the "taming of sovereignty" in Europe.[14]

## 2. The problem with sovereignty

In a world where essential competences are regularly divided among the subnational, national and postnational levels, it seems artificial, at first, to hold on to a concept of ultimate or supreme authority and power.[15] All three authors conclude, however, that the concept remains relevant in the postnational context. Those who claim that it is not have misunderstood the concept.

### 2.1. The concept of sovereignty

According to Walker, the invocation of sovereignty involves a speech act in the form of a claim to "ordering power." Sovereignty is not merely a descriptive political concept that refers to an independent and objective reality. Nor is it a purely prescriptive political concept that insists on constructing political and legal reality according to an abstract standard. Walker refers to those two ways of misunderstanding sovereignty as the "descriptive fallacy" and the "fallacy of abstraction."[16] It follows that even if it is not plausible, empirically, to locate or to posit, normatively, an ultimate power in European political and legal practice, this does not make sovereignty irrelevant.

I have argued elsewhere that sovereignty is best understood as an *essentially contestable* concept.[17] As such, it is a concept that not only expresses a normative standard, the conceptions of which differ from one person to another, but whose correct application is the creation of disagreement over its correct application or, in other words, over what the concept itself is. Essentially contestable concepts are normative concepts in that they express and incorporate one or many of the values they seek to implement in practice (such as democracy or human rights in the case of sovereignty). They are *essentially complex* concepts in that they encompass different dimensions of meaning. Finally, essentially contestable concepts are *acriterial*, in that they have no immutable core criteria by which to identify an instance of the concept but rely on certain shared paradigms as a

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[12] Bellamy, *supra* note 6, at 170. Bellamy refers interchangeably to "pre-sovereignty" and "mixed sovereignty," although the latter seems more adequate *qua* updated version of the former. *Id.* at 186.

[13] Note that Maduro, *supra* note 4, at 523, uses the term "contrapunctual law," and not "contrapunctual sovereignty," although he refers to "competitive sovereignty." *Id.* at 521.

[14] *See* Besson 2003A, *supra* note 5; Besson, *supra* note 3. *See also* MAGNETTE, *supra* note 5, at 139', on the similar idea of "état apprivoisé" or tame state.

[15] With the exception of Walker, *supra* note 2, at 6, few authors in the book define sovereignty in detail. *See, e.g.* Bellamy, *supra* note 6, at 171 ff.; Maduro, *supra* note 4, at 501–502.

[16] Walker, *supra* note 2, at 6–7.

[17] Besson 2003B, *supra* note 5; Besson, *supra* note 3.

starting point for discussion. As a consequence, the meaning of the concept of sovereignty, like some other central political and legal concepts, is neither entirely open nor entirely closed. The concept can flexibly adapt to reflect some, albeit not all, changes in political and legal reality, as well as some, albeit not all, changes in paradigms. In the case of sovereignty this is confirmed by its various historical usages and the controversy surrounding the emergence of contemporary conceptions of sovereignty, such as "popular" or "legal" sovereignty.[18]

## 2.2. Current conceptions of sovereignty

Even if there are good reasons to believe that the idea of sovereignty remains relevant, particular conceptions of it may well suffer from serious shortcomings. Bellamy and Maduro distinguish absolute sovereignty, or sovereignty *tout court*, from postsovereignty,[19] while Walker adds a third alternative: pooled or shared sovereignty.[20]

Walker starts by noting that "there remains considerable support for what might be termed the received unitary or one-dimensional approach to sovereignty in the European Union,"[21] whether the ultimate authority is claimed by and attributed to the EU or the member states.[22] As Maduro rightly states, however, ". . . European integration "attacks" this hierarchical understanding of law. [. . .] Both national and European constitutional law assume in the internal logic of their respective legal systems the role of higher law."[23] The difficulty with this approach is, to quote Walker, "the myopic partiality of simple unitarian positions in the face of substantial evidence of growing constitutional plurality," as well as the doubtful "capacity even of the more complex and sophisticated unitarianism of multi-level constitutionalism and its ilk to sustain robust pluralist political premises."[24]

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[18] *See* Theodora Kostakopoulou, *Floating Sovereignty: A Pathology or a Necessary Means of State Evolution* 22 OXFORD J. LEGAL STUD. 135 (2002). *See* Besson 2003B, *supra* note 5, on the different dimensions of complexity of the concept of sovereignty and in particular the opposition between political and legal sovereignty, internal and external sovereignty, absolute and limited sovereignty, indivisible and divisible sovereignty, and institutional and popular sovereignty. *See also* Walker, *supra* note 2, at 19–21; Bellamy, *supra* note 6, at 171–175; Maduro, *supra* note 4, at 502, 537, on the paradoxical relationship between legal and political sovereignty.

[19] Bellamy, *supra* note 6, at 175–180. Note that Bellamy conflates the opposition between sovereignty and postsovereignty with the distinction between political and legal sovereignty; while there is clearly a link between the two distinctions, a legal sovereign is "sovereign," hence the difficulty more generally to keep it distinct from political sovereignty. *Id.* at 169–70. *See also* Maduro, *supra* note 4, at 502–511.

[20] Walker, *supra* note 2, at 10–18.

[21] Walker, *supra* note 2, at 11.

[22] *See* Maduro, *supra* note 4, at 502 ff., on these two narratives. On these conflicts of sovereignty and constitutional conflicts more particularly, *see* Mattias Kumm, *The Jurisprudence of Constitutional Conflict: Reconceiving the Relationship between the Law of the European Union and Its Member States*, Jean Monnet Working Paper 2004.

[23] Maduro, *supra* note 4, at 520.

[24] Walker, *supra* note 2, at 14.

In response, the idea of disaggregation and reaggregation of sovereignty has been brought forward to grasp the polycentric dimension of sovereignty in Europe. The problem with this kind of pooled or shared sovereignty, however, is that by being everywhere, it seems that it is nowhere particularly important.[25] As Walker argues, pooled sovereignty sits "uneasily with the sense of sovereignty as a unifying and self-identifying claim made on behalf of the polity."[26]

A third approach dispenses entirely with the concept of sovereignty. After all, the tyranny of statist concepts is well established,[27] and there is no reason why the organization of postnational polities should follow the same rules as national polities.[28] The difficulty with postsovereignty, however, lies in its blindness to the essential epistemic and normative role of sovereignty,[29] whether it is attached to states or other subnational or postnational political entities.[30] Claims to ultimate authority and *finalité* are regularly made by national and EU authorities, by the judiciary and still other authorities. These claims arise in diverse regulatory fields such as those of nationality and citizenship acquisition,[31] monetary regulation,[32] or fundamental rights.[33] More generally, sovereignty belongs to the symbols and leitmotivs of current national political discourse, on the left as much as on the right. As is true of other essentially contestable concepts, sovereignty's centrality in political debates increases its contestability, yet it is its very contestability that makes it a central and indispensable element of those debates.[34] Walker refers to the "double hermeneutic" of sovereignty; the concept of sovereignty is not only an interpretation of the world, but this interpretation is already part of that world.[35] Sovereignty is too deeply entrenched in our legal and

[25] *See* De Witte, *supra* note 7, at 303–303 (discussing the contradictions of pooled sovereignty).

[26] Walker, *supra* note 2, at 15.

[27] *See* Jo Shaw & Antje Wiener, *The Paradox of the European Polity, in* STATE OF THE EUROPEAN UNION 5: RISKS, REFORMS, RESISTANCE AND REVIVAL 78 (M. Green Cowles & M. Smith eds., Oxford University Press, 1999).

[28] *See* MacCormick 1993, *supra* note 1; MACCORMICK 1999, *supra* note 1.

[29] Walker, *supra* note 2, at viii.

[30] On the importance of separating the concept of "sovereignty" from that of "state sovereignty," see Besson, *supra* note 3.

[31] *See* Jo Shaw, *Sovereignty at the Boundaries of the Polity* in SOVEREIGNTY IN TRANSITION 461 (N. Walker ed., Hart Publishing: Oxford 2003); Hans Ulrich Jessurun d'Oliveira, *Nationality and the European Union after Amsterdam, in* LEGAL ISSUES OF THE AMSTERDAM TREATY (D. O'Keeffe & P. Twomey eds., Hart Publishing 1999).

[32] *See* Constance Grewe and Helen Ruiz Fabri, *Le Conseil constitutionnel et l'intégration européenne,* REVUE UNIVERSELLE DES DROITS DE L'HOMME 277 (1992); Peter Oliver, *The French Constitution and the Treaty of Maastricht,* 43 INT'L & COMP. L. Q. 1 (1994).

[33] *See* BVerwGE 103, 301 of 30.01.1996 NJW 1996 2173; Case C-285/98, Tanja Kreil v. Federal Republic of Germany, 2000 ECR I-69 [2000].

[34] *See* Besson, *supra* note 3.

[35] Walker, *supra* note 2, at 16–17. *See also* Catherine Richmond, *Preserving the Identity Crisis: Autonomy, System and Sovereignty in European Law,* 16 L. & PHIL. 377, 379–382 (1997) 'stating a similar approach to sovereignty'.

political language and too prevalent in public debate to be ignored as an object of serious theoretical reflection.[36]

## 3. The future of sovereignty

All three authors suggest, albeit in very different terms, a fourth alternative to current conceptions of sovereignty. Their suggestions all fit into the broader category of pluralist accounts of sovereignty: cooperative sovereignty.[37] What they have in common is a focus on cooperation among national and European sovereign authorities.

### 3.1. Late sovereignty

According to Walker, "late sovereignty" is a way "to retreat from the assumptions of post-sovereignty, without returning to the oxymorons of disaggregation or the myopia of the unitary approach."[38] It matches the idea of constitutional pluralism.[39] The language of late sovereignty, by analogy with the language of late modernity as opposed to postmodernity, seeks to reflect distinctiveness—despite continuity—and transformation—despite irreversibility. According to Walker, a claim to sovereignty is always a claim over a particular society as well as a claim to constitute a society as a polity, "and so it always necessarily excludes as well as includes."[40] The key difference in the claim made in a post-Westphalian order is that the boundaries are no longer merely territorial, but also functional.[41]

Late sovereignty conceives of sovereignty "in terms of a plurality of unities and in terms of the emergent possibilities of the relationships amongst this plurality of unities."[42] As such, it is relational and reflexive. According to Walker,

> The interrogative gaze of sovereign authorities may no longer be exclusively directed outwards towards competing or putative sovereign orders, but, in response to these competing claims, and also to the self-organising and self-regulatory claims of communities of practice and interest which do not define themselves as multi-functional polities, may also turn inwards.[43]

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[36] See also De Witte, supra note 7, at 304. Compare with MacCormick 1993, supra note 1; MacCormick 1999, supra note 1, at 113 ff., who seems to have moved away from postsovereignty to a more unitarian conception of sovereignty under the influence of Richmond, supra note 36.

[37] See Besson 2003a, supra note 5; Besson 2004, supra note 5, at 271; Magnette, supra note 5, at 161–166.

[38] Walker, supra note 2, at 18.

[39] Id. at 18.

[40] Walker, supra note 2, at 22.

[41] Id. at 22.

[42] Id. at 18.

[43] Id. at 27.

### 3.2. Mixed sovereignty

Bellamy proposes an updated version of what he refers to as "pre-sovereignty"—that is to say, the state of divided sovereignty that he claims prevailed before the emergence of unitarian Westphalian sovereignty in the seventeenth century—and he refers to it as "mixed sovereignty."[44] It echoes, albeit at a postnational level and hence among national and post-national authorities, the republican theory of a mixed constitution that involves not only a separation of powers but also, and most importantly, a balance of powers among different political institutions and sections of the community.[45]

More precisely, according to Bellamy, the main achievement of his account of mixed sovereignty in the EU is to articulate "the reciprocal modification of national interests, both vis-à-vis each other and increasingly with regard to their sub-national communities and their collaboration in promoting collective interests."[46] Future attention, therefore, should not be focused on clarifying competences in the EU, but on

> improving the EU's mixed constitution in ways that further enhance the reciprocal interaction and dialogues between its multiple *demoi* and levels of governance. . . Through the resulting democratic negotiation between *peoples*, laws have to be publically justified in ways that give due recognition to difference. The multiplicity of sites of governance and decision-making also enables them to be implemented more efficiently and with greater sensitivity to local variations.[47]

### 3.3. Competitive sovereignty

According to Maduro, European law is the product of discourse and cooperation among the actors of a broad European legal community encompassing both this European legal community, narrowly conceived, and the national legal communities.[48] This is what he refers to as "contrapunctual law" by analogy to "the musical method of harmonizing different melodies that are not in a hierarchical relationship *inter se*."[49] Of course, claims to ultimate sovereignty are made by some national and European authorities. However, these claims do not cast a shadow on the close cooperation and prevention of conflicts among authorities that one may observe in practice and through which "the European legal order was gradually constructed from the bottom up rather than the top down."[50] Hence the need for a more challenging notion of sovereignty—that of *competitive sovereignty*.

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[44] Bellamy, *supra* note 6, at 186.

[45] *Id.* at 169–171.

[46] *Id.* at 188.

[47] *Id.* at 188–89.

[48] Maduro, *supra* note 4, at 511–520.

[49] *Id.* at 523. For further musical analogies, see Gerald J. Postema, *Melody and Law's Mindfulness of Time*, 17 RATIO JURIS 203 (2004).

[50] *See* Besson 2004, *supra* note 5, at 278. *See also* Miriam Aziz, *Sovereignty über alles: (Re)configuring the German Legal Order, in* SOVEREIGNTY IN TRANSITION 279 (Neil Walker ed., Hart Publishing 2003).

In fact, according to Maduro, it is in the interests of democracy, and also more generally of the normative legitimacy of the European legal order, that sovereign claims remain plural and the question of the *Kompetenz-Kompetenz* be kept open:

> On the one hand, European constitutionalism promotes inclusiveness in national constitutionalism both from an external and internal perspective. . . . On the other hand, national constitutionalism also serves as a guarantee against the possible concentrations and abuses of power from European constitutionalism and, at the same time, requires the latter to constantly improve its constitutional standards in light of the challenges and requirements imposed on it by national constitutions.[51]

## 4. The risks and advantages of cooperative sovereignty

### 4.1. Risks and the discipline of sovereignty

Even though there are numerous advantages to defending these various forms of pluralist sovereignty, the risks of the erosion of sovereignty should not be underestimated.[52] As Walker argues, however, once assessed, this risk need not be a matter of undue concern: "it is much more likely as a matter of political sociology, and relatedly it is then also inevitable as a matter of the epistemology of legal and political power, that reflexivity will lead not to the demise of the sovereign polity but instead to a new order of relations between and amongst polities and putative polities, a new and enlarged zone of boundary politics and a new set of approaches to negotiating these boundaries."[53] Of course, this sociological argument seems, at first, to be belied by the reality of constitutional conflicts between the highest judicial authorities of different polities.[54] The fact is, however, that these conflicts are merely "the tip of the relational iceberg," as Walker refers to them.[55] Relations among national and European authorities are not always conflictual, and many have provided scope for cooperation.[56]

This tendency toward sovereignty's continuous evolution may also be supported by the normative claim put forward by Maduro, who argues for mutual duties of adjustment on the part of national and European judicial authorities active in the European legal order.[57] According to him, "these authorities' decisions should not be seen as

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[51] Maduro, *supra* note 4, at 522–23.

[52] All three authors discuss these advantages, but only Walker and Maduro also address the risks of pluralist sovereignty.

[53] Walker, *supra* note 2, at 27–28.

[54] On these conflicts, see Besson 2004, *supra* note 5, at 277–278. *See also* Mattias Kumm, *Who is the final arbiter of constitutionality in Europe? Three conceptions of the relationship between the German Federal Constitutional Court and the European Court of Justice* 36 COMMON MKT. L. REV. 351 (1999); Kumm, *supra* note 23.

[55] Walker, *supra* note 2, at 29.

[56] *See* Walker, *supra* note 2, at 29–30 (discussing comitology). *See also* Besson 2004, *supra* note 5, at 275–276.

[57] Note that there is a certain amount of circularity in Maduro's account: it justifies duties of coherence on grounds of competitive sovereignty, but argues for competitive sovereignty on

separate interpretations and applications of European law, but as decisions to be inte-
grated in a system of law requiring compatibility and coherence."[58] Such obligations of
coherence derive from his conception of competitive sovereignty and correspond
to what he refers to as the "harmonic principles of contrapunctual law."[59] These
principles are necessary principles in a pluralist legal order. They are "the limits to
pluralism necessary to allow the largest extent of pluralism possible"[60] and, hence, the
limits to competitive sovereignty are necessary to ensure the competitiveness of sover-
eignty. As I have argued elsewhere, sovereignty can be understood as a normative
concept whose correct use is to constantly reflect and contest one's use of the concept
and hence one's exercise of sovereignty.[61] As such, its use is both dynamic and reflexive
and implies mutual learning and progress in the protection of the values encompassed
by sovereignty, such as the values of democracy and fundamental rights.[62] And
this applies even more acutely in the postnational constellation, where the traditional
functions of the polity can no longer be ensured by states alone.[63] The dynamic and
reflexive nature of cooperative sovereignty, therefore, corresponds to the existence of
independent duties of coherence that go further than mere requirements of dialogue
and mutual respect.[64]

   In fact, as Maduro argues, constitutional pluralism also implies that if either
national or European authorities do not fulfil their obligations toward the others, the
latter should be discharged from their reciprocal obligations.[65] And this demonstrates
how, as I have claimed elsewhere, coherence could become the virtue of Europeans'
integrated sovereignty, that is, the virtue of a community that wants to integrate itself
without, however, renouncing its diversity and hence its pluralism.[66] This idea is
perfectly captured by Bellamy's account of mixed sovereignty:

> unity is constructed via a dialogue amongst a plurality, with the one being
> continually challenged, renegotiated and reconstructed as the other evolves and
> becomes more diverse.[67]

grounds of those very duties. For further discussion, see Maduro, *supra* note 4, at 511–520. *See*
Besson 2004, *supra* note 5.

[58] Maduro, *supra* note 4, at 534 (emphasis added).

[59] *Id.* at 524–31.

[60] *Id.* at 524.

[61] *See* Besson 2003a, *supra* note 5; Besson 2003b, *supra* note 5; Besson, *supra* note 3.

[62] *See* Besson 2004, *supra* note 5, at 271. *See also* Richmond, *supra* note 36, at 415–17 (discussing
the importance of the sovereignty crisis for European integration).

[63] *See* Jürgen Habermas, *The European Nation State: On the Past and Future of Sovereignty and
Citizenship*, 9 RATIO JURIS 125 (1996).

[64] See Besson 2004, *supra* note 5, at 260–61 (discussing a non sovereignty-based justification of
an independent principle of coherence in Europe).

[65] Maduro, *supra* note 4, at 533–534.

[66] Besson 2004, *supra* note 5, at 269.

[67] Bellamy, *supra* note 6, at 189.

### 4.2. Advantages and legitimation *through* sovereignty

The constitutional conflicts and duties of cooperative sovereignty demonstrate that far from being a difficulty, the pluralism implied by the three proposed conceptions of sovereignty could constitute an advantage in practice. Such pluralism provides the normative framework for the development of a dynamic and reflexive form of constitutionalism in Europe.[68] Walker's otherwise rather descriptive account of sovereignty endorses this feature, as seen in his emphasis on the normative significance of sovereignty for the formation of a constitutional polity. Even if the framework of sovereignty does not exhaust the search for postnational political values and needs to be complemented by the promotion of constitutional values such as political discourse and citizenship in Europe, sovereignty anchors constitutional pluralism and is the inescapable precondition of postnational polity formation.[69]

Maduro goes further and argues that sovereignty provides more than a framework for constitutional polity formation. According to him, formalizing the European constitution is not a desirable political aim. This is because, he argues, the duties implied by competitive sovereignty ensure a flexible and nonhierarchical cooperation between European constitutionalism and national constitutions.[70] Despite some of its advantages, a formal European Constitution would disrupt this flexible and pluralist form of constitutionalism, replacing it with a rigid and unitary constitutional order. As I have argued elsewhere, in respecting the duties of coherence and cooperation, European constitutionalism as a process promotes the very ideals of tolerance that Joseph Weiler associates with the European material constitution.[71] This process should not therefore be allowed to die out once a formal European Constitution has been entrenched. It should, on the contrary, be reinforced through perpetuating deliberation and cooperation in the new constitutional forums that have been created by or emerged in the wake of the Convention on the Future of Europe.[72]

## 5. Conclusion

The fact that *Sovereignty in Transition* does not purport to close the debate, but rather seeks to throw as many different lights as possible on current transformations in the concept of sovereignty, is one of its outstanding characteristics. In revealing the significance of sovereignty, it constitutes a landmark in the fast-growing field of philosophy of European law.

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[68] *See also* Besson 2004, *supra* note 5, at 278–279; Besson 2003, *supra* note 5; Besson, *supra* note 3 (discussing other advantages of cooperative sovereignty).

[69] Walker, *supra* note 2, at 31–32.

[70] Maduro, *supra* note 4, at 535–536.

[71] *See* Besson 2004, *supra* note 5, at 279–280. *See* Joseph H. Weiler, *In Defence of the Status Quo: Europe's Constitutional Sonderweg*, in EUROPEAN CONSTITUTIONALISM BEYOND THE STATE 7 (Joseph H. Weiler, *et al.* eds., Cambridge University Press, 2003).

[72] *See* Jo Shaw, *Process, Responsibility and Inclusion in EU Constitutionalism*, 9 EUR. L. J. 45 (2003).