



Viewpoint

‘Individual sovereignty’ in pandemic times – A contradiction in terms?

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Over the past months, appeals to ‘individual sovereignty’ have brought together a wide range of political actors across Europe, united in their rejection of face masks, ‘social distancing’, and other forms of state-imposed regulation of behavior and mobility. Opposition to state efforts to govern the spread of the pandemic has created, indeed, the most unlikely of coalitions—from anarchists and natural health proponents to anti-vaxxers and libertarians of all stripes (from the radical-ecological to the right-nativist)—all mobilizing around a purported defense of ‘personal freedoms’ and ‘individual rights’ against the sovereign power of states.¹

In this short piece, we take to task the notion of ‘individual sovereignty’ which has been invoked by these movements to contest the pandemic powers of the state. Our aim is to point out some fundamental contradictions that underpin such claims-making, from a legal and political-geographic point of view. As Simpson notes in his commentary, the impacts of both the pandemic and of the extension of state powers in attempting to contain it have been profoundly unequal across space and across different bodies, deemed more or less worthy of protection and care. While cognizant of the inherent inequalities (if not directly violence) of state pandemic-politics, we wish to draw attention here *also* to the potential perils that the *contestation* of state powers may bring when it throws into question the very bases of democratic collectivity. By highlighting how the claims of today’s protest movements ably meld neoliberal appeals to ‘individual responsibility’ with a mystified and depoliticized notion of ‘sovereignty’ evacuated of its collective content, we add to Mitropoulos’s argument that the absence of collective action under pandemic circumstances conditions life chances on private wealth.

1. Re-claiming ‘fundamental rights’

In articulating their claims to ‘individual sovereignty’, many of the European protesters against COVID-19 measures have appealed to the language of ‘fundamental rights’. In both the German and Dutch contexts, for instance, protesters have invoked constitutional protections in

their calls for “the restoration of fundamental rights” (Baumgartner et alia, 2020; NRC, 2020). Likewise, the leaders of the protest in Rome in early June, which brought together the Italian far-right and the *gilet arancioni*,² presented themselves as “the guarantors of democracy” (Merlo, 2020).

In the political imaginary of these protesters, ‘fundamental rights’ connote universal moral claims. They are understood as something that pertains to individuals, and that is actionable by individuals. As such, they are envisioned as capable of transcending and restricting, if needed, the political power of the state. Yet fundamental rights, as they are codified by law, are always also an expression of national (or at times supra-national claims to) sovereignty. They are partial, based on a political choice, and subject to politically introduced limits (Ignatieff, 2001). Understood as a formal recognition of certain political values (and not others), codified in a particular way, and backed by the threat of enforcement, fundamental rights are both a confinement and an expression of public powers. This double role of fundamental rights is what defines their essential role in ensuring that the inherent tension between individual autonomy and collective self-rule, i.e. sovereignty, does not result in the destruction of one or the other. Jürgen Habermas eloquently expresses for pandemic times what this tension is aimed to ensure: “If democratic citizens only obey the general laws that they have given to themselves, and all together, they cannot agree to policies that, contrary to their equality, jeopardize the lives of some for the sake of everyone else’s interests” (Habermas in Habermas & Günther, 2020).

2. ‘We are the people’

Along with the language of fundamental rights, the protests across various European cities have also appealed to another powerful notion, that of ‘popular sovereignty’. Protests in Stuttgart and Berlin have invoked the slogan ‘Wir sind das Volk’ (‘We are the People’) (Höhn, 2020) while in the Italian context, the *gilet arancioni* gathered around the

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E-mail address: l.a.bialasiewicz@uva.nl (L. Bialasiewicz).¹ Discussed extensively in the European press: see among others Baumgartner et alia (2020), Mastrobuoni (2020) and Seymour (2020), and our comments in Bialasiewicz and Muehlenhoff (2020).² The ‘orange vests’, loosely affiliated with the fringes of the Five Star Movement. It should be noted that in comparison to the German and Dutch contexts the protests in Italy have been very limited in numbers and scope.

chant of ‘*Quando tutto crolla, l’ultima frontiera della democrazia è il popolo!*’ (When everything collapses, the last frontier of democracy is the people!) (Berizzi, 2020). ‘The people’ which today’s protesters invoke are the ‘real people’, the ‘silent majority’, contesting an illegitimate state that is simply a proxy for corporate (read: Big Pharma) interests and other sinister ‘elite’ and ‘foreign’ agendas. The ‘Virus Madness’ group leading the protests in the Netherlands (now called ‘Virus Truth’) is indicative, having focused its campaign on ‘giving voice to the will of the people’, through court appeals as well as direct actions protests.³

We can certainly identify here a continuity with the sort of sovereigntist-populist language that we have become accustomed to in the past years: a political imaginary reliant, as Cas Mudde (2004: 54) has argued, upon a vision of society “separated into two homogeneous and antagonistic groups: ‘the pure people’ versus ‘the corrupt elite’, and which argues that politics should be an expression of the ‘*volonté générale*’ of the people”. In this sense, as Nadia Urbinati (2019a) points out, populist rhetoric “violates the synecdoche of modern representative democracy (that is, the claim of a ‘part’ to represent ‘the whole’)” by claiming to embody “one part only, the ‘authentic’ or ‘good’ part, which by this very reason is legitimate to rule for its own good” (Urbinati, 2019a, p. 80).

The invocations of today’s protesters thus recall pre-COVID populist rhetoric. As Jan-Werner Müller (2020) has remarked, the “claim to monopoly of properly representing the people” has remained “the political business model of populists” in pandemic times. All the while, we would argue, the focus has undergone a transformation: from appeals to an imagined national ‘people’ to an emphasis *also* on personal or individual ‘sovereignty’, that now becomes the site of basic rights to be defended against the ‘sanitary dictatorship’⁴ of state institutions presented as “fundamentally illegitimate” (Müller, 2020). We would like to focus on unpacking this notion of ‘individual sovereignty’ in the remainder of this commentary in order to point out its inherent contradictions, while also cautioning how it may risk giving populist rhetoric another perilous tool with which to contest the modern constitutional democratic state.

3. ‘Individual’ sovereignty

Within modern constitutional democratic states, individual autonomy is expressed and protected through fundamental rights, which have a double-edged relationship with sovereignty. On the one hand, fundamental rights are, in their specific codified form, an expression of a sovereign choice; on the other hand, they protect individual liberty and autonomy (or self-rule) and limit the exercise of sovereignty. Individual autonomy is thus necessary to create the conditions of the very collective self-rule or ‘collective autonomy’ that is the essence of sovereignty (Habermas, 1996). Indeed, the collective autonomy of any polity is dependent on individual autonomy, in the sense that collective will-forming requires that individual participants actually possess the liberty to make decisions and to determine their actions (Habermas, 1996). The enjoyment and also enforcement of fundamental rights is central to protecting individual autonomy. Procedural and substantive rights allow the equal and free participation of all in the collective will-forming (Habermas, 1996; Zürn, 2002). They ensure that all participants are treated as individually autonomous.⁵ However – and this is crucial to remember in the current moment – individual autonomy

³ As outlined in this essay by one of the movement’s activists, under the title: ‘All together for our own freedom’ <https://viruswaarheid.nl/informeren/a-llemaal-samen-voor-onze-eigen-vrijheid/>.

⁴ As Italian protesters have termed the state’s pandemic emergency powers.

⁵ Informative in this regard is Habermas’ procedural account of democratic legitimacy, which presumes that a collective will can only be formed in a legally structured political community (Habermas, 1996, p. 448), in which courts guarantee equal subjective liberties, equal membership rights, and legal protection of these rights.

requires collective self-rule under democratic procedures, a collective rule that is able to supply the necessary (collective) public goods that can make the individual autonomous, e.g., public safety and public health.

Sovereignty is always an expression of a political relationship between the ruler and the ruled—in the modern constitutional democratic state, between the state and the people (Loughlin, 2003). When the concept of sovereignty is associated with individual autonomy under a different name – namely, the notion of ‘individual sovereignty’ – the core essence of sovereignty, namely the political and collective, is lost. The political and the collective is essential to sovereignty in the very sense of the word: if it is lost, the concept changes its meaning and becomes unrecognizable.

This is not simply a conceptual or terminological problem. As adopted in political discourse, such a notion becomes deeply misleading and charged with a neoliberal conception of the state that denies its fundamental characteristic of being collective. ‘Individual sovereignty’ simply makes no sense in light of the historical and conceptual meaning of sovereignty. Sovereignty, while conceptually blurred and contested,⁶ does have a very specific core meaning in the modern European constitutional state. In this core meaning, sovereignty connects state authority with democracy and collective self-rule. ‘Individual sovereignty’, by contrast, equates sovereignty with the *liberal* (rather than democratic) value of *individual* self-rule. It decouples the concept from its very essence and hence robs it of any meaning.

In our pandemic times, when the inherent tension between individual autonomy and collective self-rule becomes particularly stark, it is especially important to protect the collective and the ‘common good’ from terminological usurpation. Italian political philosopher Pier Aldo Rovatti (2020) writing about responses to the pandemic in his essay ‘When the I becomes us’ asks how we can reverse that which Nadia Urbinati (2019b) identifies as the populist ‘me the people’ political style that has dominated European politics in the past few years, now articulated simply under a different rubric, that of ‘individual sovereignty’. Rovatti suggests that while governments may be tempted to ensure compliance with COVID-19 measures through appeals to ‘individual responsibility’, this framing is inherently perilous.

Such an individualized response to the pandemic, which places the individual in the position of the (collective) sovereign, conflates individual autonomy with collective self-rule. In doing so, it obscures the rights of the diverse collective to protection from individual behaviours that can take an excessive toll on the health care system (a common good) and on the individual autonomy of those whose lives will be imperiled by infection.

Declaration of competing interest

The Authors declare that there is no conflict of interest.

References

- Baumgartner, M., et al. (2020). *Protests in Germany see fringe mix with the mainstream*. *Der Spiegel International* May 14. <https://www.spiegel.de/international/germany/the-corona-conspiracy-theorists-protests-in-germany-see-fringe-mix-with-the-mainstream-a-8a9d5822-8944-407a-980a-d58e9d6b4aec> <https://www.spiegel.de/international/germany/the-corona-conspiracy-theorists-protests-in-germany-see-fringe-mix-with-the-mainstream-a-8a9d5822-8944-407a-980a-d58e9d6b4aec>
- Berizzi, P. (2020). *Gilet arancioni e Casa Pound in piazza a Roma contro il governo*. *La Repubblica* May 30. <https://roma.repubblica.it/cronaca/2020/05/30/news/gilet-arancioni-e-casapound-in-piazza-a-roma-contro-il-governo-257998293/> <https://roma.repubblica.it/cronaca/2020/05/30/news/gilet-arancioni-e-casapound-in-piazza-a-roma-contro-il-governo-257998293/>
- Bialasiewicz, L., & Muehlenhoff, H. (2020). *Personal sovereignty in pandemics: Or, why do today’s sovereigntists reject state sovereignty? Open democracy* June 30. <https://www.opendemocracy.net/en/can-europe-make-it/personal-sovereignty-in-pandemics-or-why-do-todays-sovereignists-reject-state-sovereignty/> <https://www.opendemocracy.net/en/can-europe-make-it/personal-sovereignty-in-pandemics-or-why-do-todays-sovereignists-reject-state-sovereignty/>

⁶ See, among others, the extensive discussion in Biersteker and Weber (1996).

- cy.net/en/can-europe-make-it/personal-sovereignty-in-pandemics-or-why-do-today-s-sovereignists-reject-state-sovereignty/.
- Biersteker, T., & Weber, C. (Eds.). (1996). *State sovereignty as social construct*. Cambridge, MA: Cambridge University Press.
- Habermas, J. (1996). *Between facts and norms: Contributions to a discourse theory of law and democracy*. Cambridge, MA: MIT Press.
- Habermas, J., & Günther, J. (2020). *Kein Grundrecht gilt grenzenlos. Die Zeit* May 7. <https://www.zeit.de/2020/20/grundrechte-lebensschutz-freiheit-juergen-habermas-klaus-guenther/komplettansicht> <https://www.zeit.de/2020/20/grundrechte-lebensschutz-freiheit-juergen-habermas-klaus-guenther/komplettansicht>
- Höhn, A. (2020). *Coronavirus rallies: Germany's growing anti-lockdown movement. Deutsche Welle* August 6. <https://www.dw.com/en/germany-protests-coronavirus/a-54456654> <https://www.dw.com/en/germany-protests-coronavirus/a-54456654>
- Ignatieff, M. (2001). *Human rights as politics and idolatry*. Princeton, NJ: Princeton University Press.
- Loughlin, M. (2003). Ten tenets of sovereignty. In N. Walker (Ed.), *Sovereignty in transition: Essays in European law* (pp. 55–86). Oxford: Hart Publishing.
- Mastrobuoni, T. (2020). *Germania, medicina alternativa e profughi: Così il covid alimenta le vecchie e nuove fake news. La Repubblica* July 15. https://www.repubblica.it/dossier/esteri/parlamento-europeo/2020/07/15/news/angela_merkel_germania_coronavirus_true_pandemia_coronavirus-261927553/?ref=RHPPTP-BH-I0-C6-P16-S1.6-T1 https://www.repubblica.it/dossier/esteri/parlamento-europeo/2020/07/15/news/angela_merkel_germania_coronavirus_true_pandemia_coronavirus-261927553/?ref=RHPPTP-BH-I0-C6-P16-S1.6-T1
- Merlo, F. (2020). *Destre, ressa in piazza. Mascherine al bando e insulti a Mattarella. La Repubblica* June 2. https://rep.repubblica.it/pwa/generale/2020/06/02/news/destre_ressa_in_piazza_mascherine_al_bando_e_insulti_a_mattarella-258302650/ https://rep.repubblica.it/pwa/generale/2020/06/02/news/destre_ressa_in_piazza_mascherine_al_bando_e_insulti_a_mattarella-258302650/
- Mudde, C. (2004). *The Populist Zeitgeist. Government and Opposition*, 39(3), 541–563.
- Müller, J. W. (2020). *Populists are likely to benefit from the Coronavirus pandemic*. Institute for Human Sciences. *Weekly Focus: Covid-19 and Political Populism*. April 16. <https://www.iwm.at/closedbutacitve/corona-focus/jan-werner-mullerhow-populists-will-leverage-the-coronavirus-pandemic/> <https://www.iwm.at/closedbutacitve/corona-focus/jan-werner-mullerhow-populists-will-leverage-the-coronavirus-pandemic/>
- NRC. (2020). *Dansen op DJ Jean en ageren tegen vaccin en Big Pharma. NRC* August 1. <https://www.nrc.nl/nieuws/2020/08/01/dansen-op-dj-jean-en-ageren-tegen-vaccin-en-big-pharma-a4007626> <https://www.nrc.nl/nieuws/2020/08/01/dansen-op-dj-jean-en-ageren-tegen-vaccin-en-big-pharma-a4007626>
- Rovatti, P. A. (2020). *Virus veritas*. Milano: Il Saggiatore.
- Seymour, R. (2020). *Give them liberty, or give them Covid-19. Why the hard right is fighting lockdown. New Statesman* June 3. <https://www.newstatesman.com/world/2020/06/give-them-liberty-or-give-them-covid-19> <https://www.newstatesman.com/world/2020/06/give-them-liberty-or-give-them-covid-19>
- Urbinati, N. (2019a). Antiestablishment and the substitution of the whole with one of its parts. In C. de la Torre (Ed.), *The routledge handbook of global populism* (pp. 77–97). London: Routledge.
- Urbinati, N. (2019b). *Me the people: How populism transforms democracy*. Cambridge, MA: Harvard University Press.
- Zürn, C. (2002). Deliberative democracy and constitutional review. *Law and Philosophy*, 21(4), 467–542.