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# 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

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# The EU as a Confederal Union of Sovereign Member Peoples: An introduction and overview

*'What is regarded as a distinctive and exclusive feature of a federal state may be achieved in a typical confederation of States'*[1]

*'With the emergence of permanent multinational 'communities,' of which the European Community is the prime example, we are now witnessing a revival of confederal arrangements.'*[2]

## 1 Introduction: Reconnecting the EU

This thesis reconnects the EU to two classic constructs of constitutional theory: confederalism and sovereignty. Two powerful but unfashionable constructs whose joint potential for European integration remains largely unexplored and undervalued.[3] The primary instrument to explore this potential is comparative. The EU will be contrasted with the rather unknown but rich example of the American Articles of Confederation, and their evolution into the now famous American federate system. A comparison with the confederal roots of the United States which is revealing for both confederalism and sovereignty, and illustrates the potential of linking both for a constructive constitutional theory of the EU. A theory which does not have to overcome history, but connects with it, and may thereby help to recapture the EU and the increasing authority it wields.

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1 H. Lauterpacht, 'Sovereignty and Federation in International Law' in: E. Lauterpacht (ed.) *International Law, Being the Collected Papers of Hersch Lauterpacht, vol. 3* (CUP, 1977), 21.

2 D.J. Elazar, *Exploring Federalism* (University of Alabama Press 2006), 51.

3 For confederalism see M. Burgess, 'Federalism' in: A. Wiener and T. Diez (eds.), *European Integration Theory* (2nd edition, OUP, 2009), 30. Also see Elazar (2006), 9: 'Western Europe is moving towards a new-style confederation of old states through the European Community (…).', and R.L. Watts, 'Federalism, Federal Political Systems, and Federations' 1 *Annual Review of Political Science* (1998), 121-122: '(…) the European Union after Maastricht, which is basically a confederation but (…) has some features of a federation.' For sovereignty cf already N.Walker, 'Preface', in: N.Walker (ed.), *Sovereignty in Transition* (Hart Publishing 2006), v.

As for confederalism, the proposed comparison traces where the EU has blended a traditional confederal set-up with some of the federate modifications that were key to the US evolution into a federate system. These federate modifications can then be isolated, and the effect of grafting them onto a confederal basis studied. An exercise from which the EU emerges as an *inverted* confederal system which has *reinforced* a confederal foundation with a federate superstructure, and relies heavily on a *federate rule by law*. Based on these findings the descriptive fit and normative appeal of confederalism for the EU can then be explored more generally. Can confederalism, for instance, help us to better understand the nature and functioning of the EU, including the constitutional root causes of its surprising strengths and weaknesses? Or can it assist normatively in creating the ideal picture needed to drive, guide and justify its further development? Here the inherent capacity of confederalism to combine a certain degree of constitutional order with a flexible and plural reality may be of value. Especially so because the EU seems to have found some ways to reduce the structural weaknesses also inherent in the traditional confederal scheme. If so, this may bring confederalism, traditionally the ugly duckling of constitutional theory, back into play, and not just for the EU.

As for sovereignty, it will become apparent how the American transition to a federation relied on an evolution in the doctrine of internal and popular sovereignty. By relocating sovereignty in the people, public authority could be delegated to two separate governments. Emulating this evolution in the US, this thesis explores the possibility of a *confederal conception of popular sovereignty*. One which allows multiple sovereign peoples to delegate part of their authority to one shared European government. An objective for which the American example will be complemented by a more general conceptual analysis of the flexible internal core of sovereignty itself.

Where the US spearheaded a federate evolution in sovereignty to support their new federate system, therefore, the EU may champion a confederal evolution in sovereignty to support its own updated form of confederalism. A confederal conception that would soften the false juxtaposition between sovereignty and integration. Instead, it could conscript sovereignty as part of the solution, allowing sovereignty to fill some vital gaps in the confederal model and demonstrating the potential that is unleashed when these two concepts are properly linked and allied. A linkage that could *inter alia* allow a confederal EU to directly ground itself on the sovereign member peoples, who appear the only source capable of carrying the ever-increasing legitimacy demands of the EU. Most importantly, it could do so in a way that helps to rediscover these peoples as the ultimate locus of political authority, at least at the conceptual constitutional level. As a result confederal sovereignty may also be of use in realigning the democratic process, both at the national and the EU level, with the polycentric realities of today. It may thereby release the member peoples from their increasing entrapment within their states, and establish democratic control, albeit in a different form, at those levels where it increasingly matters in a globalized world.

## 2 The descriptive and normative objectives of a confederal approach

Jointly the comparative exploration of confederalism and sovereignty form the two key ingredients of the overarching conception of the EU as a confederal polity of sovereign member peoples examined in this thesis. A constitutional system that is founded *both* on the popular sovereignty of its member peoples, and on the Member States that remain the primary bodies through which these people organize themselves. An overarching conception that would also fit our Neo-Westphalian world where states have surrendered their near monopoly on exercising public authority but nevertheless remain of central importance.[4] A world, therefore, where government, and the mechanisms for democratic control, need to be realigned with the reality that needs governing. A world where the confederal form may finally come into its own.

This overarching aim must and will of course be deconstructed into multiple more specific aims along the way. Here, however, it is important to already indicate some of these specific aims, and especially to separate the analytical and descriptive from the normative claims, at least to the extent that the descriptive can be uncoupled from the normative in law and constitutional theory.[5]

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4 Cf also N.Walker, 'Late Sovereignty in the European Union', in: N. Walker (ed), *Sovereignty in Transition*, (Hart, 2006), 5. I prefer the term neo-Westphalian to his post-Westphalian, as it better captures the continuity, as well as the enduring, if diminished role of the states. it also comes closer to his use of 'late sovereignty'. It fully shares, therefore, the sentiment he expressed elsewhere that '(…) rather than signaling a break with the paradigm of political modernity centered upon the modern state and its legal and constitutional edifice, the EU reflects and contributes to a variation in the form of political modernity.' N. Walker, 'The Place of European Law', in: G. de Búrca and J.H.H. Weiler (eds), *The Worlds of European Constitutionalism* (CUP 2012), 57.

5 Cf the distinction as made by Rosenfeld and Sajó 'From a descriptive standpoint, the scholar examines systematically the comparative constitutional work that participants undertake, performing a number of tasks ranging from classification to critical assessment. (…) Normative, or prescriptive scholarly work, on the other hand, concentrates on what the scholar deems desirable or feasible, depending on the latter's empirical, ideological, or discipline based position.' M. Rosenfeld and A. Sajó, 'Introduction', in: M. Rosenfeld and A. Sajó (eds) *The Oxford Handbook of Comparative Constitutional Law* (OUP 2012), 10. At the same time this distinction is not to deny the inherent normative element in *choosing* the comparator, in this case confederalism, from amongst the multiple other possible candidates for comparison. Cf N. Jansen, 'Comparative Law and Comparative Knowledge' in: M. Reimann and R. Zimmermann (eds), *The Oxford Handbook of Comparative Law* (OUP 2006), 314.

To begin with this thesis makes several descriptive, factual claims about confederalism, sovereignty and the EU. It is, for instance, claimed that the EU can be usefully understood as a modified confederal system.[6] For the EU does combine several of the core characteristics of a confederation with some federate elements. Furthermore, approaching it as such contributes to a better understanding of its functioning and nature and may guide future modifications. Such modifications, after all, should build on the specific strengths of the modified confederal model, whilst avoiding the remaining confederal pitfalls. Similarly, it is claimed that sovereignty *is* compatible with far-reaching integration, if only we return to the more appropriate internal and popular strands within sovereignty. Strands that are inherently more amenable to sharing and dividing authority. Strands that are also conceptually prior and more fundamental than the unsuitable external conceptions of sovereignty generally applied to the EU, and which lead to a false dichotomy between sovereignty and the EU. Equally the federate evolution in sovereignty that took place in the US is not a normative claim, but a descriptive fact, as is the inherent potential within sovereignty for a further confederal evolution.

Added to these descriptive claims, yet separable from them, are several normative claims. Chief amongst these is the claim that a conception of the EU as a confederal union of sovereign member peoples is attractive and desirable. A conception that should be pursued and further realized where possible.[7] This, for instance, because of its tendency to respect and strengthen other desirable outcomes such as respect for autonomy, identity and diversity, debate and cooperation. Crucial values in a world where we both need far-reaching cooperation and respect for local identities.[8]

In addition the confederal conception allows the EU to ally with other valuable normative constructs in constitutional theory, such as democracy, state, sovereignty and citizenship. Instead of having to oppose and overcome them, and with them the national systems that rely on these constructs as well, the EU can be be allowed to build on these constructs in a symbiotic manner. Instead of radically rejecting them, therefore, the EU can

6 See in this regard also the conclusion of Burgess that the EU is 'an evolving, highly decentralized, federal union of states and citizens with limited but significant public duties, obligations and responsibilities that is built upon 'unity in diversity'. And: 'It is, in other words, a new kind of federal-confederal union that we can classify either as a '*new confederation' or a new federal model*.' Burgess (2006), 238-239 (my italics).

7 This should not be mistaken, however, for a 'missionary' type of suggestion that confederalism forms a panacea to all the problems of the world, which it certainly is not. Cf in this regard also M. Forsyth, *Unions of States: The Theory and Practice of Confederation* (Leicester University Press 1981), 9.

8 These outcomes also relate to the liberal and contractual nature of federalism itself. In the words of Burgess: '(…) – a voluntary union, we are reminded, and one that is founded on liberal democratic principles that recognize, respect and tolerate differences and diversity.' Burgess (2006), 236.

better be made compatible with these traditional concepts, improving them where possible. One of the main advantages of a confederal focus in this regard may precisely be its capacity to provide updated conceptions of such classic constructs as sovereignty, also for the *national* level. Such updated notions may help national constitutions and democratic systems, on which a confederation must rely, to adapt to their new roles and functions in a globalizing reality, and hence to retain their relevance. In doing so they may also counter the simplistic notions now often used to hold constructive national debates hostage.[9] In the long run, integration and cooperation are necessary to protect and improve traditional constructs such as democracy, identity state or sovereignty. For as always, survival lies in adaptation, not fossilization.

Lastly, and closely related, there is the normative claim that the ultimate basis of public authority should be the people, and not, for instance, the states. Even the state, after all, is there for the people. Yet the risk exists that the people are squeezed out of the equation in the clash between the EU and the Member States. Any solution to the relation between the states and the EU, therefore, should be found in rediscovering the people that should support and control both.

These normative claims build on the descriptive claims, but of course require additional normative justification: an Is cannot be transformed into an Ought that easily. Where necessary, such further normative justification will therefore be provided, or at least the need for it acknowledged. As indicated, furthermore, these normative claims can be separated from the descriptive ones. One can agree that the EU can currently be described and understood as a confederal system, without agreeing that the confederal form is desirable, now or in the future. Even where one, for other normative reasons, rejects the confederal form, and for instance prefers a federate or purely intergovernmental *telos* for the EU, however, the descriptive reality of a confederal EU remains relevant and should be acknowledged. Both the transition to the desired form of the EU, as well as the normative justifications for that form, after all, must take into account the current confederal reality.

9 See typically T.H.P. Baudet, *The significance of borders: why representative government and the rule of law require nation states* (Doctoral thesis Leiden University 2012).

## 3 Three tests and challenges for a confederal approach

To further develop these descriptive and normative claims, the confederal framework will be tested against three challenges, selected to represent both theory and reality.

On the plane of theory, confederalism will be set against, or rather between, the conflicting schools of statism and pluralism.[10] Statist approaches attempt to fit the EU within the existing statal framework. Here states remain the ultimate, irreducible building blocks. Typically such approaches lead to an unavoidable but unconvincing choice: The EU either has to stay within the confines of an international organization, or it must become a (federal) state.

The opposite approach of pluralism starts from those novelties in the EU that seem to defy this statal framework. Building on these novelties the central tenets of statism are rejected, especially its assumption of a fixed hierarchy with the sovereign state at the top. Instead, we are invited to a plural reality where multiple centres of authority co-exist in civilized heterarchy. Although such pluralist approaches often accurately describe reality within the EU, they also tend to deconstruct far more than they can reconstruct. Once the statal framework has been scuttled, there is generally little stable or constructive theory left to replace it.

It will be examined whether these influential but opposing views of both schools may be partially reduced to a false juxtaposition between sovereignty and integration, and whether their respective strong points may therefore be partially synthesized under a confederal approach. For this purpose the statist camp will be primarily championed by the German *Bundesverfassungsgericht* and its forceful case law on European integration. As a primarily academic school of thought, the pluralist camp will be represented by some of its leading scholars.

Second, linking theory and practice, this thesis explores how a confederal approach may assist in securing a more stable and legitimate basis for the EU. A major theoretical and practical challenge that will clearly not be settled here, but does lead us to an analysis of a confederal evolution of the democratic process itself. Some highly tentative proposals will be made in this regard to better align national systems to their participation in an overarching confederal constitution, and to anchor the EU directly in the national constitutions of its Member States. The place where a confederal Union should logically be anchored.

10 See for a detailed discussion of both schools part II, chapter 8.

Lastly, switching from theory to harsh reality, the confederal approach will be further tested against the EMU crisis. A challenge to any constructive account of the EU, it will be seen if the proposed ideas can assist, however tentatively, in better understanding the EMU crisis as a perfect confederal storm. In addition, it is examined if a confederal analysis may also help in descrying a general direction for structural solutions to the crisis. Solutions that both reinforce the EMU, without subsuming the Member States altogether in a European federation, and thereby overstepping the outer bounds of a confederal structure.

## 4 Method, approach and limitations

It is contested whether jurisprudence, let alone constitutional theory, can have a truly 'scientific' method.[11] Acknowledging these limits, this thesis relies on several of the common methods that are available within jurisprudence. Considering the central role of the American Articles of Confederation constitutional comparison obviously forms one particularly important method. This comparative exercise is complemented by historical and conceptual analysis, especially concerning sovereignty. Both are established methods which can rely on existing practice and on established categories, yet retain many pitfalls. Added to these key methods are the staple methods available to jurisprudence, such as the legal analysis of treaties, legislative acts and judicial rulings and the study of secondary literature. These methods will be introduced more thoroughly at later stages in this thesis where they can be linked directly to the research carried out. Together these methods provide structure and formalization, which, although not as strong as in physics or mathematics, may certainly support more modest claims.

11 This already because the objects of study are not immutable laws of nature. They are changing social realities, partially determined by our own social practices and understanding of them. Cf Walker (2006b), 16-17 or G. Frankenberg, 'Comparing constitutions: Ideas, ideals, and ideology – toward a layered narrative', 4 *International Journal of Constitutional Law* (2006), 444.

### 4.1 Normalism v. exceptionalism

In addition to these methods this thesis is also based on a more general, underlying approach, or perhaps even perspective. It examines where the EU is *not* unique, but (comfortably) fits within existing categories.[12] For though the EU is innovative on several points, it did not develop outside, or independent of, the realm of human knowledge and experience.[13] Nor should its further development be based on the assumption that it ought to do so.[14] This approach could be termed normalism, at least to contrast it with its opposite of exceptionalism, which predominantly focuses on those areas where the EU is presumed to be unique.

Normalism therefore searches for commonality rather than uniqueness. This because it assumes that understanding *starts* where it becomes clear how something is related to existing experience and knowledge, even if the object of study challenges and changes that existing knowledge.[15] This does not reject exceptionalism as a useful paradigm. Nor does it deny, or wants to deny, the highly relevant differences that do exist between the EU and

12 See already P. Hay, *Federalism and Supranational Organisations* (University of Illinois Press 1966), 37 and 44 'the Sui Generis label 'not only fails to analyze but in fact asserts that no analysis is possible or worthwhile, it is in fact an 'unsatisfying shrug.' For a more recent rejection of the *Sui Generis* approach, also see, B. de Witte, 'The European Union as an international legal experiment', in: G. de Búrca and J.H.H. Weiler, *The Worlds of European Constitutionalism* (CUP 2012), 19 et seq., and also L. van Middelaar, *De passage naar Europa, Geschiedenis van een begin*, (Historische Uitgeverij 2009), 29 et seq.

13 Quite the opposite, in fact, as is illustrated by the key role that the experiences with pooling of resources during WW I and II played in conceiving the European Coal and Steel Community (ECSC). Generally for the allies, but specifically for Monnet who had a central place in this project, as well as a lead role in the settlement of the Saar region dispute under the League of Nations. With the benefit of hindsight this was a clear precursor to the ECSC. See J. Monnet, *Memoirs* (Doubleday 1978), 85 et seq. and F. Duchêne, *Jean Monnet, The First Statesman of Interdependence* (W.W.Norton 1994), 41 et seq. On the negative focus of exceptionalist approaches and the *Sui Generis* qualification, also see C. Schönberger, 'Die Europäische Union als Bund: Zugleig ein Betrag zur Verabschiedung des Staatenbund-Bundesstaat-Schemas' 129 *AÖR* (2004), 81.

14 '(…) rather than signaling a break with the paradigm of political modernity centered upon the modern state and its legal and constitutional edifice, the EU reflects and contributes to a variation in the form of political modernity.' Walker (2012), 57.

15 Elazar (2006), 28 summarizes it nicely: 'in this he follows the English conceit of rejecting political theory. As a result, he does not do much to advance our knowledge of the subject.' Cf also A. Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach' 31 *JCMS* (1993), 476, describing how in fact the excessive focus on the EU's *sui generis* nature might also have been based on an implicit assumption that it would develop into a federation anyway, meaning what was of interest was the process, not the current parallels with other forms of political organization.

other polities.[16] In the language of genetics, however, if the EU is indeed a Genetically Modified Constitution, which mixes different strands of constitutional DNA, it is still relevant to identify which genes remain unaltered, which have mutated, and which of these mutations might contribute to specific characteristics of the EU. Only then can we isolate the unique modifications and understand their effect on the overall organism, instead of just qualifying the entire creature as unique. As changing less than two percent of DNA can make the difference between a human and a chimpanzee, furthermore, the claim that the EU is unique and at the same time largely consists of known constitutional building blocks are not mutually exclusive either. Excessive exceptionalism, however, only leads to the identification of infinite unique phenomena at the cost of the possibility of learning and knowledge.[17]

Although perhaps less spectacular than exceptionalism, furthermore, normalism also allows the comparative knife to cut both ways: where confederalism and sovereignty may help to understand the EU, the EU can be used to test and develop existing constitutional theory.[18] Especially important in this regard is that the EU might provide insights that help stabilize and improve the confederal form more generally.[19]

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16 For an interesting example, and constructive interplay, of exceptionalism and ordinarism also see the debates on the US constitution at Philadelphia, with Hamilton, for instance, analyzing all former confederacies and basing proposals on British experience, and Pinkney rejecting such comparisons for: 'The people of this country are not only very different inhabitants of any State we are acquainted with in the modern world; but I assert that their situation is distinct from either the people of Greece or Rome, or of any state we are acquainted with amongst the antients. …(…) I believe this observation will be found generally true: – that no two people are so exactly alike in their situation or circumstances as to admit the exercise of the same Government with equal benefit: that a system must be suited to the habits & genius of the people it is to govern, and must grow out of them.' (Charles Pinkney according to Madison's notes on the convention, June 25, 1787). Cf also F. McDonald (ed.), *Confederation and Constitution 1781-1789* (Harper & Row 1968), 146. For some clear normalism see Governor Morris, July 2nd 'Thus it has been all the world over. So it will be among us. Reason tells us we are but men: and we are not to expect any particular interference of Heaven in our favor.' (McDonald (1968), 157).

17 Which explicitly does not mean that the EU cannot be innovative, nor does it imply a Burkean sanctification of tradition and experience. For a (strong) rejection of the *sui generis* and exceptionalist approach to the EU also see R. Schütze, 'On "Federal" Ground: the European Union as an (Inter)National Phenomenon', 46 *CMLRev* (2009), 1090 or M. Kumm, 'The Moral Point of Constitutional Pluralism. Defining the Domain of Legitimate Institutional Civil Disobedience and Conscientious Objection' In: J. Dickson and P. Eleftheriadis (eds) Philosophical Foundations of European Union Law (OUP 2012), 216.

18 B. de Witte, 'Sovereignty and European Integration: the Weight of Legal Tradition' *Maastricht Journal of European and Comparative Law* (1995), 146.

19 A. Cuyvers, 'The confederal come-back: Rediscovering the confederal form for a transnational world' 19 *European Law Journal* (2013), issue 6 (forthcoming).

### 4.2 Caveats and limitations

Obviously the project outlined so far faces numerous pitfalls and has to acknowledge far-reaching limitations.[20] For example it engages with several of the most complex and contested conceptions in constitutional theory. To make matters worse it tries to comparatively apply these concepts to multifaceted and shape shifting entities like the EU and the US.[21] How to compare two phenomena where no consensus seems to exist on either one of them, and where the practice of constitutional comparison itself is already heavily contested?

Many disciplines, and even more extremely insightful minds, furthermore, have occupied themselves with the problems and questions underlying this thesis. The resulting corpus of knowledge makes selection unavoidable, and makes it impossible to explicitly engage with all relevant views and contributors.

In addition, the method chosen rather rigidly juxtaposes confederate and federate systems, even though the realities behind these labels is, of course, far less clear cut than such a categorisation implies. The risk of this method is acerbated by the exclusive focus on the US as a comparator, as other (con) federal systems present different mixtures of confederal and federate elements. Even within the US, furthermore, the distinction between the confederate and the federate constitutions can be relativized. For example, some of the more federate elements, such as judicial review or the prohibition to secede, only established themselves well after formal federation.

Rigidly clinging to a theoretical distinction between confederalism and federation may, therefore, actually get into the way of understanding the reality of EU integration, especially where the crux of EU integration might lie in the way it *blends* the confederal and the federate, and hence escapes the (con)federal dichotomy. Acknowledging these risks, however, the dichotomy between confederal and federate is consciously developed and adhered to in this thesis with some rigor. Yet the rigidity of this framework should not be mistaken for a denial of the mutability and variability of (con)federal systems. Let alone that it should be a mistaken for a rigid understanding of the EU. Quite the opposite: A relatively rigid analytical framework provides precisely the backdrop against which to better frame and understand the fluid reality of European integration, and explore the constitutional potential that lies in the middle ground between the confederal and federate archetypes. Nevertheless, the risks and limits of the con-

20 For a detailed discussion of the methodology used see below chapter 1, section 3. For a very clear overview of the general problems facing comparative law, see C. Saunders, 'Towards a Global Constitutional Gene Pool', 4 *National Taiwan University Law Review* (2009), 5-7.

21 A. Rosas and L. Armati, *EU Constitutional Law* (Hart Publishing 2010), 8 et seq.

federal dichotomy as an analytical tool must be acknowledged already at this stage.

All of these limitations affect the strength and value of any conclusions reached. Many more restrictions and limitations could, furthermore, be enumerated, and will be throughout this thesis. Numerous reasons, in short, exist to despair and to reject the current enterprise as utmost *hubris*. Some reassurance may, however, be had from the fact that this thesis can also benefit from the valuable work that has already been done by others, both regarding the objects under study and the process of comparison itself. Perhaps the most pressing reason to embark on the path proposed, however, is that we do not seem to have any choice. The EU is not a theoretical exercise, but a reality carrying immediate responsibilities to over five hundred million citizens. As it appears current theory is not yet capable of fully addressing the challenges this raises, and a sustained, joined effort is needed to improve our response to them.

## 5 Structure and outline

Although a more detailed outline will be provided in each part, the general structure of this thesis is as follows. Part I (chapters 1-6) will compare the EU with the American confederation and its subsequent transformation into the US federation. To this end chapter 1 will first explain and justify our focus on (American) confederalism, and set out the specific methodology used for the comparison. Subsequently it will introduce the American confederation and develop a 'comparative grid' of sixteen key modifications that together constituted the American transition from a confederation to a federation. A grid which can then be used in chapter 2 to trace the relative position of the EU between the US confederation and the US federation via a point by point comparison on these sixteen points. Chapter 3 will then aggregate the results of this comparison into three central propositions on the modified confederal nature of the EU polity. Based on these propositions it subsequently examines in what ways these modifications have strengthened the constitutional system of the EU. Chapter 4 then takes the opposite tack and asks what the specific flaws and weaknesses are of the modified confederal system that has developed in the EU.

In chapter 5 attention shifts to the *process* of federating in the US: How did the US transform itself into a federate system? Some of the most interesting factors driving and enabling that process, at least from the perspective of the EU, will be discussed. These include, *inter alia*, the typical elite structure in the US at the time, the anti-democratic aims and undertone of American federation, and some of the tools and tricks used to amend and ratify the federate constitution. Chapter 6 contains a sub conclusion of part I on the potential of the confederal form to understand, guide and support the EU.

Part II then focuses on sovereignty and its confederal potential to address the core weaknesses revealed in part I, including the need to strengthen the confederal foundation of the EU, and to realize the democratic potential of the confederal form (Chapters 8-11). To this end part II first introduces the idea of confederal sovereignty, the central aims and advantages of confederal sovereignty, and the methodology used (chapter 7). Subsequently the statist and pluralist challenges to sovereignty are set out. Challenges that seemingly lead to an inevitable and fundamental contradiction between sovereignty and integration, and therefore a choice for either the sovereign state or a plural EU (chapter 8). We then return to the conceptual evolution of sovereignty itself to take a closer look at this apparent contradiction. Based on a historical and conceptual analysis of sovereignty, and inspired by the federal evolution of sovereignty in the US, it will be shown how the internal and external strands within sovereignty should be carefully separated as two distinct concepts, which have become gradually confused over time. It is then demonstrated how the EU should be approached from the internal concept of sovereignty, instead of the external one as is usually done, and how such an internal conception of sovereignty does not inherently conflict with integration but rather contains the potential for a further confederal evolution (chapter 9). This potential is then explored and applied in chapter 10, which illustrates the different advantages of confederal sovereignty, including its capacity to provide a stronger confederal foundation for the EU, provide a partial synthesis between statism and pluralism, reconcile the respective national and EU claims to primacy and help to create a positive democratic narrative for the EU. Capacities that are especially important because they help address several of the confederal weaknesses and risks identified in part. I. Chapter 11 then provides a conclusion of part II, after which part III further applies the mutually reinforcing outcomes in part I and II to the two other challenges set: Outlining a confederal evolution of the democratic process (chapter 12) and understanding and weathering the EMU crises (chapter 13). Lastly the main findings and suggestions are brought together in a final conclusion.