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**Courts, People, Citizens. Understanding EU's Constitutional
Democracy with the Help of the Lisbon Treaty and the Lissabon Urteil**
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Courts, People, Citizens. Understanding EU's Constitutional Democracy with the Help of the Lisbon Treaty and the *Lissabon-Urteil*

*Tom Eijsbouts**

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I The Constitutional Challenge of Populism

The Great European Constitutional Challenge of the present moment is populism. It needs to be answered in the realm of reality and of politics, as we can all see, and may spark some fresh constitutional thought, as the present contribution hopes to show. The following analysis links up populism with the *Lissabon-Urteil* and with the Lisbon Treaty by discussing the constitutional concept of 'the people' in the context of Europe. Its central question is: What is the nature of EU's constitutional democracy.

Populism is a national trend, affecting and defying the domestic representative character of our constitutions. It is a national trend having taken Europe-wide proportions, however, and one that may eventually affect the EU. This is not because the EU as such is vulnerable to its own continent-wide populism. It is because domestic populism is mostly opposed to foreign influence – and the EU still fits the qualification of 'foreign' in most of its member states.

Populism will convert fear of the foreign into the wish to define the familiar. Unfulfillable notions such as (national) 'identity', whose appearance in personal life are sure markers of a person's troubled state, then take pride of place in public debate. Pluralism, one of the opposites of the search for identity, is viewed in the light of suspicion.

I myself did not think that populism was a big issue, but two facts have changed my mind: the euro-crisis and the sudden appearance in my country, the Netherlands, of a government based on populist support.

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The euro-crisis has shown many things but one thing in particular: that there is only one way of the euro to be defeated: not by a decision in Brussels but by populist uprising against it in a single country.

This means, in a general sense, that the constitutional future of Europe is not necessarily going to be decided in Brussels, or among the governments, but in single countries under populist challenge, and notably in Europe's core country, Germany. Once the voters there in a majority turn against the euro, little can probably be done. And it is probably the only way for the euro to be defeated in the face of hesitant but certain determination of the governments.

Second, in my country a minority government has just been formed which depends on support in Parliament of a populist party. Its leader Wilders is seeking to coalesce the various populist movements in Europe. In one of my recent newspaper columns I spoke of the Encirclement of Germany. Look from Berlin at Austria, Poland, Slovakia, Hungary, Austria, Sweden, Denmark, Norway, Netherlands, Belgium: everywhere the populists take a confident share in running the country or prepare to do so.

As a scholar you can 'make fire from all wood', as the French say, so populism also can help some rethinking of constitutional conditions of Europe, as I hope to explain. How to go about this? The link between populism and constitutional doctrine is formed by the notion of 'the people'. The people (*populus*) is, ideally, a constitutional founder of and actor, or institution, in the body politic, acting by way of voting notably. The people is also the human and social substrate or belly of a society, the owner of public opinion, of emotions, intuitions, and of the gut feelings to which populism may appeal.

Populism, as the name indicates, centres on the people. It is an often benign pathology affecting the popular instance in the body politic. Populism is a challenge to the representative institutions such as parliaments and political parties. While in a stable constitutional and democratic state the people is in majority bound up with and tied down to the political centre through the party structures and the representative institutions, under populism the people becomes averse to the middlemen and attracted to an immediate involvement. Populist politicians cater to this wish for a more direct, a more emotional and a more fresh involvement. One of their ways is to rip apart or erode the political middleground essential to a democracy by taking extremist positions and picking sharp and engaging fights with opponents at the other side of the spectrum.

In the most straightforward and simple way, the challenge of populism to the constitution can be seen as a threat. When and where populism succeeds utterly, the constitution is simply destroyed. Hitler can be seen as prime case of such an utter success. This is rare and therefore less interesting. Short of such complete degenerative effect, populism has a revelatory function. It shows up flaws in the

political situation and it lays bare some of the actual and intellectual foundations of the constitution. This is interesting for scholarship.

Most of the intelligence needing to cope with populism should be mustered not in the realm of theory and doctrine but in the realm of politics and in that of the law and of adjudication notably. But some help may be given by academic analysis. This is the modest aim of this paper.

Populism is heir to two traditions in our great Western constitutional tradition. The first goes back to ancient Athens and Rome, to this tradition's origins in direct democracy. The second is more recent. It goes back to the French revolution and to the misgivings of some of its intellectual authors, notably Jean-Jacques Rousseau, with representative and with party democracy. Rousseau expressed the romantic wish of a direct line between people and authority, uncorrupted by the machinations of the establishment.

The same nostalgia recurs up to today with basically romantic authors who are aware of the immense powers and energies stored up in the people of a nation state and some of which may or should be made available to politics without the laming intermediary of the representative institutions and the parties.

So one strand of the tradition preceded the national state (and its powerhouse of the nation); the other harkens back to the time when the nation came into being and was still unharnessed by representative institutions.

II People and Populism in the Lissabon-Urteil

The constitutional challenge of populism can be discussed academically via introducing the constitutional agency of the people. The people in a constitutional sense is involved in relationships with the different (other) institutions: legislator, government, courts. Of these several and distinct constitutional relationships, the one between the people and the courts is most topical in the present context and also the one most uncharted, both in the constitutions of our countries and in that of the European Union. It is also topical in the sense of wanting analysis in the context of current trends in Europe.

In its *Lisbon* Judgment the German Federal Constitutional Court chose to elaborate on its relationship with the German people, the *Staatsvolk* or *Volk*. As is the case in all or most of the Court's doctrinal digressions, this one makes for fascinating reading. In a recent paper published elsewhere I was able to use the judgment as a source and an incentive to analyze the constitutional notion of the people in general and the Court's understanding of the German people in particular, including their

relationship. Let me summarize the analysis as far as it is relevant for the current argument.¹

Original and Electoral People. In the kind of constitutional systems operating under 'popular sovereignty', the people is normally split into two distinct *personae*. The first is the people as originator of the constitution, the 'constituant' in French jargon going back to the Abbé Sieyès. This version is most obvious in the American 'We the people' in whose name the constitution was concluded. This *persona* of the people we may call the 'original people'.

The second *persona* of the people is that which participates in the constitutional order by voting in elections and referendums. This *persona* we may call the 'electoral people'.

Not only are these two *personae* kept apart and distinct as a matter of the constitution; their distinction is a key element of the constitutional order and even of the Western constitutional tradition. The distinction and separation is one of the many checks and balances whose upkeep we entrust to the constitution.

The particular distinction of people-*personae* serves, for one thing, to deny or ward off the illusion of a single, organic, people as the ultimate and immediate reality and testing stone for the state, even under popular sovereignty.

Both forms of the people under the constitution are in part immediate reality and part mediated, or conventional, reality. The original people is often conventional to the point of being fictitious, as when the German people is credited with the creation of the Basic Law in 1949. But there is a potential of immediate reality in even this. When the East German crowds sang in 1989: 'We are the People', this was an unmediated form of reality of a people taking its history in its hands.

The electoral people, on the other hand, is most obviously real but then it is so only when called by the convention of a law to act under its terms, on election day. Between elections or votes it exists and acts in a mediated, represented, way only.

Why recall this split between the two versions of the people? It is to see how a constitutional court will relate to each of them.

Constitutional courts in general will have a tendency to conceive their constitution as the expression of the *original* people's will. In giving expression to that will, they in a sense represent the original people, the *constituant* people, the 'We the People'.

This was demonstrated for the first time by the American Supreme Court in *Madison v. Marbury*. Chief Justice John Marshall there created constitutional review on the authority of the We the People people which had originally created the Constitution. He said:

1 'Wir sind das Volk. Notes about the notion of the people as occasioned by the *Lissabon-Urteil*' (2010) 6 *European Constitutional Law Review* 199.

That the people have an original right to establish for their future government, such principles, as, in their opinion, shall most conduce to their own happiness is the basis in which the whole American fabric has been erected. The exercise of this original right is a very great exertion; nor can it, nor ought it, to be frequently repeated. The principles therefore, so established, are deemed fundamental. And as the authority from which they proceed is supreme, and can seldom act, they are designed to be permanent.

This constitution, the creative act of 'We the People' (in my terms the original people), was then opposed to the act proceeding from the institutions elected by the people, the Judiciary Act of 1789. In other words, the *original* people was set up against the *electoral* people. The Constitutional Court is the original people's champion.

In its *Lisbon* ruling, the German Constitutional Court did something not wholly dissimilar. It called upon the original German people (the authority which gave us the constitution) as a check upon the authority emanating from the electoral people.

There are many differences, but the basic idea was the same. The possibility is inherent in any system of popular sovereignty, which will split the people into two distinct *personae*: original and electoral, between which there may be a contradiction.

The thrust of my argument is based on this distinction between the original and the electoral people. It is not absolute and there are many shades between the two, but what is important is that it should be seen and understood.

The people's duality only exists in systems of popular sovereignty. But where you have it, it needs to be used in mapping the constitution and its weak spots.

The *Bundesverfassungsgericht* in its *Lissabon-Urteil* attributes a fundamental role to the people as a) the original maker and as the unmaker of the state and b) as the electoral authority voting in parliament. All power proceeds from the people.

But then it fails to make the distinction and, implicitly and logically sides with the original people, the creator of the constitution, and puts it in the lead over the political institutions.

This can be seen as a form of populism practiced by a court. The original or *constituant* people as an institution exists partly *outside the constitution*. Populism always will hearken to the people outside the constitutional context; its affinity is with the people unbound, excited, intoxicated, authentic, free from the regular political constraints. (That is the freedom you almost inevitably find in the names of populist parties).

Courts, if they do not pay heed to the duality of the people-concept, nor to their own natural affinity with the *constituant* people, which distinguishes them from Parliaments, will go for the authentic, the original, the unique, the *demos* so to speak.

Three related ideas in the German Constitutional Court's *Lisbon* ruling lend themselves to criticism in the current context. The crucial one is the lack of dis-

inction between the different *personae* of the people, notably between the original and the electoral people, followed by the Court's staging of the people as its puppet. This move is underpinned in part by an incorrect idea of the people's role in constitutions in general. The Court reasons as if all democracies are based on popular sovereignty, i.e. consider themselves as a creation of the original people. To this is related the third contention: that European Union cannot be a democracy as it lacks an electorate of equally empowered citizens, a *demos*.²

In as far as these ideas are indeed debatable, conversely they form a convenient launching pad for a discussion of the nature of democracy in the European Union. It is to this discussion that we shall now turn.

III From 'We the Citizens' (Constitutional Treaty) to the Lisbon Treaty

This final discussion is in three stages. It starts from an analysis of how the original treaties and the European Court of Justice viewed the people in the context of the European Communities, forerunners of European Union. This will prove to have been an open but reserved approach. It was open in that it introduced a clear 'people-element' into this new intergovernmental cooperation. It was reserved in that it did not call into being a new aggregate of 'European people', but referred to the existing peoples of the member states.

In the second stage, marked by the European Constitutional Treaty, the EU member state governments attempted to invest the European citizens with an original *constituant* role, somewhat similar to that of the people in American constitution of 1787 and the German constitution of 1949. This attempt ran into the refusals by the French and the Dutch voters in 2005, ending a short but certain second stage.

In the Lisbon Treaty this defeat of an original or constituent EU citizenry/people was accepted by the member states and even laid down for the future. European Union's evolution to any form of popular constitutional democracy was then foreclosed. The Union's future of non-popular constitutional democracy at the same time was extended to a textual promise in the Lisbon Treaty.

This promise of EU constitutional democracy in the Lisbon Treaty is in want of a definition. On the basis of the above analysis and following the historic stages just outlined, it can, indeed, be brought nearer to definition.

The Community Treaties and the ECJ on people. People and peoples have played an interesting part in EU legal evolution. In the 1951 European Coal and Steel

2 See Lissabon Urteil marginal 231 '[...] the source of Community authority and of the European constitution that constitutes it are the peoples of Europe [...]'. As if all EU member states were popular sovereignties! As to the lacking electoral equality and the lack of a *demos*, see marginals 277 and 296.

Treaty's Preamble the signatory states expressed their resolution '[...] to create, by establishing an economic community, the basis for a broader and deeper community among *peoples* long divided by bloody conflicts; [...]' The reference to the different peoples involved in an agreement or institution was not new; the UN charter of 1945 was concluded in the name of 'We the peoples of the United Nations [...]'. But in the framework of the European Communities there has been a remarkable development. Article 20 of the ECSC Treaty introduced the '[...] Assembly, which shall consist of representatives of the peoples of the states brought together in the Community [...]'. This was new. The UN General Assembly does not consist of representatives of peoples but of member states.

The EEC-Treaty of 1957 in turn expressed the determination '[...] to lay the foundations of an ever closer union among the peoples of Europe' and in its preamble the signatories also made a point of the '[...] constant improvement of the living and working conditions of their peoples.' Article 137 of this Treaty created an Assembly, just like Art. 20 of the ECSC Treaty, consisting of 'representatives of the peoples of the States brought together in the Community [...]'. This provision, rooting the Assembly in the different peoples, would hold out until 2009. It was then replaced by the first sentence of the current Art 14(2) of the EU Treaty, stating: 'The European Parliament shall be composed of representatives of the Union's citizens'. In this way the European citizens, called into being by the EU Treaty of 1992, could be seen to form a single body, the EU citizenry. And even though this is not made explicit, as in the German Basic Law (the *Bundestag* members represent the whole people, Art. 38), the singularity of the electorate is reinforced by their being represented in a single institution and its action.

Long before the European citizen would be created by the Union Treaty, already, the European Court of Justice had begun to reinforce the position of the individual person under European law. In its *Van Gend & Loos* ruling of 1963 the Court had empowered private parties by giving them indirect standing before it in actions against their states via the preliminary reference procedure and by acknowledging direct effect for certain norms of the EEC Treaty. This interpretation of the Treaty was underpinned by its preamble's reference 'not only to governments but to peoples' and by the fact that 'the nationals of the States brought together in the Community are called upon to cooperate in the functioning of this Community through the intermediary of the European Parliament and the Economic and Social Committee.'

After the creation of the European citizen in 1992 the Court would pursue this drive of empowering individuals under the heading of EU citizenship. In its *Grzelczyk* ruling of 2001 it came to conceive this citizenship, as 'destined to be the fun-

damental status of nationals of the Member States'.³ Not long afterwards the 'Citizenship Directive' 2004/38/EC would consolidate the economic or market related rights of EU citizens and their family members.

Let us now pose the question how this lineage of ECJ rulings, from *Van Gend & Loos* on, focusing on peoples, nationals, then people individually, and finally EU citizens, compares with the US Supreme Court's ruling in *Marbury v. Madison*, presented above.

Both courts are interpreting instruments which were originally Treaties between states. The American Constitution was a Treaty between states, as one finds expressed in Article VII. Both Courts upgraded these Treaties to something more, empowering people on the basis of their interpretation of the founding acts. The US Supreme Court in 1803 lifted the original American 'We the people', in whose name the states had concluded the constitution, onto the constitutional pedestal. The ECJ in *Van Gend* builds rights of private parties upon the EEC-Treaty's original intentions.

Apart from this analogies, however, there are striking differences between the two rulings both in their interpretations and in their empowerments. The Supreme Court took the original American Constitution of 1787 to have been concluded by the people. The ECJ by contrast, in its upgrading the original compact, did not summon an original people. It stuck to the founding states as originators of the Treaty and only upgraded these founders' intentions so as to include the empowerment of individuals.

While creating EU citizenship in the EU Treaty of 1992 the member states did not act in the name of these citizens, let alone in the name of an EU 'We the people'. And the Court of Justice, in all its innovative empowerment of these individuals/nationals/citizens, never went so far as to turn them into anything like originators, let alone an originating collective. The ECJ only improved these individuals' standing and their individual rights.

At the same time these Europeans' collective rights were being enhanced by the direct election of the European Parliament and by the latter's gradual better empowerment under the Treaties. But never in this whole process was there so much as a hint at their elevation to the status of what has been titled above, in the American case, the 'original people'. If anything, the ECJ in its upgrading the original compact of the EEC has upgraded the compound of the member states and thus has better defined the Union as a 'We the States' compact.

This synergetic relationship between the Court and the member states is not always given sufficient attention, to say the least. Too easily the relationship between the member states and the Court is seen in the light of simple opposition. But

3 ECJ in case 184/99, no 31.

in fact the Court has consistently upgraded the position of the member states collectively, the treaty makers, at the expense of the member states individually and sometimes even at the expense of the original institutional set-up.⁴

Unlike the US Supreme Court, however, the ECJ has never sought an alliance with an European people or citizenry as an original collective entity. Instead it has looked at the member states collectively, as the Treaty fathers. And it has used this vantage point primarily not against EU acts, but against acts of the member states individually (direct effect, supremacy). So it sets up the 'Member States Collectively' (MSC) against the member states individually, and also against Union legislation.

This category of the MSC and the bond between the member states, consequently, has since been asserted repeatedly not only by the Court of Justice, but also by the member states themselves, by their practice, and by the practice of the international community. It is at the source of the most original though subtle development of the Union as a compound, including not only the states as a collective entity, but also the different organizations as an entity and the legal order of the whole.

We the Citizens. In the Constitutional Treaty of 2004 a bold move was made to turn the European citizens into something like co-originators or co-authors of the Constitutional Treaty. Article I-1 of that Treaty opened with a clear even if a weak echo from the American Constitution's exordium: 'Reflecting the will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union [...]'.⁴

True, the Constitutional Treaty was not concluded by the states *in the name of* the people, as the US constitution was, but only *as an expression of the citizens' will*. But this comes down to the same and the difference is not one of principle but one of degree only. Likewise, the fact that in the Union constitution the citizens were not the only founders but were taken as co-founders with the states is no difference of principle. What counts is that the citizens, as a compound, were seen to be endowed with a single expressive will to take part in the *creation* of a political entity, the European Union. The reference is clearly to the concept of popular sovereignty as embodied in the American and German constitutions. So there you had, in a weak but certain version, an original people or, in EU's terminology, a 'We the citizens'.

This was an attempt of fundamental innovation. European citizenship was introduced in 1992 mainly with an eye to upgrading the status of individuals as persons in the context of the market and of the (incipient) area of freedom, security

⁴ It is beyond the scope of the present contribution to go well into this development. Suffice it to point at the way EU primary legislation (in the form of new and of amending treaties) has an essential part of the Unions legislative action.

and justice. When the Constitutional Treaty turned the citizens into a part of the constitutional foundation of the Union, it also immediately operated the split between the original and the electoral peoples.

Apart from introducing the above notional element of (original) popular sovereignty, the Constitutional Treaty also was innovative on the side of the *electoral* citizens. Article I-20(2) provided: 'The European Parliament shall be composed of representatives of the Union's citizens.' As squarely as a provision can do, this one created a single electoral basis and made the Union depart from the compartmented representative structure envisaged by the EC-Treaty's Article 189 (formerly EEC 137, mentioned), which rooted the European Parliament formally into the several member states' peoples.

As will be detailed below, the Constitutional Treaty's call for the *original*, constituent citizenry, by its 'expressing the will of the citizens [...]', would turn out a failure. But the *electoral* citizenry of the Union, its single electoral basis, would be maintained.

The Difference. In order to read the parameters of EU's constitutional evolution from its involvement of the popular or citizen element, which is the ultimate purpose of the present exercise, it is helpful to look very closely at the *difference* between the Constitutional Treaty and the Lisbon Treaty.

It is proper to events and hence to acts, and to legal acts, to make a difference. But the events and the acts do not define the difference they make. In part this difference can only be figured out over time; but in part logical and doctrinal means of understanding and analysis can be attempted right away. This will now be undertaken.

Many authorities on EU law hold that the Lisbon Treaty of 2007 is substantively not very different from the rejected Rome Constitutional Treaty of 2004. What they mean is that the current amended EU Treaty and the Functioning Treaty add up to roughly the same legal substance as the Rome Treaty. The differences, they say, are a matter of signs and symbols only: name, formulae flag, anthem etc.

This paper argues that at least one difference is not apparent but profound, and that it relates to the constitutional nature of the Union. The difference made by the Treaty of Lisbon is much more important than those formalities. On the other hand it is not, as is maintained by some downplaying the Lisbon Treaty, the difference between a constitution and a regular Treaty.

On the one hand the current EU treaties probably govern a structure different from the one that might have been governed by the Constitutional Treaty. On the other hand they have not been divested of their constitutional status.

It is the purpose of the last part of this paper to dig up that profound difference and explain the element of the Union constitution which it affects.

The difference is best understood as one of historic fact settling into law. One should see that the Lisbon Treaty and, hence, the Union and the Functioning Treaties somehow retain, within its normative substance, the popular refusal of the Rome Treaty in France and the Netherlands. This refusal, *as acknowledged by the EU governments*, is carried along in the Lisbon Treaty's normative baggage.

As explained, the full measure of the difference, as the full effect of the Lisbon Treaty, can only be known over time. But one thing is quite certain. The Treaty holds an acknowledgement of the enduring role of the national electorates and voters in the creation of new EU treaties. These national electorates, and the parliaments holders of their wills, are to keep standing at the basis of coming treaties and they shall not be merged into a single all citizens' will, as the Constitutional Treaty would have it.

At a practical level this probably means that even in the distant future there will be no departure from the trusted EU Treaty revision procedure of Article 48, requiring double unanimity (and full separate approval including popular approval of revision Treaties). What the French, the Dutch and the Irish have obtained is for this procedure to be part not only of the Treaties, but of the Union's engrained structure.

Now does this mean that the Union indeed has dropped the constitutional concept for its Treaties, as it was intended by the European Council mandate of June 2007? Many colleagues' law students would agree, holding that to perpetuate amendment by Treaty (and *a fortiori* under double unanimity) is to maintain the Union as a Treaty structure, as an international organisation, and foreclosing its constitutional future. A legal entity of public law is either one of public international law or one of domestic constitutional law. *Tertium non datur*, nor one belonging to both.

This issue can be resolved on the basis of the above analysis.

The idea which has received a fresh boost from the German Constitutional Court's *Lissabon-Urteil* is that every constitution should have its origin somehow in a constituent act by the people; that all real constitutions are foundations of popular sovereignty. This is a misunderstanding. Constitutions based not on popular but on royal or parliamentary sovereignty are among the oldest ones available, such as the English and the Dutch constitutions.

Status or nature of a legal instrument governing a structure of public authority is not primarily a matter of its name, its 'constitutional concept' nor even of its normative substance. It is a matter of the nature and structure of the public authority that it governs. If the authority governed is endowed with significant political autonomy, if it has its own political life and is rooted in a community of people, then there is a constitution. But it suffices if this community of people is an electoral people only; it does not need to be original.

To the extent that the Union has legal and political autonomy, and that its autonomous political and legal life underpins, or carries, i.e. serves to initiate, justify, legitimize, the weight of European political development, its founding documents are constitutional documents. They govern a political structure with its own life and a political community of which people, in the form of citizens, are a part.

This is not to say that the Union is a fully-fledged constitutional body; obviously it is not. Often and in many ways it is only fledgling. But to allow its understanding as constitutional and as involving its citizens in an electoral capacity, the first thing needed is a denial of the *Bundesverfassungsgericht*'s logic which fully forecloses any constitutional status or evolution to the Union. This denial is based not only on the disqualification of the electoral EU citizenry as unequally endowed with voting rights, but also on the absence of an original EU citizenry.

The Constitutional Concept that was held by the *Bundesverfassungsgericht* but was abandoned with the Lisbon Treaty was not the one concerning the constitution as such, but one belonging to a specific constitution, i.e. one of popular sovereignty.

The admission that the Union and its Treaties are undoubtedly constitutionally qualified leaves two questions to be answered. The first is one of degree: is it *fully* qualified? That is not hard to answer. The Union's constitutional capacity, i.e. its capacity to solve crucial social conflict and pull the weight of political settlement and development, is very limited. In comparison with an accomplished member state, it may pull, roughly, something like 5-10 % of the full weight needed to be pulled. But this percentage is probably on the increase. So the first question can be answered thus: no, the Union is far from fully qualified.

The second question is about the nature of the Union's constitutional structure. If not of popular or citizens' sovereignty, what is the Union's type of constitution?

Put simply, the difference is that the Union's constitution is not one of popular sovereignty nor one of parliamentary sovereignty, nor a mix, as was intended by the Rome Constitutional Treaty, but one more ancient in kind, of pooled national sovereignties. Constitutive action of the Union lies and will remain with the member states acting in full concert, jointly, *involving their parliaments and populations, acting separately and independently*.

This may be a disappointing conclusion of an ambitious constitutional analysis. *Pooled sovereignty* is nothing new; it is one of the old notions brandished by original champions of European integration. The news is that pooled sovereignty is a sound notion also for future use. First, it is fully compatible with constitutionalism albeit not with 'popular constitutionalism'. Second, pooled sovereignty is compatible with parliamentary democracy at the level of the Union, albeit not with the type of democracy involving a single people as *constituant*.

We need return now to the original preoccupation which sparked this paper. What does the above have to say, finally, about populism in the context of the

Union? Probably this. The Union does not claim for itself an extraconstitutional popular basis in the form of its own original people or citizenry. It leaves to its member states the joys and the worries of their original peoples, their sleeping dogs, and trusts them to let them lie.

And, if they should wake up, to put them to rest again.