



Universiteit  
Leiden  
The Netherlands

## **The EU as a Confederation of Sovereign Member Peoples: Exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU**

Cuyvers, A.

### **Citation**

Cuyvers, A. (2013, December 19). *The EU as a Confederation of Sovereign Member Peoples: Exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU*. Meijers-reeks. Retrieved from <https://hdl.handle.net/1887/22913>

Version: Not Applicable (or Unknown)

License: [Licence agreement concerning inclusion of doctoral thesis in the Institutional Repository of the University of Leiden](#)

Downloaded from: <https://hdl.handle.net/1887/22913>

**Note:** To cite this publication please use the final published version (if applicable).



## Universiteit Leiden



The handle <http://hdl.handle.net/1887/22913> holds various files of this Leiden University dissertation.

**Author:** Cuyvers, Armin

**Title:** The EU as a confederal union of sovereign member peoples : exploring the potential of American (con)federalism and popular sovereignty for a constitutional theory of the EU

**Issue Date:** 2013-12-19

The EU as a Confederal Union of Sovereign Member Peoples

Exploring the potential of American (con)federalism and  
popular sovereignty for a constitutional theory of the EU



# The EU as a Confederal Union of Sovereign Member Peoples

*Exploring the potential of American  
(con)federalism and popular sovereignty  
for a constitutional theory of the EU*

## PROEFSCHRIFT

ter verkrijging van  
de graad van Doctor aan de Universiteit Leiden,  
op gezag van Rector Magnificus prof. mr. C.J.J.M. Stolker,  
volgens besluit van het College voor Promoties  
te verdedigen op donderdag 19 december 2013  
klokke 10.00 uur

*door*

**Armin Cuyvers**

geboren te Nijmegen

in 1980

Promotiecommissie:

Promotoren: prof. dr. C.A.P. Hillion  
prof. dr. A.A.M. Kinneging

Overige leden: prof. dr. L.J. Brinkhorst

prof. dr. B. De Witte (Maastricht University and  
European University Institute, Florence, Italy)  
prof. dr. A. Rosas (University of Turku, Finland and  
The European Court of Justice)  
mr. B. Smulders (The European Commission)  
prof. dr. T. Zwart (Utrecht University)

Lay-out: AlphaZet prepress, Waddinxveen

Printwerk: Wöhrmann Printservice

ISBN 978-94-6203-500-3

© 2013 Armin Cuyvers

*Behoudens de in of krachtens de Auteurswet van 1912 gestelde uitzonderingen mag niets uit deze uitgave worden verveelvoudigd, opgeslagen in een geautomatiseerd gegevensbestand, of openbaar gemaakt, in enige vorm of op enige wijze, hetzij elektronisch, mechanisch, door fotokopieën, opnemen of enige andere manier, zonder voorafgaande schriftelijke toestemming van de auteur.*

*Voor zover het maken van reprografische verveelvoudigingen uit deze uitgave is toegestaan op grond van artikel 16h Auteurswet 1912 dient men de daarvoor wettelijk verschuldigde vergoedingen te voldoen aan de Stichting Reprorecht (Postbus 3060, 2130 KB Hoofddorp, [www.reprorecht.nl](http://www.reprorecht.nl)). Voor het overnemen van (een) gedeelte(n) uit deze uitgave in bloemlezingen, readers en andere compilatiewerken (art. 16 Auteurswet 1912) kan men zich wenden tot de Stichting PRO (Stichting Publicatie- en Reproductierechten Organisatie, Postbus 3060, 2130 KB Hoofddorp).*

*No part of this book may be reproduced in any form, by print, photoprint, microfilm or any other means without written permission from the authors.*

## Acknowledgments

Writing the acknowledgments to your thesis is a grateful moment, and thankfully there is much gratitude to acknowledge. For writing a thesis remains a curious mixture of bliss and self-torment. On the one hand there is the extreme luxury of researching a topic that fascinates you, discussing it in an orchard in Stockholm, and the bursts of inspiration and intellectual pleasure when you 'get it' or enjoy the elegant and powerful arguments of others. On the other hand, there is the constant awareness that the only obstacle between you and a good thesis is you, life in the shadow of 'the book', and the frustration when you read the elegant and powerful arguments of others. Many have supported me throughout the joys and tribulations of this wondrous process, and I want to take this opportunity to thank them, even if I will inevitably fail to mention all of you that deserve to be.

This thesis would not have been here without Henry Schermers. The inspiration and mentoring he provided to me as a student has been invaluable. He simply opened the world to me. Piet Jan Slot has been equally vital to this thesis and my choice for academia. As his student-assistant he showed me the ropes, as well as the meaning of good coffee, and really good wine. When I came back from Oxford he welcomed me into the Europa Instituut. I hope to enjoy his advice and company for a long time.

I received much appreciated financial support from the Leiden University Fund, the *Prins Bernhard Cultuurfonds* and the *Ketel I* fund to conduct research abroad. That research was further enabled by many institutions and gracious hosts. I especially thank professors Harry Scheiber and Martin Shapiro from Berkeley, professor Gerhard Casper from Stanford and professor Peter Oliver from the University of Ottawa for their kind reception and stimulating ideas. UC Hastings, and most certainly professor Joel Paul, a very warm thank you for my great months in 'the tower', and the many insights into the US Constitution and society.

Many great (former) colleagues in Leiden created a motivating and often downright fun working environment. With the unfairness that singling out individuals entails, I first mention Bas van Bockel, Ay Ling Josaputra, Narin Idriz and my long-time roommates and *confidantes* Lisa Louwerse and Nelleke Koffeman: Thank you for many memorable moments and your friendship. Jorrit Rijpma, Moritz Jesse, Vicky Kosta, and Pieter van Cleynenbreugel, whose humor and intelligence creates a wonderful vibe, and Vestert Borger, who is always in for some intellectual gymnastics. Wendy Rodger, many thanks for being a solid back-up, and your patient languaage reviews.

---

Dear Alison McDonnell, who combines a big mind with a big heart and a wicked sense of British humor, and has brightened many a day with all three. Dear Christa Tobler (and Jacques Beglinger), whose frightful efficiency and legendary hospitality alike serve as an aspiration, and who taught me how to bake a *Zopf* and ski up a mountain to boot! Last, and certainly not least, Stefaan Van den Bogaert, who challenges, enables and supports me as the professional trainer he probably would prefer to be, and because he simply also is a really nice guy. He may therefore be provisionally forgiven for stealing the name Floris.

More closely related to the process of the thesis I would like to sincerely thank Laurens Jan Brinkhorst and Ben Smulders. The conversations I had with them always left me invigorated and much wiser. They also provided me with much appreciated glimpses of the real world, where European integration lives, and where theory should strive to contribute.

Thankfully, the new regulations now also allow me to thank my *promotores*. Andreas Kinneging, who personally convinced me to study legal philosophy next to the bicycle racks of the social sciences building after he had introduced me to Kant. Thank you for convincing me, the intellectual freedom to pursue a confederal perspective, and do not worry: The entire prism on Aristotle and EU aristocracy will see the light of day elsewhere. Christophe Hillion, my main supervisor, whose trust and support I have greatly appreciated, whose precise and refined mind I admire, and whose French *finesse* and British wit serve as an example to my Dutch bluntness. Thank you for all I have learned, and I also look forward to our future relationship outside the PhD-context.

Wieke Scholten en Frans Jan van Laer, thank you for great friendship, which even makes simply being dead-tired together a pleasure. Daniel Ohmann, Jaap Corthals, Jelle Nijland and Martijn van Kogelenberg, my fellow mordantes, our poker nights and other pastimes were a lifeline, and I value our friendship greatly. Martijn, we have shared much since Leiden, Moscow and Oxford, including the joys of children and PhD's, and I am very happy indeed you agreed to be my *paranimf*.

Pascal Haazebroek, my good friend, I admire your intellect, energy, loyalty, and overall Pascallness. From high school, through university, our business adventures, and life as a PhD, from Florence to California, your friendship means and has meant a lot to me. And who could have imagined that we would both defend our theses in Leiden within 8 days of each other!

Paula and Herman, your warm welcome into the Van Steenbergen family has been much appreciated, your wonderful help, with Floris and many different matters, has been simply vital in surviving these years.

Dearest parents and brothers and sisters, dear Peter, Hanny, Daniel, Marijn, Yara, Ilka, and Hugo. Thank you mom and dad for your unconditional love and support, for the best upbringing I could have imagined, and for showing me how to be parent myself, (and thanks dad for not finishing your thesis before me...). The family has always been a safe haven and warm bath for me. What is more, academic debates are easy once you have survived a Cuyvers family dinner. Ilka, I simply miss you.

Then I come to the inner sanctum of my life: Elianne and Floris. Elianne, you mean more to me than I can capture in words, let alone in a few sentences, although I will keep trying. I never quite figured out how I managed to conquer such a wonderful woman, so I just count my blessings, and thank you for the sheer happiness and love you give me, and the life we live. I so look forward to our post-PhD life together, including the unborn miracle you nurture as I write these words.

My dear Floris, you could have slept a little bit more than four hours a night, but boy do you light up my world with your laughter, amazement, and boundless joy. You certainly provided the best summary of the last period of the thesis. I was sitting in my customary corner of the table, typing away. When I got up, you nudged your mother and exclaimed '*hij beweegt!*' I am free again Floris, *Papa niet meer proefschrift praten*, lets go and play!



# Table of Contents

ACKNOWLEDGMENTS	V
THE EU AS A CONFEDERAL UNION OF SOVEREIGN MEMBER PEOPLES:	
AN INTRODUCTION AND OVERVIEW	1
1 Introduction: Reconnecting the EU	1
2 The descriptive and normative objectives of a confederal approach	3
3 Three tests and challenges for a confederal approach	6
4 Method, approach and limitations	7
4.1 Normalism v. exceptionalism	8
4.2 Caveats and limitations	10
5 Structure and outline	11
PART I THE CONFEDERAL PERSPECTIVE 13	
1 THE WHY AND HOW OF AMERICAN CONFEDERALISM: ESTABLISHING A COMPARATIVE GRID FOR THE EU 15	
1 Introduction: A trip down constitutional memory lane	15
2 Why (American) confederalism?	16
2.1 Why confederalism?	16
2.2 Why the American Confederation?	21
3 Specific aims and hypotheses	24
4 Comparative methodology: Comparing apples and I-pads?	26
4.1 Caveats and limitations: The inherent hubris of comparison	26
4.2 The practice and methodology of constitutional comparison	30
4.2.1 The epistemic interest: To what end are we comparing?	31
4.2.2 Five approaches to constitutional comparison	32
4.2.3 A classificatory and functional approach	33
4.2.4 Core assumptions: The possibility of comparison and overarching categories	35
4.3 Designing the confederal comparison	38
5 Concepts and terminology: Specific and general concepts used	40
5.1 Terminology: General conceptions used	40
5.1.1 Federation	42
5.1.2 Confederation	43
5.1.3 Member people	44
5.2 Terminological shifts and traps	45

---

6	The confederal cradle	46
6.1	The road to confederation	47
6.2	The Sovereign States	48
6.3	Brief overview of the Articles	50
6.4	A successful failure: Challenges and difficulties of assessment	51
6.5	'The failure of this our current government'	54
7	Reversing confederalism: The federal modifications	57
7.1	Fundamental modifications	58
7.2	Structural modifications	59
7.3	Increased competences and implied powers	59
7.4.	Institutional modifications and the system of representation	60
7.5	A comparative grid	61
2	THE CONFEDERAL COMPARISON	63
1	Introduction: A point by point comparison	63
2	Foundations: Fundamentals of the constitutional systems compared	64
2.1	Foundations: Ultimate foundation of authority	64
2.1.1	We the peoples	64
2.1.2	We the People	66
2.1.3	We the peoples and /or states?	68
2.2	Foundations: The use of force against the States?	71
2.2.1	The use of force under the Articles	71
2.2.2	Force as a necessary federate backbone	72
2.2.3	The use of force in the EU	72
2.3	Foundations: Taxation and the generation of revenue	74
2.3.1	The problem of revenue under the Articles	74
2.3.2	Taxation and revenue in the Federation	76
2.3.3	The generation of revenue in the EU	77
2.4	Foundations: Amendment	80
2.4.1	Unanimous amendment of the Articles	80
2.4.2	A federate process for amendment by majority	81
2.4.3	Amending the EU Treaties	82
2.5	Foundations: Secession	86
2.5.1	The possibility of secession under the Articles	86
2.5.2	The eventual impossibility of secession under the federate Constitution	87
2.5.3	Secession from the EU	88
2.6	Foundations: Expanding the Union	90
2.6.1	Accession under the Articles	90
2.6.2	Accession under the Federation	91
2.6.3	Accession to the EU	92
2.7	Sub-conclusion foundational modifications	95

3	Structural elements and modifications: Direct, separate and supreme government	95
3.1	Structure: Legal supremacy and direct effect	95
3.1.1	The lack of legal supremacy and limited direct effect in the Confederation	95
3.1.2	The supreme law of the Federation	98
3.1.3	Legal supremacy and direct effect of EU law	99
3.2	Structure: Separate versus merged government	103
3.2.1	Merged government in the Confederation	103
3.2.2	Separate government in the Federation	103
3.2.3	Separate or merged government in the EU?	104
3.3	Sub-conclusion structural modifications	106
4	The authority of the centre: Objectives, attribution and specific competences	106
4.1	The authority of the centre: Objectives	107
4.1.1	Objectives under the Confederation	107
4.1.2	Objectives under the Federation	109
4.1.3	Objectives of the EU	109
4.2	The authority of the centre: Attribution	112
4.2.1	The narrow doctrine of attribution in the Confederation	112
4.2.2	A broad doctrine of attribution in the Federation	113
4.2.3	Attribution in the EU	114
4.3	The authority of the centre: Specific objectives	118
4.3.1	The Confederation and the war focus	118
4.3.2	The Federation: Combining the internal and the external	122
4.3.3	The EU and the internal focus	123
4.3.3.1	The regulation of trade: A federal centre of gravity	123
4.3.3.2	The relative absence of war and defence competences	125
4.4	Sub-conclusion: An interesting mix of central authority	127
5	Institutional modifications	128
5.1	Institutional modifications: Representation and the legislature	128
5.1.1	Representation and the Confederal legislature	128
5.1.2	The federate modifications to the legislature and the system of representation	130
5.1.3	The EU legislature and system of representation	133
5.1.3.1	The Council of Ministers	134
5.1.3.2	The European Parliament	137
5.1.3.3	The European Commission	139
5.2	Institutional modifications: The executive	141
5.2.1	The weak executive under the Articles	141
5.2.2	The powerful executive in the Federation	142
5.2.3	The executive in the EU	143

5.3	Institutional modifications: The judiciary	146
5.3.1	The (absent) judiciary in the Confederation	146
5.3.2	The essential judiciary in the Federation	147
5.3.3	The judiciary in the EU	148
5.4	Sub-conclusion institutional modifications	151
6	The Confederal Comparison: Overview and conclusions	152
3	THE EU AS AN INVERTED CONFEDERATION WITH A FEDERATE SUPERSTRUCTURE: THE STRENGTHS OF A MODIFIED CONFEDERAL FORM	157
1	Introduction: Three general propositions on the nature of the EU	157
1.1	Structure	158
1.2	Caveats and limits	158
2	The inverted confederation: Europe as Impire	159
2.1	The relevance of the external for the EU...	162
2.2	...but the primacy of the internal and economic	163
2.3	Inverting the confederal pattern	165
2.4	The constitutional benefits of inverted confederalism	165
2.4.1	A constant impetus for cooperation	166
2.4.2	Structural-institutional benefits	167
2.4.3	The self-deepening effect of the internal focus	168
2.4.4	Riding the market wave	169
2.5	The inverted confederation: Sub-conclusion	171
3	A confederal foundation with a federalized superstructure	172
3.1	Negative integration as a confederal backbone	174
3.2	Determining competences	176
3.3	Adaptability and pseudo-amendment	177
3.4	Enabling self-deepening	179
4	Rule by law, self-control, and the importance of stable Member States	180
4.1	The importance of stable and well-constituted members for confederal rule	181
4.2	The (more) stable basis of the EU and the capacity of self-control	183
4.3	A rule by law: The USB of confederal organization	185
4.4	Laws impire and the plural nature of the EU order	189
5	Back to Madison's Score Card: Evaluating the modifications	192
5.1	General lack of power and energy in the centre and compliance in the states	192
5.2	Weak finances and unstable states	195
5.3	Lack of competences and the inability to (make) amend(s)	196
6	Madison's score card: A clear pass grade	197

4	THE COSTS OF MODIFICATION AND THE LIMITS OF THE CONFEDERAL FORM: OF NEW AND EXACERBATED PROBLEMS	199
1	Introduction	199
2	A market without borders or an EU without limits?	199
2.1	The challenge of an unlimited market: Collective action	202
2.2	Fundamental rights	203
2.3	In search of confederal limits?	204
3	Limits and risks of the rule by law	205
3.1	Areas not amenable to legal control	206
3.2	Unbalancing the Trias	207
3.3	Setting an amendment trap	208
3.4	Reliance on stable Member States and member courts	210
3.5	Absolving political responsibility	211
4	The increasing schism between foundation and superstructure	212
4.1	An increasing schism: A problem of normative capacity	213
4.2	The no-demos challenge...or not	215
4.3	The limited capacity of a confederal system for direct conflict	217
5	Conclusion: The weaknesses of a modified confederation	219
5	OF ELITE STRUCTURES AND ANTI-DEMOCRATIC REVOLUTIONS: THE PROCESS OF FEDERATION	221
1	From Confederation to federation: The process	221
2	Elites and elite structure: If you cant beat them make them join you	222
2.1	The federate path to power in the US	222
2.2	The national path to (EU) power	225
3	The anti-democratic revolution	227
4	The benefits of secrecy: Inverting the convention scheme and attached amendments	230
5	Attached amendments	232
6	Aemulatio, not innovatio	232
7	Process conclusions	233
6	CONCLUSIONS PART I: THE MODIFIED CONFEDERAL MODEL OF THE EU	235
1	The modified confederation as a model?	235
2	An inverted confederation with a federate superstructure relying on a rule by law	236
3	Weaknesses and risks of a modified confederal system: A widening gap...	238
4	Closing the gap?	240

---

<b>PART II</b>	<b>A CONFEDERAL CONCEPTION OF SOVEREIGNTY</b>	<b>241</b>
7	TOWARDS A CONFEDERAL CONCEPTION OF SOVEREIGNTY	243
1	Introduction: 'We the peoples'	243
2	Aims and advantages of a confederal conception of sovereignty	244
2.1	Removing sovereignty as an obstacle to constructive theory	244
2.2	Grounding the EU in its sovereign member peoples	245
2.3	The fit of confederal sovereignty with EU Treaties and case law	246
2.4	Confederal constitutionalism and confederal supremacy	246
2.5	An attractive narrative: A confederal evolution of democracy	247
3	Approach and method: Limiting scope and ambitions	247
4	Structure	251
8	THE STATIST AND PLURALIST CHALLENGE	253
1	Sovereignty as an obstacle: The statist and the pluralist challenges	253
2	Central dichotomies: National v. international or statism v. pluralism	254
3	The statist – pluralist dichotomy	255
4	Statism: The sovereign state as bulwark and safe haven	257
4.1	Academic statism	257
4.2	Empirical statism	261
4.3	The key tenets of statism	262
4.4	Application: Judicial statism	263
4.4.1	The Lissabon Urteil: The statist challenge of the Bundesverfassungsgericht	264
4.4.2	Background and brief overview of the Lissabon Urteil	265
4.4.3	A sovereign people under a sovereign constitution in a sovereign state	266
4.4.4	Democracy as the normative armour of the sovereign state	267
4.4.5	The case of sovereignty and democracy v. integration	269
5	Pluralism: Overcoming sovereignty and our darker selves	272
5.1	The EU as crown witness against sovereignty	274
5.2	The key tenets of pluralism	276
5.3	The fit and failure of pluralism	278
5.4	The statist rejoinder	279

6	The statist – pluralist divide: Bridging attempts	280
6.1	Constitutional pluralism: Constitutionalizing plurality without hierarchy	281
6.2	Hierarchy under Contrapunctual principles	282
7	Conclusion: A sovereign either/ or?	285
9	<b>A TALE OF ENTANGLEMENT: THE EVOLUTION AND CONFUSION OF INTERNAL AND EXTERNAL SOVEREIGNTY</b>	287
1	Introduction-A tale of entanglement	287
2	Five phases of historical development	288
3	Bodin and the origin of the absolute myth	289
3.1	The internal focus and relative absolutism of Bodin's sovereign	290
3.2	The personal sovereign and the impossibility of a constitution	292
3.3	The prescriptive nature of sovereignty	293
3.4	The descriptive fallacy	294
3.5	Sub-conclusion: Dismantling the absolutist myth of Bodin	296
4	The Primitives and the creation of the external	297
4.1	Discovering the external via the internal	297
4.2	A new concept is born: External sovereignty	298
5	The constitutionalization of the internal sovereign	299
5.1	The abstract sovereign: Abstractions don't shoot	300
5.2	The constitutional layer	301
5.3	The Federalists and the sovereign 'We'	302
5.4	Combining federalism, sovereignty, and democracy	304
6	Fulfilling the myth: External sovereignty and the creation of the absolute	305
6.1	From Monarch to State: Disconnecting the external from the internal	306
6.2	The absolute external sovereign	307
6.3	The conceptual dominance of external sovereignty	307
6.4	Sub-conclusion: Towards a fifth step in sovereignty?	308
7	The EU: Where internal and external sovereignty meet?	309
7.1	The conceptual fit of integration and confederal sovereignty	310
7.2	The clash between internal and external sovereignty	311
10	<b>THE CONFEDERAL POTENTIAL OF 'WE THE PEOPLES'</b>	313
1	Introduction: The uses of confederal sovereignty	313
2	Outlining a confederal conception of sovereignty	314
3	The fit between confederal sovereignty and the legal and normative basis of the EU	317

---

3.1 The legal fit: Delegation of sovereign powers	318
3.2 The normative fit: The value of democracy, popular rule and identity	319
3.3 The evolutionary fit: The increasing relation between the EU and the individual	322
4 Dissolving the clash between statist sovereignty and plural integration	324
4.1 Statism and confederal sovereignty	325
4.2 The statist Maginot line against integration	327
4.3 Trapping the people and the democratic process in the state	328
4.4 The potential benefits of confederal sovereignty for statism	330
5 Pluralism and the confederal perspective	331
5.1 Free floating authority	333
5.2 The descriptive basis and prescriptive weakness of pluralism	334
5.3 The plural reality of confederal sovereignty	335
5.4 Sub-conclusion: Where statism and pluralism meet?	338
6 Grounding the Union: A sufficient popular foundation for the EU	339
6.1 Counter arguments: The people, really?	344
6.1.1 Statal instead of popular delegation	344
6.1.2 Overstating the exclusion of the people	344
6.1.3 Overcoming past shortfalls in popular consultation	347
6.2 Institutionalizing confederal sovereignty	347
6.3 Sub-conclusion: A direct and subsidiary link	348
7 To constitute or not to constitute: Why does constitutionalism fit the EU?	349
8 The confederal primacy of EU law	352
8.1 The narrow but ultimate normative primacy of the national constitution	353
8.2 The weaker but broader claim of EU supremacy	353
8.3 Confederal primacy: The peaceful coexistence of EU and national primacy	355
9 The normative appeal of confederal sovereignty	357
9.1 The importance of self-understanding for democratic legitimacy	359
9.2 A confederal fairytale?	360
 11 CONCLUSIONS PART II: SOVEREIGNTY AS PART OF THE SOLUTION	 363
1 The possibility and possibilities of confederal sovereignty	363
2 The fit and advantages of confederal sovereignty	365
3 The confederal promise and challenge	368

<b>PART III</b>	<b>TOWARDS A DEMOCRATIC UNION OF SOVEREIGN MEMBER PEOPLES: APPLICATION AND CONCLUSIONS</b>	
		371
<b>12</b>	<b>A CONFEDERAL EVOLUTION OF THE DEMOCRATIC PROCESS</b>	373
1	Applying confederalism: The democratic process and the EMU crisis	373
2	A confederal evolution of the democratic process	374
3	Confederal causes: The lack of a national process to control 3.1 The democratic disconnect: An irrelevant national democratic process?	374
	3.2 The unconstitutionalized double role of the state	375
	3.3 The missing national link in confederal democracy	380
4	Building blocks of a confederal democracy	382
4.1	Building blocks: Delegation as democratic substance	383
4.2	Three guidelines for the national institutionalization of integration	385
4.2.1	EU senates	386
4.2.2	Competences	387
4.2.3	Prerequisites for national control	389
4.2.4	Conclusions EU Senates	389
5	EU contributions to confederal democracy	390
5.1	Political space: De-constitutionalization at the EU level	390
5.2	Guiding and compelling national democratic evolution	392
6	Conclusion: The democratic potential of confederal rule	394
<b>13</b>	<b>THE SOVEREIGN DEBT AND EMU CRISES: A PERFECT CONFEDERAL STORM?</b>	397
1	A perfect confederal storm?	397
2	A tale of three crises	397
2.1	A permanent stability mechanism	401
2.2	Of six-packs, duo-packs and plus-pacts	403
2.3	A new outer circle of EU law: The TSCG	405
2.4	From Banking Unions to a 'deeply' 'genuine' EMU	406
3	The EMU crises: Confederal diseases?	409
3.1	The internal focus and the momentum of self-deepening	410
3.2	Hitting the weak spots: Money	412
3.3	Politics and conflict	413
3.4	The schism between confederal basis and federate superstructure	415
4	Confederal pitfalls in responding to the crisis: Mind the gap... please	416
4.1	Exploding the federate superstructure	416
4.2	Relocating democracy to the EU level	418
4.3	Only conquer what you can defend	420

5 Confederal cures?	421
5.1 Designing confederal checks at the national level	421
5.2 The alternative of automaticity	425
6 A confederal course to weather a perfect confederal storm	426
 CONCLUSION: THE EU AS A CONFEDERAL UNION OF SOVEREIGN MEMBER PEOPLES	
	429
1 The challenging potential of European integration	429
2 Confederalism and the EU: The modified confederation as a model	430
2.1 Three comparative key findings	431
2.2 Three confederal key conclusions	432
2.3 The lack of federate driving forces	433
3 A confederal evolution of sovereignty	434
3.1 The conceptual fit of confederal sovereignty	434
3.2 De-complicating reality	435
3.3 Advantages of confederal sovereignty: From technocratic frog to democratic prince	436
4 Confederal tests and application: Democracy and the EMU crisis	438
4.1 A confederal evolution of the national democratic process	438
4.2 A confederal answer to the sovereign debt and EMU crises	439
5 Strengths and weaknesses of confederalism	440
6 Towards a democratic confederal union of sovereign member peoples, or the confederal come back!	442
 SUMMARY	
	443
 NEDERLANDSE SAMENVATTING	
	457
 BIBLIOGRAPHY	
	473
 CASE LAW	
	491
 CURRICULUM VITAE	
	497