2

Vicarious Sovereignty

Becoming European the Estonian Way

Maria Mälksoo

As Estonia restores and surpasses the statehood enjoyed in the era 1918–1940, a new Estonian is being born: knowledgeable, proud and self-confident, European in outlook, and hungry for achievement in a pioneer kind of way typically associated more with America than the continent. The new Estonian will shape the Estonia of tomorrow; his attitudes will become the national attitude, his sensitivities will become the national sensitivities.

Foreign Minister Toomas Hendrik Ilves at the Institute of International Affairs, Stockholm, January 9, 1997.

2.1 INTRODUCTION

How to be 'independent', 'sovereign' and 'European' – all at once? The opening quote of this chapter by one of the defining foreign ministers and European ideologues in Estonia's post-Soviet journey of 'becoming European' illustrates well how any iteration of identity and belonging is always a performative speech act – that is, it aims to bring something about by the act of saying it.[1] The musings on the emergence of new Estonia and new Estonian are, hence, a politically self-conscious make-believe rather than an objective observation of an unmediated reality. The following inquiry into the Estonian European constitutional imaginaries proceeds from the very methodological premise. I understand the imaginaries in question as political performatives that have been articulated and enacted in a particular historical and political context with a specific political goal in mind. My argument is that the internal paradox of this goal can be captured by the concept of vicarious sovereignty: the Europeanization of a state as a means to practice sovereign agency.

Estonia's model of the European Union (EU) membership is notably permissive, considering the country's constitutionally unequivocal commitment to the

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[1] John L. Austin, *How to Do Things with Words*, 2nd ed. (Clarendon Press, 1975).

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conservative notion of sovereignty.[2] Having restored its sovereignty from the embers of the Soviet Union in 1991,[3] Estonia joined the EU in 2004 along with nine other, mostly Central-Eastern European countries. Striving to be recognized as a 'good European', Estonia's implementation of EU law has been generally without reservations, with primacy granted to EU law over the national constitution.[4]

An apparent paradox of Estonia's constitutionally conservative understanding of sovereignty and its practical sharing with the EU is illustrative of a general aperture between the principle and practice of sovereignty. Classically conceived as indivisible, with the ultimate authority vested in a single sovereign or institution within a political community,[5] sovereignty is 'eminently divisible' in practice, and the idea of indivisible sovereignty is thus indeed an idea in the mind rather than an empirical fact.[6] Further, sovereignty in and of itself has no purposive content: it refers, by default, to some higher order value. For the constructivist International Relations (IR) scholarship, the reference point of sovereignty is accordingly provided by socially recognized identity values.[7]

The mapping of Estonian European constitutional imaginaries is, hence, also an exercise in defining what makes a state a state; the nature and features of sovereignty in the early twenty-first century and, last but not least, the probing of the meaning of the Estonian 'social self' at the time a political window of opportunity opened for its self-(re)enactment as a sovereign state. This chapter explores how political agency has been imagined by a country that has pooled important aspects of its sovereign power with the EU.[8] This question is probed in the context of Estonia's participation

[2] Article 1 of the Constitution, adopted in 1992, states that 'Estonia is an independent and sovereign democratic republic wherein the supreme power of state is vested in the people. The independence and sovereignty of Estonia are timeless and inalienable.'

[3] Estonia's sovereign statehood, which had been illegally taken away by the Soviet Union in the course of WWII, was reinstated on the doctrine of legal continuity, instead of being established anew by seceding from the Soviet Union.

[4] Hent Kalmo and Anneli Albi, 'Estonia', in Stefan Griller, Lina Papadopoulou and Roman Puff (eds.), *National Constitutions and EU Integration* (Hart Bloomsbury, 2022).

[5] For critical engagements with the classical position, see Jens Bartelson, 'On the Indivisibility of Sovereignty' (2011) 2 *Republic of Letters: A Journal for the Study of Knowledge, Politics, and the Arts* 85; John Agnew, 'Sovereignty Regimes: Territoriality and State Authority in Contemporary World Politics' (2005) 95 *Annals of the Association of American Geographers* 437.

[6] David A. Lake, 'Delegating Divisible Sovereignty: Sweeping a Conceptual Minefield' (2007) 2 *The Review of International Organisations* 219, 220.

[7] Christian Reus-Smit, *The Moral Purpose of the State: Culture, Social Identity, and Institutional Rationality in International Relations* (Princeton University Press, 1999), 30.

[8] See Lake, 'Delegating Divisible Sovereignty', 220, 231–234, for a distinction between delegating sovereignty and pooling sovereignty. In the first case, states grant an international organization contingent authority to perform certain limited tasks; whereas pooling occurs when states transfer the authority to a collective decision-making body producing binding decisions for member states. Pooling sovereignty accordingly refers to 'compromising to some extent on their ideal policy to get a policy that actually "works" and solves the problem before them'. Ibid, 232. See, further, Saskia Sassen, *Losing Control? Sovereignty in an Age of Globalization* (Columbia University Press, 1995).

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in the discussions of the Convention on the Future of the European Union in the early 2000s – the process which could be legitimately described as the constitutional leg in Estonia's journey of 'becoming European'.[9]

I explore Estonia's sovereignty-sharing with the EU through the lens of the vicarious identification concept. Vicarious identification refers to the subject's attempts to establish and legitimize a vicarious identity – that is, a sense of self-identity, purpose and self-esteem through riding on (and appropriating) the achievements and experiences of others.[10] The dictionary references for 'vicarious' include 'substitute', 'second-hand', 'derivative', 'secondary' and 'surrogate' – in short, 'experienced in the imagination through the feelings or actions of another person'. The other meaning of the word 'vicarious' pertains to 'acting or done for another'. The adjective derives etymologically from the Latin *vicarius*, meaning 'substituted, delegated', and from *vicis*, denoting 'a change, exchange, interchange, succession, alternation, substitution'.[11] As in vicarious relationships, one thing is taken to stand in or substitute for another, there is a 'second hand'-quality about such liaisons. Vicarious identity is then 'one that can be delegated, substituted, or understood as interchangeable with the identity of another'.[12] Coveting such an identity can be considered as a form of ontological security seeking or the subject's desire for continuous self-being in the face of potentially destabilizing existential anxieties.[13] It is not uncommon among states to seek a sense of ontological stability, security and self-esteem 'through locating themselves as members of civilizational communities, seeking to vicariously appropriate elements of a civilizational tradition and its achievements as their own' for the promise of vicarious identity relationships to 'establish, preserve, or even enhance a state's club/positional status'.[14]

Building on the notion of vicarious identity, I conceptualize *vicarious sovereignty*, using Estonia's experience of 'becoming European' post-1991. I refer to the politics of becoming European both in the narrow institutionalist sense of Central and East European (CEE) states' journey from the accession negotiations in 1997 to the EU membership in 2004 and in the deeper identitarian meaning of seeking recognition to Central and East Europeans' 'Europeanness' from the authoritative carriers of contemporary European identity in the western part of the continent.

The argument is structured in three parts. In Section 2.2, the concept of vicarious sovereignty is outlined against the backdrop of the idea of sovereignty as a symbolic

[9] Maria Mälksoo, *The Politics of Becoming European: A Study of Polish and Baltic Post-Cold War Security Imaginaries* (Routledge, 2010).

[10] Christopher S. Browning, Pertti Joenniemi and Brent J. Steele, *Vicarious Identity in International Relations: Self, Security, and Status on the Global Stage* (Oxford University Press, 2021), 1, 17.

[11] *Online Etymology Dictionary*, www.etymonline.com/search?q=vicarious (last accessed 2 April 2025).

[12] Browning et al., *Vicarious Identity in International Relations*, 11.

[13] Ibid., 184.

[14] Ibid., 44–45.

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form, a highly ambiguous and contested social structure of international politics. Section 2.3 zooms in on the context of the Estonian European constitutional imaginaries to set the historical background for this chapter's empirical research question, namely: *how were the conditions for sovereignty and the boundaries of the European constitution imagined by the Estonian state-appointed visionaries and spokespeople during the Convention on the Future of Europe?* Such a focus is by default limited and, some might argue, rather outdated, since the Europe and Estonia envisioned twenty years ago are another country compared to today. My claim is not that zooming in on the bygone political discourse on the future of Europe and Estonia's way of blending in with it would point at some deeper continuities in the contemporary Estonian constitutional thought either domestically or at the European level. Nor do I suggest that the originally provided rationale for vicarious practicing of sovereignty through the EU membership remains intact *anno* 2025. The national conservatives of contemporary Estonia, along with considerable segments of the public, would not necessarily subscribe today to the idea that substituting national sovereignty unquestioningly with the European authority is in the interests of Estonia's security. Rather, I propose that the temporal window in the focus of this chapter marks an important (if ultimately not realized) constitutional moment in the European integration process, crystallizing Estonia's political discussions back in the day about its sovereign agency in the European polity (of which it was yet to become a formal part then). This moment thus allowed Estonia to tap into the political reconciliation attempts of becoming a state while – and arguably via – becoming an EU member state. Consequently, in Section 2.4, I offer a discursive breakdown of a set of notable visions of Europe, as articulated by the defining Estonian constitutional 'map-makers' at the time of the Convention (2001/2002–2003), to wit: Lennart Meri and Toomas Hendrik Ilves.[15] While hardly representative of the broader constitutional debate back at the time, such a sample is still evocative of the political discourse in Estonia's run-up to the EU accession. The limited handful of the highlighted political visions is, alas, also indicative of the slender original contributions by the Estonian political elite to 'thinking Europe' in the first place. The chapter concludes with brief reflections on the broader applicability of the vicarious sovereignty concept beyond the (historical) Estonian case.

2.2 THE 'NECESSARY FICTION' OF SOVEREIGNTY

Sovereignty is one of the 'necessary fictions' international relations (are) run by: it is the foundational concept for international law and IR theory, providing both

[15] Meri was the Estonian government's representative at the Convention, whereas Ilves was Estonia's Minister for Foreign Affairs at the time of the Convention's deliberations, providing one of the most noteworthy political interventions in the debate with his Humboldt lecture of 2001.

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disciplines with an original *raison d'être*. As 'the paradigmatic symbolic structure of the international system',[16] the 'highly ambiguous' concept of sovereignty has many allusions.[17] Besides being referred to as the constitutive norm of the modern institution of statehood or 'a foundational habit of the modern state system',[18] sovereignty has been denoted as a legal status, an institution, (a bundle of) rights, a bridge between inside/outside of the state and, hence, a constitutive link between the (international) society and states and the list goes on.[19] Jens Bartelson has made a compelling case for sovereignty to be understood as a symbolic form 'by means of which we have come to perceive the political world, but as such it does not stand in any determinate relationship to the world thus perceived'.[20] A symbolic form 'represents a perspective taken of an object rather than a representation of its essence'.[21] The objectivity of symbolic forms consequently stems from their virtue of organizing words and things into meaningful wholes (and rendering the latter accessible to knowledge).[22] Adopting a narrow sense of the concept of symbolic form, sovereignty can be understood as structuring the production of both meaning and experience. According to this line of thinking, drawing on Ernst Cassirer's earlier work on symbolic forms, 'sovereignty is real only by virtue of having been constructed'.[23] Hence, the meaningful question is not to contemplate over the realness or constructed-ness of sovereignty but to probe 'how this symbolic form has been used as a template for organizing political life, and by what means it has been allowed to structure the political world'.[24] Put differently, sovereignty is not either present or absent: rather, sovereignty 'unfolds in legal and political games as meaning production and praxis' in particular ways.[25]

The preceding threads imply, by default, a non-fixed meaning of the sovereignty concept through time. It is precisely the shifting meanings of sovereignty, Cynthia Weber argues, that ought to be studied for 'what counts and/or functions as sovereign is not the same in all times and places'.[26] Taking a cue from her

[16] Charlotte Epstein, Thomas Lindemann and Ole Jacob Sending, 'Frustrated Sovereigns: The Agency That Makes the World Go Around, Introduction to the Special Issue on Misrecognition in World Politics: Revisiting Hegel (2018) 44 *Review of International Studies* 787, 790.

[17] Hent Kalmo and Quentin Skinner, *Sovereignty in Fragments: The Past, Present and Future of a Contested Concept* (Cambridge University Press, 2010).

[18] Sebastian Schmidt, 'Foreign Military Presence and the Changing Practice of Sovereignty: A Pragmatist Explanation of Norm Change' (2014) 108 *The American Political Science Review* 817, 822.

[19] Tanja E. Aalberts, *Constructing Sovereignty between Politics and Law* (Routledge, 2012), 40.

[20] Bartelson, 'On the Indivisibility of Sovereignty', 86.

[21] Jens Bartelson, *Sovereignty as Symbolic Form* (Routledge, 2014), 14–15.

[22] Ibid., 15.

[23] Ibid., 17.

[24] Ibid.

[25] Rebecca Adler-Nissen and Ulrik Pram Gad, 'Introduction: Postimperial Sovereignty Games in the Nordic Region' (2014) 49 *Cooperation and Conflict* 3,17.

[26] Cynthia Weber, *Simulating Sovereignty: Intervention, the State and Symbolic Exchange* (Cambridge University Press, 1995), 2.

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exploration of how the meaning of sovereignty has become stabilized historically, the study of Estonian imaginaries of Europe and the constitution thereof is concurrently an inquiry into how the Estonian state has been written with particular capacities and legitimacies within the bounds of the EU as a postmodern or late sovereign in and of itself.[27] Notably, Estonia had just about restored its state sovereignty when it felt compelled to share it with the EU – a post-Westphalian polity in the latter's self-mythology, increasingly focussed on individual sovereignty via the emphasis on fundamental rights already at the time of the enlargement.[28] As an instance of exercising authority functionally, not territorially, the EU has emerged as 'a late-sovereign complex of overlapping claims to sovereignty',[29] decentring the familiar sovereign state imaginary with its distinctive mix of integrated and differentiated authority.[30]

As Bartelson notes, the concept of sovereignty concurrently functions as a source of self-identity and a principle of self-recognition.[31] The recognition granted by international society can be legal-political, pertaining to equal rights and obligations therein, or moral, going 'beyond the mere recognition of rights, and into the thick recognition of social and cultural identities'.[32] Ayse Zarakol has proposed to call the two different IR understandings of the concept of recognition 'legal' and 'existential' recognition, respectively.[33] Whereas the first, legal (or thinly understood) recognition concerns seeking statehood, thick (or existential) understanding of recognition does not see the innate recognition aspiration solved by legal recognition only. Rather, legal recognition can provide a prerequisite for agency, whereas the desire to be recognized as a certain sort of being still persists. Pinning down sovereignty gets further complicated with the modern concept of 'independence' added in the mix. The latter is closely linked to popular or national sovereignty, at the core of which is 'the idea of the self-determining community that constitutes the rules by which a people will be governed'.[34]

Estonian political scientists Eiki Berg and Ene Kuusk have distinguished (and even sought to empirically measure) internal and external aspects of sovereignty on

[27] Cf. Ibid., 29; Rebecca Adler-Nissen, 'Sovereignty', in Rebecca Adler-Nissen (ed.), *Bourdieu in International Relations: Rethinking Key Concepts in IR* (Routledge, 2013), 179.

[28] Today, Poland and Hungary have emerged as vocal critics of such an understanding about the EU, seeing it rather as a projection of the German–French power than a practical utopia of individual empowerment.

[29] Adler-Nissen and Pram Gad, 'Introduction', 20.

[30] Jennifer Mitzen, 'Feeling at Home in Europe: Migration, Ontological Security, and the Political Psychology of EU Bordering' (2018) 39 *Political Psychology* 1373.

[31] Jens Bartelson, 'Three Concepts of Recognition' (2013) 5 *International Theory* 107, 111.

[32] Ibid., 117–118.

[33] Ayse Zarakol, 'Sovereign Equality as Misrecognition' (2018) 44 *Review of International Studies* 848, 850. See also Lisa Strömbom, 'Thick Recognition: Advancing Theory on Identity Change in Intractable Conflicts' (2014) 20 *European Journal of International Relations* 168.

[34] Karin Fierke, 'Introduction: Independence, Global Entanglement and the Co-production of Sovereignty' (2017) 6 *Global Constitutionalism* 167, 171.

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the reasoning that 'entities' internal legitimacy and external recognition issues matter most in the praxis to relatively locate them within international society'.[35] Consequently, internal sovereignty is understood in terms of symbolic attributes (such as flag, national holidays), governance (constitution, autonomous government, head of state), monetary system, territorial integrity and permanent population. External sovereignty, in turn, pertains to 'the extent of actorness, the existence of security structures, diplomatic relations with other countries and membership in international organisations'.[36] According to this view, most attributes of statehood and sovereignty are related to symbols, constitutional arrangements and world standing. Estonia's early permissiveness[37] in granting the EU supremacy above its own constitution might appear striking for the temporal proximity of the restoration of the country's long-coveted sovereign agency as a legal subject and the politically articulated vision of the substantiation and execution of that agency emphatically through the membership in the EU. Such politics was underpinned by the general perception of Russia as an existential threat, against which membership in the EU was supposed to provide a political remedy. Having entrusted some of its sovereignty features to the EU's competence, the absolute sovereignty of Estonia (and any other member state, for that matter) is naturally reduced to a degree; yet the benefits from international cooperation were considered to be higher, for instance through enhanced security provisions, than the losses accompanying the waiver of some sovereignty attributes.[38] Whether or not such sovereignty attributes are those 'mainly with symbolic meaning', as Berg and Kuusk maintain,[39] is yet an open question, however.

2.2.1 *Vicarious Sovereignty*

From a classical position on sovereignty, 'vicarious sovereignty' appears as a contradiction in terms. Recalling an ideal–typical vision of sovereignty, the state either is sovereign or it is not.[40] However, whereas theories of sovereignty presuppose that

[35] Eiki Berg and Ene Kuusk, 'What Makes Sovereignty a Relative Concept? Empirical Approaches to International Society' (2010) 29 *Political Geography* 40, 42.

[36] Ibid.

[37] The 2003 constitutional amendments on the basis of which Estonia's entrance to the EU was made legally possible still allow for a pro-sovereignty interpretation as well. Nor should the notable pro-Europeanness of the 2008 Estonian Supreme Court be taken as the last word in this process, as the modification of the Court's initially strongly pro-European interpretation by the successive composition attests to.

[38] For a characteristic example, see Märt Rask, 'Suveräänsuse areng Euroopa Nõukogu ja Euroopa Liidu õigusaktide mõjusfääris tuginedes Euroopa Inimõiguste Kohtu ja Euroopa Kohtu pretsedendiõigusele', 28 August 2011, www.riigikohus.ee/sites/default/files/elfinder/dokumendid/m.raski_ettekanne_vene_kk_2011_0.pdf (last accessed 2 April 2025).

[39] Berg and Kuusk, 'What Makes Sovereignty a Relative Concept?', 49.

[40] See Hans J. Morgenthau, 'The Problem of Sovereignty Reconsidered' (1948) 48 *Columbia Law Review* 341, 365. Notably, international law has historically allowed for various kinds of states: for instance, the practice until 1918 also knew vassal states and protectorates. There were only a

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political authority ought to be indivisible, the findings of political science are customarily testing to its actual divisibility.[41] Constructivist International Relations theory, in particular, contests the indivisibility of sovereignty, noting the variability of what having sovereignty means in international society at different times and places.[42] Not unlike Facebook's transfiguration to Meta, the concept of vicarious sovereignty remains tied to 'the symbolic form of sovereignty'[43] while stretching the dogged idea of sovereignty as indivisible to the point of voiding it from its original (if mythical) substance.

Vicarious sovereignty is sovereignty achieved through sovereignty shared – a curious kind of sovereignty that emerges by the act of pooling national authority with other polities and thereby supposedly elevating state's agency in international politics. It is a type of sovereignty that materializes through membership in another polity and a state's willing self-subjugation to the latter's supremacy for the sake of the supposed generation of a sense of ontological security thereby. Vicarious sovereignty can be visually depicted through an image of a Russian doll embedded in a bigger version of its spit image. Vicarious identity entails integrating others' stories as part of one's own autobiography, presenting events not experienced by the self directly precisely *as if* they were. Vicarious sovereignty, in its turn, emerges as a condition of pooled sovereignty where the elevation of sovereign being/status is supposedly achieved by sharing parts of it with a broader community that the actor identifies with and gains its sense of ontological security, order and purpose from.[44]

Vicarious sovereignty has obvious resonance with the earlier notion of 'associated sovereignty', coined to capture the system of governance characterized by the softening of sovereign power via pooling competencies in overlapping domains of power and interest at the European level.[45] Alike associated sovereignty, vicarious sovereignty captures the paradoxical quest to regain national sovereignty through international integration, accompanied by the process of a Europeanization of state identity. Distinct from associated sovereignty, vicarious sovereignty emphasizes the affectively charged ontological security seeking dynamics such pooling of sovereignty in the European polity is imbued with. The assumedly heightened 'bang for the buck' of one's international agency as a result of shared sovereign power is accordingly accompanied by a specific emotive logic of elevated sense of self and status as an important goal in the process. Vicarious sovereignty highlights the affective mobilization of identity concerns in the process of diffusing sovereign

handful of 'sovereign' states in 1913, a number of them, in fact, empires. See, further, Gerry Simpson, *Great Powers and Outlaw States: Unequal Sovereigns in the International Legal Order* (Cambridge University Press, 2004).

[41] Bartelson, 'On the Indivisibility of Sovereignty', 93.

[42] Aalberts, *Constructing Sovereignty*, 125.

[43] Bartelson, 'On the Indivisibility of Sovereignty'.

[44] Browning et al., *Vicarious Identity in International Relations*, 2.

[45] Peter J. Katzenstein, 'United Germany in an Integrating Europe' in Peter J. Katzenstein (ed.), *Tamed Power: Germany in Europe* (Cornell University Press, 1997), 33.

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power in the European system of associated sovereignty. While associated sovereignty has been prominently unfolded against the backdrop of the institutionalized taming of Germany's power in Europe,[46] vicarious sovereignty captures the power dynamics of attempted strengthening and projecting of European identity and belonging by the latecomers to the European polity from its oft-disregarded smaller fringes.[47]

The concept of vicarious sovereignty is further distinct from other restrained types of sovereignty, such as semisovereignty[48] and 'nested' conception of sovereignty.[49] The concept of 'semisovereignty' – albeit 'epitomi[zing] a condition familiar to most small states in world politics'[50] – is internally grounded, with its coiner's original emphasis on largely self-imposed domestic constraints that limited the sovereignty of the West German state.[51] Whereas semisovereignty in its original conception similarly refers to a condition of 'tamed sovereignty' for '[a] semisovereign state is not free to act as it pleases',[52] the notion of vicarious sovereignty is explicitly relational vis-à-vis a polity or polities beyond the state. A wider view of semisovereignty equates it with pooled or shared sovereignty, framed by interdependence and reflexive multilateralism, turning all states effectively semisovereign and sovereignty thus into a bargaining resource.[53]

If sovereignty traditionally refers to a materialization of an idea of the state, ontological security[54] pertains to the securing of the idea of the state – that is, in

[46] Peter J. Katzenstein (ed.), *Tamed Power: Germany in Europe* (Cornell University Press, 1997). See also Chapter 7, focusing on a variety of Central European cases between international ization and institutionalization.

[47] Cf. Peter J. Katzenstein (ed.), *Mitteleuropa: Between Europe and Germany* (Berghahn Books, 1997).

[48] In Katzenstein's original account, the concept of 'semisovereignty' refers to the organization of power in domestic politics, combining co-operative federalism, powerful societal groups and non-partisan parapublic institutions, rather than the loss of sovereignty due to European integration or external prerogatives. Peter J. Katzenstein, *Policy and Politics in West Germany: The Growth of a Semisovereign State* (Temple University Press, 1987).

[49] Simpson's 'nested sovereignty' refers to a situation in settler colonialism where one sovereign political body exists nested within another sovereign political body on the example of indigenous peoples and their political orders in North America. Audra Simpson, *Mohawk Interruptus: Political Life across the Borders of Settler States* (Duke University Press, 2014).

[50] Peter J. Katzenstein, 'Conclusion: Semisovereignty in United Germany', in Simon Green and William E. Paterson (eds.), *Governance in Contemporary Germany: The Semisovereign State Revisited* (Cambridge University Press, 2012), 286.

[51] William E. Paterson 'European Policy-Making: Between Associated Sovereignty and Semisovereignty', in Simon Green and William E. Paterson (eds.), *Governance in Contemporary Germany: The Semisovereign State Revisited* (Cambridge University Press, 2012), 261.

[52] Katzenstein, 'Conclusion', 283.

[53] Paterson, 'European Policy-Making', 278.

[54] The literature on ontological security in International Relations is voluminous and growing fast. For key inspirations, see Ronald D. Laing, *The Divided Self: An Existential Study in Sanity and Madness* (Penguin Books, 1990 [1960]) and Anthony Giddens, *Modernity and Self-identity: Self and Society in the Late Modern Age* (Stanford University Press, 1991). For path-breaking

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case a state is in our focus in the first place, as the concept of ontological security originates from individual and social psychology.[55] The premise of ontological security is that our self-understandings are formulated against the backdrop of our awareness of the profound uncertainties and arbitrariness of human life and our own mortality. Ontological security-seeking is accordingly about strategies of managing that anxiety (for example, via autobiographical narratives and routines vis-à-vis 'significant others') so that we could go on with our everyday life.[56] The ontological security promise and allure of vicarious identification with 'Europe' and its modern-day institutionalized materialization in the EU thus probed the *finalité* of the Estonian state as discussed in the run-up to the EU membership. Estonia's 'sovereignty games' in the EU illustrate the relativity of the concept of sovereignty in the context where the execution of sovereignty is considered to be dependent on its sharing in crucial parts with the vicarious identification object (that is, the EU).[57]

2.3 THE CONSTITUTIONAL PROCESS OF BECOMING EUROPEAN

Estonia was the first of the former USSR republics to start the accession negotiations with the EU in 1998, becoming a member of the Union on 1 May 2004. To enable the accession, the Accession to the EU and the Supplementary Act to the Constitution was passed, following the referendum of 14 September 2003. However, while carefully navigating the formal amendment, supplementation by an independent constitutional act *de facto* still changed, not just supplemented the

accounts in IR, see Jennifer Mitzen, 'Ontological Security in World Politics: State Identity and the Security Dilemma' (2006) 12 *European Journal of International Relations* 341 and Brent J. Steele, *Ontological Security in International Relations: Self-identity and the IR State* (Routledge, 2008). For a good round-up of the literature, see Karl Gustafsson and Nina C. Krickel-Choi, 'Returning to the Roots of Ontological Security: Insights from the Existentialist Anxiety Literature' (2020) 26 *European Journal of International Relations* 875.

[55] As with the notion of ontological security, the conceptual 'scaling up' of vicarious identification from individual actor level to state level raises methodological challenges and has been questioned for the potential to result in anthropomorphization of states. Browning, Joenniemi and Steele demonstrate the relevance of vicarious identification at the collective level on multiple grounds, showing how vicarious identification is practiced by states in their respective searches to secure a sense of self-identity and status on the global stage; how an international politics of vicarious identification can occur between individuals at a societal level and how individuals 'live through' and vicariously identify with their nation-states. They further propose a useful distinction between *vicarious identification* and *vicarious identity promotion* for ascertaining suitable methods of analysis. – See Browning et al., *Vicarious Identity in International Relations*, chapter 2.

[56] Jennifer Mitzen, 'Anxious Community: EU as (in)Security Community' (2018) 27 *European Security* 393, 396.

[57] Or a spin on the claim of integration with Europe making Estonia a state in the first place. See Merje Kuus, 'Sovereignty for Security?: The Discourse of Sovereignty in Estonia' (2002) 21 *Political Geography* 393, 398.

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constitution of the republic.[58] The Act's provision that the Constitution 'is applied without prejudice to the rights and obligations arising from the Accession Treaty' has been interpreted in the judgments of the Supreme Court in a way that grants EU law primacy.[59] Due to the intense securitization of the country's belonging to Europe via the coveted EU membership,[60] the issue of shared sovereignty created domestic tensions but remained largely depoliticized top-down in Estonia during the accession period.[61]

In order to explore how and why this became possible, ideas and their authors in Estonian European constitutional thought need to be taken seriously, no matter how sparse the respective record.[62] To map the constitutive ideas about the EU's constitution and for the Union's constitutionalism and, more generally, for the European integration, sovereignty and statehood, as articulated from Estonia, I will turn to the two outstanding political figures among the constitutional 'map-makers' at the time of the Convention on the Future of Europe (February 2002–June 2003): namely, Lennart Meri (as the representative of the government to the Convention) and Toomas Hendrik Ilves (as Estonia's foreign minister in 1999–2002 and a prominent voice in the debates on Europe).[63] This is, by default, a delimited sample, as it represents only a small political fraction of what could be described as the Estonian European constitutional thought, leaving aside the oft-heated juridical debates over the European constitution and its hierarchical relationship to the Estonian constitution among the community of Estonian constitutional lawyers (e.g., Anneli Albi, Madis Ernits, Carri Ginter, Hent Kalmo and Julia Laffranque).[64]

[58] Anneli Albi, *EU Enlargement and the Constitutions of Central and Eastern Europe* (Cambridge University Press, 2009), 19, 111; Lauri Mälksoo, 'Eesti suveräänsus 1988–2008', in Hent Kalmo and Marju Luts-Sootak (eds.), *Iganenud või igavene? Tekste kaasaegsest suveräänsusest* (Tartu University Press, 2010), 141.

[59] Kalmo and Albi, 'Estonia'.

[60] For example, not mincing the existentialist words, President Meri argued in his end-of-the-year interview of 1997 that EU membership was necessary for the continuation of the Estonian state. Lennart Meri, 'Euroopa Uniooni on vaja riigi püsimiseks', *Eesti presidendi aastalõpuintervjuu*, *Luup*, 22 December 1997.

[61] See Merje Kuus, 'European Integration in Identity Narratives in Estonia: A Quest for Security' (2002) 39 *Journal of Peace Research* 91; Merje Kuus, 'Toward Cooperative Security? International Integration and the Construction of Security in Estonia' (2002) 31 *Millennium: Journal of International Studies* 297; Kuus, 'Sovereignty for Security?'.

[62] Cf. Jan Komárek, 'Constitutional Imaginaries: Utopias, Ideologies and the Other', *iCourts Working Paper Series* (no 172), IMAGINE Paper (no 1), October 2019, 19.

[63] Ilves was the main promoter and powerhouse behind the idea of Estonia's EU membership in the 1990s, when the membership prospects in NATO looked dim for the Baltic states. He was further savvy to note early on that the question of the EU institutional reform was one of the issues that defied regional compartmentalization and called for all-Union solutions. See Toomas Hendrik Ilves, 'Estonia, the European Union and the New North' (1999) 4 *European Foreign Affairs Review* 291, 294.

[64] For a state–academia collaboration in mapping the distinct political visions and the preferable Estonian scenarios for the EU's future in the context of the Convention's debates, see Külliki

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The Convention on the Future of the European Union (aka the European Convention) was a body established by the European Council in 2001, tasked with the purpose to re-order the existing treaty base to sustain the Union's functionality in light of the pending enlargement. The main issues discussed at the Convention concerned the ways of making the Union more democratic and transparent; modes of streamlining the decision-making processes; the division of competencies between the EU institutions, member states and pertinent regional organizations; the inclusion of national parliaments at the EU level, and the ways of making the EU's Common Foreign and Security Policy (CFSP) more effective. The membership of the Convention consisted of the representatives of the European Commission, European Parliament, the delegates of the member and candidate states' governments and national parliaments, each of whom had the right to send one governmental and two parliamentarian representatives to the Convention. In all, 28 states and 217 representatives participated in the work of the Convention, led by the former French president Valéry Giscard d'Estaing. The government of Estonia was represented at the Convention by the former president Lennart Meri, with Henrik Hololei serving as a deputy. The Estonian parliament's representatives were Tunne Kelam and Rein Lang for the latter parliament formation and Tunne Kelam and Peeter Kreitzberg for the former.

For Estonia, as then still a candidate country of the EU, participation in the discussions over the future shape and face of the Union on par with the established member states[65] was a valued opportunity. The Convention enabled Estonia to speak along in imagining the future of the European institutions and member states' division of labour in governance *in spe*. It was an opportunity to practice hands-on 'the politics of becoming European'[66] or 'that paradoxical politics by which new cultural identities are formed out of old energies, injuries, and differences'.[67] For Lennart Meri, the Convention must have felt like a symbolic homecoming – if one thinks of his old adages, according to which '[w]hen creating a new Europe we have to at the same time create a new European';[68] or that '[o]ne is not born European. One becomes European. And no one has a monopoly on Europe'.[69] The Convention on the Future of the European Union provided an opportunity to

Tafel and Erik Terk (eds.), *Euroopa Liidu tulevik ja Eesti: Kolm institutsionaalset tulevikuvisiooni* (Riigikantselei Euroopa Liidu sekretariaat ja Eesti Tuleviku-uuringute Instituut, 2003).

65 Except for the candidate states' inability to block the consensus of the member states.

66 Mälksoo, *Politics of Becoming European*.

67 William E. Connolly, 'Suffering, Justice, and the Politics of Becoming', in David Campbell and Michael J. Shapiro (eds.) *Moral Spaces: Rethinking Ethics and World Politics* (University of Minnesota Press, 1999), 136.

68 Lennart Meri, Address by the Estonian Minister of Foreign Affairs at the Opening Stage of the Helsinki Follow-up Meeting of the Conference on Security and Co-operation in Europe, 25 March 1992.

69 Lennart Meri, Remarks by the Estonian Minister of Foreign Affairs in Strasbourg, at the Council of Europe, 26 November 1991.

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practically enact Meri's belief that 'Europe is not a continent, but a ... philosophical, ethical, cultural, political and economic programme, of which Estonia ... used to be an indivisible part and will be so again in the future'.[70] For the EU, the Convention was an instance of 'taking a deep breath' and discussing 'for the first time in history ... how to maintain itself so that everything changes, and changes for the better'.[71]

The Convention's discussions around the division of competencies between the EU institutions and the member states polarized between the larger and smaller member states, with Estonia joining the initiative of sixteen small states against the creation of the European president's position and for sustaining the balance between the EU institutions and member states as provided by the EU foundational treaties. For Estonia's positions in the Convention, the bottom line was an emphasis on the effective and transparent functioning of the Union, along with the principle of equality between the EU's member states, including the rotation of the EU commissioners and the presidency of the Council of the EU.[72] Estonian representatives in the Convention were broadly in favour of the subsidiarity principle;[73] yet argued for the leanness and uncomplicatedness of the decision-making processes of the Union, for instance opposing the enlargement of the competencies of national parliaments, regions or regional committees to turn to the European Court in fear of potentially allowing for the transfer of domestic political issues to the EU level.[74] Estonia also emphatically opposed the qualified majority voting in the realm of taxation policy, along with the EU competencies expansion in this sphere.[75] As Tunne Kelam stressed, the competencies given to the EU institutions were

[70] Lennart Meri, Solutions to the Baltic Crisis, Estonian Minister of Foreign Affairs at the 'Baltic Solutions' Conference in Tallinn, 2 March 1991.

[71] Lennart Meri, 'Lennart Meri: Euroopa kaitsevõime on ajaloo madalaim', Interview to Tuuli Koch, *Eesti Päevaleht*, 22 February 2002, https://epl.delfi.ee/artikkel/50914857/lennart-meri-euroopa-kaitsevoime-on-ajaloo-madalaim (last accessed 3 April 2025).

[72] Keit Kasemets and Elo Tuppits, 'Euroopa Liidu laienemine ja Eesti integratsioon ELi', 12 June 2003, www.digar.ee/arhiiv/et/download/22604 (last accessed 3 April 2025). It is notable that almost two decades post-accession, Central and Eastern Europeans are still severely underrepresented in EU institutions. See *Geographical Representation in EU Leadership Observatory 2021*. A survey by European Democracy Consulting, https://eudemocracy.eu/wp-content/uploads/2021/02/Geographical-Representation-in-EU-Leadership-Observatory-2021.pdf (last accessed 3 April 2025).

[73] The principle of subsidiarity is laid down in the Treaty on European Union (Art 5(3)), seeking to safeguard the ability of the Member States to take decisions and action in areas in which the EU does not have exclusive competence, as well as authorize intervention by the Union when the objectives of an action cannot be sufficiently achieved by the Member States. The principle essentially stands for powers being exercised as close to the citizen as possible (Art 10(3) of the Treaty on European Union).

[74] Viljar Veebel, 'Eesti Euroopa tulevikudebatis', in Andres Kasekamp (ed.), *The Estonian Foreign Policy Yearbook 2003* (The Estonian Foreign Policy Institute, 2003), 142.

[75] Ibid., 147; see further, Viljar Veebel, 'Euroopa Liidu põhiseaduslik leping: Eesti ja Euroopa valikud', https://diplomaatia.ee/euroopa-liidu-pohiseaduslik-leping-eesti-ja-euroopa-valikud/ (last accessed 3 April 2025).

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effectively to be understood as delegated or 'on loan' by the member states,[76] arguing against the European super-state and for Estonia's continuation as a 'dignified nation state' in a union of nation-states.[77]

In the meantime, Toomas Hendrik Ilves, in his capacity of the Estonian Minister for Foreign Affairs, maintained his belief that full participation in the Union's Common Foreign and Security Policy (CFSP) would make Estonia's 'national foreign policy stronger', as '[w]ith the weight of the EU behind us, we will be able to do more to pursue issues of vital importance to Estonia'.[78] As he averred,

> I believe that due to our size, history and geographic location, we are much more concerned with our external identity than most countries. And so we should be. As a small country, we must constantly develop our international image. So far, we have been fairly successful in developing a positive external image for ourselves. We are widely recognised as a rapidly developing small country and as a result, we are taken seriously on the international arena. In the coming years, our most pressing goal will be to consolidate this positive image. In my opinion, the most obvious and simple way to do this is to join the EU.[79]

In this quintessential case for vicarious sovereignty, Estonia is deemed to be bound to practice its sovereignty by moving it up to the playing field of the EU – arguably in order 'to be' in the first place.[80] An implicit tension between a 'nation-states-Europe' and a more congealed post-sovereign structure visible from the indicated positions of Kelam and Ilves was characteristic to Estonia's practical sovereignty-dilemmas at the cusp of the EU membership more generally.

In Section 2.4, I will delve in further detail into two exemplary speeches which present distinct political visions for the future of Europe: Lennart Meri's speech at the University of Turku on the role of small nations in the European Union (25 May 2000) and Toomas Hendrik Ilves's lecture on constructing a new Europe at the Humboldt University in Berlin (5 February 2001). Such a choice is motivated by three reasons: first, the two highlighted interventions are among the most

[76] Tunne Kelam,'Euroopa Tuleviku Konvent Euroopa ja Eesti tuleviku kujundamisel' (2001) 5 *Riigikogu Toimetised* 138.

[77] Cited in Ülo Toomsalu, 'Kreitzberg ja Kelam jõuavad viimasel hetkel konventi', *Äripäev*, 27 February 2002, www.aripaev.ee/uudised/2002/02/27/kreitzberg-ja-kelam-jouavad-viimasel-hetkel-konventi (last accessed 3 April 2025).

[78] Toomas Hendrik Ilves, 'EU Enlargement and Estonia's Identity on the International Stage', Remarks by the Minister of Foreign Affairs of Estonia, at the International Conference 'Estonia and the European Union' at the National Library, Tallinn, 5 November 1999. Yet, it should be noted that, in later practice, Estonia has been rather reluctant towards surrendering its competencies in security and defence – the traditional purview of state sovereignty – to the EU, preferring to pool its sovereignty in this sphere with NATO instead.

[79] Ibid.

[80] Cf. Erik Ringmar, 'The Relevance of International Law: A Hegelian Interpretation of a Peculiar 17th-Century Preoccupation' (1995) 21 *Review of International Studies* 87, 95. A critical take of this position would suggest that Estonia never managed to grow into a proper state before the elites hurried to share its newly regained sovereignty with the EU.

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systematic and visionary political engagements with the European constitutional future debates in Estonia. Secondly, both engage directly with an earlier speech which marked the launch of the political debate over the future constitution of Europe – namely, the German Foreign Minister Joschka Fischer's 'From Confederation to Federation – Thoughts on the Finality of European Integration' at the Humboldt University in Berlin (12 May 2000).[81] Last but not least, both Meri's and Ilves' interventions were delivered at universities, enabling them to appeal on academic freedom as a cloak for speaking more openly in personal, rather than official, capacity.[82] While these speeches come from a different era compared to today, they illuminate a critical juncture in Estonia's political journey of 'becoming European'.

2.4 EUROPEAN FUTURE THROUGH THE ESTONIAN LOOKING-GLASS

Lennart Meri's speech 'The Role of Small Nations in the European Community', held at the University of Turku on 25 May 2000, makes a strong case for the democracy of Europe and the development potential of the European Community depending on the sustained diversity on the continent. Accordingly, keeping an optimal balance between large and small states appears as the key task for the demiurges of the European future as:

> The survival and development of small nations is the key issue of the future of Europe. Europe needs small nations as much as we need Europe. Because the strength of the European Union does not lie in its size – the strength of Europe comes from its diversity.

In this lecture, Meri focuses on the intensity of cultural and political transfers in the historical European space in order to shed light on this 'little peninsula of the Eurasian continent' having 'managed to become the development engine of the

[81] Fischer's federalist vision of the EU was followed by the takes of the French Prime Minister Lionel Jospin, the German *Bundeskanzler* Gerhard Schröder, the Finnish President Tarja Halonen, the President of the European Parliament Nicole Fontaine, the President of the European Commission Romano Prodi and, *inter alia*, the Foreign Minister of Estonia, Toomas Hendrik Ilves.

[82] 'Politicians also taste academic enjoyment on these rare occasions when they manage to express their experimental thoughts in front of an academic auditorium.' Lennart Meri, 'The Role of Small Nations in the European Community', The President of the Republic of Estonia at the University of Turku, 25 May 2000. Ilves, in his turn, expressed his pleasure 'to be able to speak today at Humboldt University, where a tradition of sorts has been established to offer foreign ministers the chance to speak of their personal visions, unencumbered by the straightjacket of *ex officio* restrictions or silenced by the implications of their personal views for their government's official position. If Chatham House has given us the "Chatham House Rules", then perhaps we can begin to speak of the "Humboldt University Freedom".' Toomas Hendrik Ilves, 'Constructing a New Europe', *Lecture by the Estonian Minister of Foreign Affairs at Humboldt University*, Berlin, 5 February 2001.

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entire world'. Through his trademark cornucopia of metaphoric and allegoric language, Meri's Turku lecture is a powerful hymn to Europe's cultural multitude and diversity, for the potency of Europe is deemed to lie precisely in being 'different next to each other'.[83] The performative power of the Turku speech act reaches a climax in Meri's strong (if implicitly made) riposte to the then mulling ideas about a 'multi-speed' Europe led by a 'core engine' of France and Germany as an answer to the efficiency problem of the institutionalized Europe:

> Europe does not worship quantity, but quality. 'Big is beautiful' is alien to Europe, maybe because Europe itself is small and its greatness is first and foremost spiritual. The sum of the cultural nations and states of our tiny continent creates the miracle that we call Europe. This extraordinary multitude of cultures has without a doubt been the result of the geographical multitude of Europe, a present from nature, like any natural resources. And like in the case of natural resources, it took us until recently to learn how to appreciate them and treat them sparingly. Or, if you wish, to pretend being sparing.[84]

Accordingly, Meri maintains that Joschka Fischer's eurofederalism should remain an 'academic excurse' rather than 'find application in the real world'[85] for, ultimately, 'the ethical imperative of the European Union is in the fact that the common denominator on its diverse cultural palette consists of common values of democracy, *one common goal, but every state will find its own way to achieve these goals and principles*' (emphasis added). Hence, small states should not be 'run over' in the debates over the future constitution and set-up of Europe, nor should the internal reforms of the EU take place on account of the expansion of the Union. Meri's ode to state sovereignty[86] is tempered with a reminder of a special political mission of the small states, to make the voice of this 'silent majority … heard loud and clear in the world and especially in Europe'. This mission has gained renewed significance with the expansion of the EU, for at the end of the day:

> The big ones need the small ones in order to maintain the balance in Europe that drives it further, because there are always certain conflicts between the big ones and the presence of the small ones is needed to overcome them. Small states are the lubricating oil of Europe and the mortar of Europe.[87]

[83] Such a proposition has an ironic ring to it today, considering the Commission's infringement procedure against Poland for violations of EU law by its Constitutional Tribunal.

[84] Lennart Meri, 'The Role of Small Nations in the European Community', The President of the Republic of Estonia at the University of Turku, 25 May 2000.

[85] Note that Germany's 2021 coalition agreement asserts support to the idea of a constitutional convention and further development of the Union towards a federal European state. For a summary in English, see 'Germany's Coalition Agreement for a new federal Government', www2.deloitte.com/dl/en/pages/legal/articles/koalitionsvertrag-deutschland.html (last accessed 3 April 2025).

[86] 'Every nation has the possibility, the necessity and the obligation of self-determination. Independent statehood is the supreme self-realisation of every nation. This can be done only once. When established once, it is principally inalienable. The Finns and the Estonians have taken this step during the last century.' Ibid.

[87] Ibid.

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The Turku lecture is, therefore, an important prompt in the debate over the future political design of the EU, in characteristic defiance of what Meri had previously described as the feudal eurocentrism of European enlargement debates.[88] Just as the issue of NATO and the EU enlargement *per se*, Meri's intervention on the role of small states in the EU was to serve as a reminder that 'Estonia is not a geographical object, but a constitutional subject'; nor is Europe (or *should be*) the court of Louis XIV where only the specially selected are invited.[89]

A much more federalism–sympathetic vision for Europe's political future was put forth by the then foreign minister of Estonia, Toomas Hendrik Ilves, in his lecture 'Constructing a new Europe' at the Humboldt University in Berlin, on 5 February 2001. This intervention has remained perhaps the best elaborated Estonian political contribution to the discussion on the European constitutionalism – if emphatically delivered in personal, rather than state representative's capacity.[90] It is also the one most directly engaging in dialogue with Joschka Fischer's inaugural intervention of the high-level political debate on the future of the European constitutionalism. In his Humboldt lecture, Ilves called for building on the eighteenth-century early American federalism as 'the intellectual source . . . for the future of EU integration', since:

> It was 18th-century America that grappled with the issues virtually identical to those facing Europe today. These include the need to balance the interests of large and small constituent states; the question of how to distribute competencies, i.e. – what should be the prerogatives of the central government and should not; the creation of a monetary union and mechanisms to ensure a common defence.[91]

Consequently, the lecture took a stab at 'three issues of a fundamental nature': namely, (1) the cultural and psychological adjustment of the old members with the new members, arguably 'differ[ing] fundamentally from those in the present EU Member States as regards their national emotional traditions, experiences, interests and value judgments';[92] (2) small vs. large members; and last not least; and (3) democratic legitimacy vs. effective decision-making. Instead of the deepening vs. widening dilemma of the Union, Europe's future functioning, per Ilves, was solving the 'core issue' of keeping the EU legitimate, yet effective among subjects 'of greatly differing size and economic power'. Ilves's case is for the reconsideration of a federalist approach, to clarify 'a fundamental misunderstanding about the meaning of Federalism and

[88] Lennart Meri, The President of the Republic of Estonia on the Security Policy of Estonia at the St Gallen Forum on Security Policy, 25 January 1995.

[89] Ibid.

[90] '. . . what I have to say today is my own view, and not necessarily the view of the Government of Estonia. It is a personal view expressed in the same spirit and manner as Joschka Fischer spoke here nine months ago'. Toomas Hendrik Ilves, 'Constructing a New Europe', Lecture by the Estonian Minister of Foreign Affairs at Humboldt University, Berlin, 5 February 2001.

[91] Ibid.

[92] Ilves cites here a past president of the European parliament, German social democrat Klaus Hänsch (originally in *Beitrag für die Frankfurter Rundschau*, 23 February 2000).

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Constitutionalism', on the one hand, and acknowledging that 'the solutions offered by a federalist approach resolve rather than create the problems we fear', on the other.

According to Ilves, then, if the EU had taken up issues that once were the sole prerogative of the nation-state by the agreement of all the member states, the citizen-to-state relationship emerged in the focus of the Union as a result. Thus, a move from the Union's 'sole reliance on the community method' was deemed necessary, in order to 'take into account the established norms of democratic decision-making that lie at the core of each democratic nation-state's legitimacy'. To beat the Euroscepticism for the perceived lack of transparency, legal understandability and clarity of decision-making, Ilves made a case for a federalist approach – not in the last order to ease the structural tension between small and large constituent members. For Ilves, 'the crux of the dilemma facing the *finalité* of Europe' was in maintaining a similar sense of democratic legitimacy and transparency in EU decision-making that people were accustomed to within their own countries.

The model according to which to mould the enlarged EU parliament was accordingly to be sought from the first 150 years of the American federalism (or the federalism of John Jay, Alexander Hamilton and James Madison) rather than the contemporary American prototype. Hence, Ilves's case for a two-chamber European Parliament, 'to balance the legitimate democratic concerns of the Large (through a proportionally elected lower chamber) with the justified fears of the Small (by way of equal representation in an upper chamber of the legislature)'. For Ilves, a strong bicameral European parliament was the key to EU's democratic legitimacy – yet remained unachievable as long as the single chamber model with semi-proportional representation was to be maintained.

Ilves further took an issue with subsidiarity (aptly described by Joschka Fischer in his own 2000 Humboldt lecture as 'a subject that is … discussed by everyone and understood by virtually no one'). Bothered by the principle's divine allusions to authority 'from above' due to the idea of subsidiarity originating from the Catholic Church, Ilves recalls the EU's ultimate authority coming from the citizen – and, hence, the Union's ability to appeal to the will of the electorate – and nothing but. A 'Lockean-Rousseauan vision of bottom-up legitimacy' was accordingly called for to replace the 'Hegelian, trickle-down theory of government in which the higher body pushes decision-making downwards' in order to 'achieve that noble goal of a Europe of Citizens'. Subsequently, not just nation states, but really the citizens were to accede some decision-making upward to the Union.

In sum, besides engaging with 'the dreaded "F-word", that is to say, "Federalism",' Ilves called for a no-frills approach to the EU constitution:

> you can have a constitution without automatically ending up with a super or supra-state. A constitution is a way to codify the relationship between citizens and the political process. But now the Union, with the consent of its members, has begun to deal with such fundamental issues as the citizen–state relationship, issues that previously were the monopoly of the nation-state. Given this development, we need to formalize and legally enshrine this relation in such a way so that everyone

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> understands what he can and cannot do, what rights he enjoys and what the duties of those structures created to make the Union work are.[93]

An EU constitution, codifying the Union decision-making process according to a federalist model, was needed precisely for the aforementioned reasons, maintained Ilves. His Humboldt lecture remains a distinct Estonian contribution to the fleeting utopian moment of the European constitutional imaginary.

2.5 CONCLUSION

This chapter has probed a novel conceptual lens of *vicarious sovereignty* for making sense of the Estonian way of reconciling its long-coveted state sovereignty with its equally desired European belonging. In the wind of searching a secure international home for the Estonian state, vicarious sovereignty or the idea of elevated ontological security and international agency by pooling national sovereignty at the EU level emerged as the Estonian way of 'becoming European'. Such a path was far from prescribed, nor has it been failsafe from the 'neo-Westphalian' backlashes which have recently emerged in the context of varying political sensibilities and responses to the migration pressures on the EU more widely.

The Estonian variety of constitutionalism and its European constitutional imaginaries hence raise the question of the broader applicability of the vicarious sovereignty concept within the CEE region and beyond. If the EU member states arguably feature three distinct varieties of constitutionalism – 'post-fascist constitutionalism', 'evolutionary constitutionalism' and 'post-communist constitutionalism'[94] – how does the concept of vicarious sovereignty fare in the constitutional regimes of other states with similar historical trajectories and their respective relationships to the project of European integration? The post-communist constitutions have been characterized as by and large more protective of sovereignty (hence, '*souverainist*') compared to most of their Western European counterparts.[95] According to a Sigrid Rehling Larsen's trenchant assessment, post-communist constitutionalism beckons the return of ethno-nationalism to European constitutionalism for it is embedded in the notion of the sovereign power of the people (conceived of as the ethnically homogenous nation) as the source of all public authority.[96]

[93] Ilves, 'Constructing a New Europe'.

[94] These ideal types are distinguished by 'radically different notions of what a constitution is, in what ways it creates and constrains the power of the state, and what the foundational ideas of the constitution of public authority are'. Signe Rehling Larsen, 'Varieties of Constitutionalism in the European Union' (2021) 84 *Modern Law Review* 477, 481.

[95] See Albi, *EU Enlargement*, 24–25.

[96] 'At its heart post-communist constitutionalism celebrates what is feared most within post-fascist constitutionalism, namely, the ideas of nationalism, the nation-state and national sovereignty. … Democracy means *national democracy* celebrating the self-determination of the nation finally liberated from imperial oppression.' Larsen, 'Varieties of Constitutionalism', 496, 497.

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The concept of vicarious sovereignty and the Estonian practice of it in the run-up to the EU membership contests such a wholesale diagnosis. Compared to Poland's and Hungary's recent reservations about the limitation of sovereignty entailed in EU membership and thus the occasional viewing of the European project as a new form of foreign dominance,[97] Estonia's pooling of sovereignty has been publicly more effortless and enthusiastic throughout the accession process and membership, not least for the existential fear of Russia. Of course, resonating with the broader concerns over the EU endangering rather than protecting democracy, the Estonian national conservatives have similarly viewed the country's 'scaling up' of its sovereignty to the level of the EU as a worrying sign of provincialization – potentially leading to the loss of sovereignty *in toto* and the collapse of the society in the long-run.[98] Taken together, however, the Estonian interventions in the debate on the form and *finalité* of Europe considerably nuance, and at times disturb, a sweeping reading of the 'imitation imperative' and the 'copycat mind' of post-1989 Central and Eastern Europe.[99]

Nonetheless, the conceptual proposition of vicarious sovereignty calls for further empirical applications across other cases in the region, most immediately on the other two Baltic states. The Estonian case illustrates that small does not have to mean peripheral when envisioning the constitutional future for Europe.[100] At a conceptual level, the idea of vicarious sovereignty in and through the EU could be potentially further explored in relation to Jennifer Mitzen's notion of a 'homespace' – where home is conceived 'as hearth and not container and borders as skin or membrane not wall'.[101] Juxtaposed to the other macropolitical idea of home – that is, homeland – homespace is accordingly conceptualized as 'an articulation of "being with becoming"' which is 'located, but not reducible to its location'.[102] Just as the notion of homespace seeks to 'loosen … the stranglehold of Westphalian territoriality on our political – and theoretical – imagination',[103] the concept of vicarious sovereignty stretches our understanding of the sovereignty games and paradoxes of a small East European state in the late sovereign European polity at the turn of a millennium.

[97] Wojciech Sadurski, *Constitutionalism and the Enlargement of Europe* (Oxford University Press, 2012), 67.
[98] E.g., Jaak Valge, 'Eesti suveräänsusest ja provintsistumisest', *Objektiiv*, 23 November 2015, https://objektiiv.ee/eesti-suveraansusest-ja-provintsistumisest/ (last accessed 3 April 2025).
[99] See Ivan Krastev and Stephen Holmes, *The Light That Failed. A Reckoning* (Penguin Books, 2019).
[100] Cf. Katzenstein, 'United Germany in an Integrating Europe', 5.
[101] Jennifer Mitzen, 'Feeling at Home in Europe: Migration, Ontological Security, and the Political Psychology of EU Bordering', 39 *Political Psychology* 1373, 1384.
[102] Ibid., 1375.
[103] Ibid., 1384.

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