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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Summary

Executive summary

This thesis explores a conception of the EU as a modified confederal system of sovereign member peoples and their states. A confederal conception which demonstrates how, contrary to popular belief, European integration does not conflict with sovereignty or democracy. For, properly conceived and constituted, the EU reasserts the sovereignty of the member peoples, and liberates national democracy from the confines of the state.

To this end, 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. The primary instrument to explore this potential is comparative. The EU is 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 and the statal system it has created, but connects with it. A theory, therefore, that may help to recapture the EU and the increasing authority it wields, both in theory and in practise.

The thesis is subdivided in three parts. Part I addresses confederalism. It demonstrates how the constitutional system of the EU combines a confederal foundation with a federate superstructure, and explores the particular strengths, weaknesses and limits of this modified confederal system. Part II discusses sovereignty. It first demonstrates how the EU forms a logical confederal evolution of popular sovereignty, and how European integration does not conflict with sovereignty. Subsequently, it shows how the concept of confederal sovereignty equally helps to dispel the presumed conflict between statism and pluralism, how it respects and conciliates national and EU claims to supremacy, and how it allows a confederal evolution of national democracy, which updates democracy to the global reality it is to control. Part III applies the findings of Part I and II to the EMU crisis and the challenge of establishing an effective democratic foundation for the EU at the national level. An application which demonstrates the concrete and attractive contributions a confederal approach can make to addressing some of the core challenges facing the EU.

Part I: the (con)federal cocktail

Part I of the thesis concerns confederalism, and the question if the EU should be understood as confederal or not. Using the American Confederation and the current US Federation as concrete benchmarks, it first establishes a 'comparative grid' of sixteen constitutional markers. These markers are derived from the key constitutional modifications, which together constituted the American transition from a confederation to a federation, and can hence be used to trace the relative position of the EU between the US confederation and the US federation.

Based on a point by point comparison on these sixteen markers, chapter 2 finds that the EU remains on the confederal side of the equation for eight of them (No single people, no use of force, no direct taxation, no amendment by majority, secession allowed, use of a merged government, the executive, and the representational scheme). On five markers the EU scores as federate, or at least predominantly so (Supremacy, direct effect, broad doctrine of attribution and implied powers, internal commerce competences, and a central judiciary). On three markers the EU is qualified as mixed (objectives, external powers, and the legislature). Here the EU wholly blends the confederal and the federate, conforms to neither, or equally to both.

Importantly, this comparison demonstrates that the EU has not incorporated any of the five *truly foundational* modifications that underlay US federation. As far as its foundation is concerned, therefore, the EU has remained fully confederal. Most of the five federate modifications that have been taken over, on the other hand, concern *legal infrastructure and competences*. These include the -mutually reinforcing- federate modifications of supremacy, direct effect, attribution, and the internal market competences. Many of these modifications were made possible by the *institutional* modification of a central court with the competence to rule on the interpretation of the Treaty. These findings are summarized in the table below:

Category		Modification	US CF	Blended	US Fed.
Institutional	16	Judiciary			
	15	Executive			
	14	Legislature			
	13	Representation			
Competences	12	Internal / commerce comps			
	11	War and external comps			
	10	Doctrine of attribution			
	9	Specific objectives			
Structural	8	Direct effect			
	7	Supremacy			
	6	Separate or merged gov			
Fundamentals	5	Enlargement / secession			
	4	Amendment by majority			
	3	Taxation			
	2	Use of force			
	1	Single people			
			8	3	5
			US CF	Blended	US Fed.

Chapters 3 and 4 aggregate the results of this comparison into three central analytical propositions on the modified confederal nature of the EU. First, how the EU forms an *inverted* confederation, which has reversed the traditional confederal focus from the external to the internal. Second, how the EU has modified the traditional confederal form by *reinforcing and burdening its confederal basis with a partially federalized superstructure*. Third, how this inverted and adapted structure *heavily relies on a rule by law*, and therefore on the very stable legal and administrative systems of its Member States. Subsequently, these chapters explore and demonstrate the explanatory power of these propositions: All three help to understand the particular strengths and weaknesses of the modified confederal system of the EU.

Chapter 3 thereby sets out for each proposition, and the modifications underlying it, how they have helped to strengthen the EU's constitutional set-up. After all, confederal systems are not exactly known for their longevity, but normally seem to rival the Panda bear in their determination to go extinct. Hence, it must be wondered how the EU has managed to survive and thrive so far, and it becomes vital to grasp the constitutional factors contributing to this success. Both to build on them in the future, and to prevent future changes from (accidentally) undermining the very factors that support confederal stability.

To this end chapter 3 returns to the brilliant analysis by Madison of the flaws and weaknesses of confederations, which directly informed the discussion in Philadelphia. It is shown how the federate modifications in the EU system have indeed addressed several of the flaws in the conventional confederal form.

To begin with, the EU suffers far less from a lack of power and energy in the centre, and a lack of compliance in the states, the primary confederal weaknesses identified by Madison. Here the inverted focus of the EU created a more effective, constant and self-deepening impetus to cooperate, which provided more 'energy' to the centre and ensured that the self-interest of Member States in cooperating kept pace with the demands of deepening integration. Simply put, an internal and economic focus appears to be a much better power source for a confederation than external policy and defence.

In addition, a broad array of purposefully interpreted competences allowed this energized centre to act. Effective negative integration manned the fort and shocked the system back into action where the centre was nevertheless immobile. A mechanism that enabled the EU to survive periods of crisis and stagnation that would have toppled most traditional confederations. Rule by law over stable states, furthermore, significantly increased compliance, and reduced the need for the EU to create effective central enforcement. Although far from perfect, the general energy, robustness and compliance within the EU thereby is far higher than anything Madison could probably have ever envisioned in a confederal system.

A second weaknesses concerned weak finances. Here as well the EU is in much better shape, even though it was not granted the right to tax. Rather, due to better compliance and the rule by law, the Member States simply pay their share, even if the 'net payers' do so increasingly grudgingly. In addition, the rule by law, and the regulatory focus of the EU also means that it does not need that big an income, at least not in relative terms. As a result the EU reduces the stress on its confederal system for collecting revenue.

Madison's third woe, the *unstable states* that made up the Confederation, also troubles the EU, but to a lesser degree. More contextual providence than actual modification, the relative stability of the Member States has removed some of the stressors on the confederal basis of the EU.

The fourth confederal weakness concerns the general lack of internal competences of confederations. Again, this problem has to a large extent been addressed through several federate modifications, especially the grant of explicit internal market competences to the EU, and the broad doctrine for determining competences as developed by the federate Court of Justice. In fact, the EU now has such far-reaching market powers that the problem has rather become the absence of *non-market competences*, which now seem necessary to flank and counterbalance the market ones, as well as a lack of external competences to project the authority of the EU externally.

The last major flaw Madison noted was the inability of confederations to amend their own shortcomings. The modified system of the EU at least reduces this weakness. Formal amendment, in line with its confederal basis, still requires unanimity. Yet the EU system has enough internal flexibility to adapt through judicial interpretation and political compromise. In addition, the internal focus, negative integration as developed by the Court of Justice, and the relative stability of the Member States have helped in achieving several important formal Treaty amendments. Compared to the US Confederation, therefore the EU system is far more flexible and adaptable, although future challenges await, and recent attempts at major Treaty changes do not bode well.

Scoring the EU against the archetypal weaknesses of the (American) Confederation, chapter 3 therefore shows how the EU has been able to contain, or at least soften, most of them. It did so by incorporating a mix of federate modifications and utilizing its very different context. The cumulative increases in effectiveness and stability these modifications have brought may well have impressed a Madison, and perhaps even surpass the expectations that some founding fathers had of the federate system at Philadelphia.

At the same time, a free lunch is rare, even in constitutional theory. Can one simply place a federate superstructure atop a confederal basis, or is this the constitutional equivalent of armouring a *deux chevaux* with six inch steel plates?

Chapter 4 therefore analyses the flaws and inherent weaknesses retained by the modified confederal form, as well as the new problems that flow from the federate modifications in the EU system. These weaknesses and risks deserve to be explored as they assist in better understanding the problems facing the EU, and the limits that remain inherent in modified confederal forms. As chapter 4 demonstrates, furthermore, several well-known ailments of the EU may be partially understood as logical consequences of its modified (con)federal set-up.

The self-deepening of the EU's inverted focus, for example, might lead the EU to unsustainable levels of integration and federalisation: the internal power source of the EU sometimes seems to powerful, and not very amenable to legal containment. The tendency of the federate elements in the EU system to increase in relative weight and importance *vis-à-vis* their confederal counterparts only reinforces this dynamic. This tendency, furthermore, also explains the risk for (federate) market objectives to trample on (confederal) non-market objectives. Elements that also help to better understand the evolution of the EU constitutional system more generally. In addition, a rule by law may be no match for direct political challenges, may actually undermine the political dimension needed to sustain EU integration, and in any event depends on several preconditions that may not hold. In addition, a rule by law is inherently unsuited to control fields that are not, or not fully, amenable to legal control, such as budgets or foreign policy. Most fundamentally, however, the growing schism between the federate superstructure and the confederal foundation of the EU puts an increasing strain on the overall constitutional structure of the EU and its legitimacy. After all, the confederal foundation of the EU is asked to legitimise an ever increasing federate superstructure. All in all these are serious challenges that need to be addressed or at least taken into account in the future development of the EU.

Before exploring some potential suggestions and solutions to these challenges in part II and III, however, chapter 5 first turns to a second crucial, and so far unexplored dimension, of the confederal comparison: The *process* of American federation. A better grasp of this process not only sheds light on the nature of (con)federal systems and the European modifications. It also provides some concrete foundation for debates over whether Europe could or should 'federate', and if so how.

Chapter 5 thereby discusses four process elements that are of particular relevance for the EU. First and foremost, it arrives at the vital conclusion that the national democratic and elite structure in the EU prevents rather than propels European federation. In the US, federation was largely conceived, promoted, and realized by powerful national elites that had lost their hold on the state legislatures after independence from Great Britain. Federation, and ensuring control over the new central government to be created, was seen by these cross-state elites as the only way to regain political power.

In the EU, however, there is no critical mass of unified elites that stand to benefit from federation. There are no sufficient (political) elites that derive their power from the EU, or ultimately aim to derive such power from the EU within the time span of their (political) future. What is more, this elite structure is consolidated rather than challenged by the confederal organization of political power in the EU, which protects and empowers the current national elites. Federate ideals for the EU, therefore, face an uphill battle.

The second process element discussed in chapter 5 deflates the democratic myth of American federalism, as it unearths the anti-democratic nature and objectives of US federation. For in fact, one could describe American federation as an *anti-democratic revolution*. It was emphatically not intended to increase democracy, but to decrease the radical democracy that had developed in the states after independence. These anti-democratic objectives behind American federation should be taken into account when contemplating a federate Europe, especially when the stated objective is democratization. For *federation is not the same as democratization*, even though the founding fathers have done a truly impressive PR-job in linking both concepts. The democratic level of any federate polity will depend on *how* the federate system is developed, and not on federation as such. In any event the democratic weight and autonomy of the individual member peoples will be reduced by federation. Rallying cries for European federation, furthermore, will have to honestly acknowledge that federation carries an inherent aristocratic tendency.

In addition to these two central procedural issues, chapter 5 discusses several more practical lessons that might be learned from the US process. To begin with it points out the benefits of the US procedures for drafting and ratifying the federate constitution. This procedure combined confidential dialogue and drafting, and therefore space for honest compromise and changes of view, with a rigorous public debate of the eventual texts adopted. A system that seems to lead to better results than the current EU system for amendment. An almost complete mirror image, which envisions a highly public and visible drafting process, which complicates compromise and changing positions, to be followed by parliamentary ratification, especially where referenda are deemed too risky.

In addition, the EU could benefit from the concept of attached amendments as developed in the US, as well as from the focus on *aemulatio* over *innovatio*. For, to a very large extent, the new American constitution built on, and even copy-pasted, existing materials. We should abandon the romantic myth, therefore, that new constitutions can be devised in the abstract, from scratch, and without using existing concepts and theories, if only one just has enough smart people. What the US process learns, in fact, is that the best change lies in practical yet well thought through and informed, emulation.

Part II: confederal sovereignty

Part II engages the second core construct of this thesis: Sovereignty. It demonstrates how sovereignty does not inherently conflict with European integration. Rather, the EU forms a logical confederal evolution of sovereignty. What is more, a confederal conception of sovereignty can be instrumental in addressing the confederal challenges identified in part I, in overcoming some of the current deadlocks in EU theory, and developing a constructive constitutional theory of the EU. This because confederal sovereignty can provide a sufficiently stable, legitimate, and flexible basis for EU authority without undermining the Member States as primary centres of public authority or the member peoples as independent and sovereign entities.

To explore this potential, and after chapter 7 has introduced these objectives and the potential benefits of confederal sovereignty in more detail, chapter 8 first sets out the apparent conflict between sovereignty and European integration. It does so by discussing the statist and pluralist schools, two of the currently most dominant schools on EU integration, which perfectly represent the presumed clash between sovereignty and integration. For the moment one supports a meaningful notion of sovereignty, as statists like the *Bundesverfassungsgericht* do, one is seemingly forced to establish and defend all kinds of untenable limits to integration. Rejecting sovereignty altogether in a plural embrace of integration, however, also leaves one with some rather fundamental gaps and problems. For once the anti-hierarchical genie is out of the lamp, it is hard to prevent it from spiriting away all formal hierarchy, authority or legitimacy. As a result, statism increasingly struggles to accommodate the current realities of integration within a statal framework. *Vice versa*, pluralism struggles to relate its claims to the existing, and still vital, statal system or any other form of foundation for that matter. As a result it remains rather ethereal and academic, lacking the capacity to solve conflicts or carry much weight. Consequently, we seem trapped in an unattractive dichotomy: Statism or pluralism, established theory or *tabula rasa*, sovereignty or the EU.

To escape this dead end, chapter 9 returns to a conceptual analysis of sovereignty itself. Looking behind the simplistic myth of absolute sovereignty, it first demonstrates how internal and external sovereignty are two distinct, albeit related, concepts, which have become increasingly confused over time. It does so by tracing the development of internal and external sovereignty through five different stages of their historical development and conceptual entanglement. These five stages include the development of sovereignty by Bodin and especially the federal evolution of internal sovereignty which underlay US federation, and which allowed internal sovereignty to be divided over multiple governments.

Based on this conceptual analysis of sovereignty, chapter 9 draws three core conclusions. First, it concludes that European integration does not conflict with sovereignty as such. The EU fully fits with the concept of *internal sovereignty* and its tradition of constitutionally dividing powers over multiple actors. The common assumption that the EU conflicts with sovereignty is based on unsuitable notions of external sovereignty, and the absolute myths that surround them. Such absolute external concept of sovereignty, logically, cannot accommodate the EU, and hence lead to the false contradiction between sovereignty and integration. Fortunately, such external notions are also irrelevant for a proper understanding of the EU, which forms a confederal, and hence constitutional, system, and should therefore be approached from internal sovereignty, just like national constitutions.

Second, chapter 9 concludes that a *con*federal notion of sovereignty forms a logical evolution of internal sovereignty. The evolution of internal sovereignty is one of increasing abstraction and delegation. The 'federate twist' in popular sovereignty, as invented in the US, has even enabled the division of sovereign powers over multiple governments. Confederal sovereignty takes this federate evolution of sovereignty one step further. It incorporates extra-statal, and even non-statal, entities into the national constitutional framework for the delegation of sovereign powers. As a result the state loses some of its sovereign competences, but the people do not lose their sovereignty.

Third, chapter 9 shows how a confederal evolution of sovereignty also fits with the *prescriptive* nature of internal sovereignty. Just as in the US, it can therefore be used to indicate how public authority *should* be organized and legitimated, and to subsequently help create that desired reality for the EU.

Combining these conclusions, chapter 9 subsequently shows how the EU should not be understood as a clash between sovereignty and integration, but as a clash between internal and external sovereignty. In the confederal system of the EU, the organizing principles of internal sovereignty are being applied in what was previously considered part of the 'external' domain: The relation between the Member States. As a result, the state no longer forms a complete barrier and controlling nexus between the internal and the external domain. Instead, the internal sovereign (the peoples) openly challenges the external sovereign (the state). The traditional conceptual framework, which sees internal and external sovereignty as part of the same concept, cannot explain this collision. As a result, this traditional framework falsely forces one to choose between integration or sovereignty, and between the EU or the Member State. A false choice, which also underlies the juxtaposition described in chapter 8 between statist defenders of sovereignty and pluralist defenders of integration.

In reality, however, we are not witnessing the decline of sovereignty as such, and sovereignty is not anathema to integration. Rather, we are witnessing a relative decline of external sovereignty, and a relative ascendance

of internal sovereignty. This confederal ascent of internal sovereignty, furthermore, holds great potential for supporting and organizing far-reaching integration between states.

Chapter 10 further unpacks confederal sovereignty, and explores its explanatory and normative potential for the EU. It starts with an introductory overview of confederal sovereignty, and its fit with the EU Treaties and the case law of the European Court of Justice. Subsequently, the idea of confederal sovereignty is further developed and tested by examining several potential advantages. To begin with, chapter 10 further discusses the potential of confederal sovereignty to reduce the misconceived contradiction between sovereignty and integration, and with it the conflict between statism and pluralism. A confederal approach can thereby combine the different strengths of both schools, inter alia allowing for a high degree of pluralism within an overarching confederal hierarchy. Next, and even more fundamentally, it discusses the capacity of confederal sovereignty to provide a more stable, potent, and democratic confederal foundation for the EU, which might be able to support the increasing federate superstructure of the EU outlined in part I. A foundation which also fits with the concept and evolution of EU citizenship as developed by the Court of Justice.

In addition to these two primary points, chapter 10 also examines three further and mutually related benefits of confederal sovereignty. First, how it explains the fit between constitutionalism and European integration. Second, the potential of confederal sovereignty to conceptualize a distinctly confederal form of supremacy for EU law. A form of primacy which grants a sufficient operational primacy to EU law, without undermining a narrow but ultimate supremacy of national constitutions. Lastly, but certainly not least, the capacity of confederal sovereignty to create a normatively attractive narrative of and for the EU. A narrative that builds on the potential of the EU to modify and improve the national democratic process, and make it 'globalization-proof'.

Chapter 11 provides a summary of part II, and concludes that the EU can be understood as a crucial evolution in internal and popular sovereignty that safeguards democracy by updating it. Democracy 2.0 so to speak. Instead of a necessary evil that erodes the democratic glory days of old, the EU can be envisioned as, and subsequently developed into, an entity that saves popular sovereignty and democratic control from globalisation. It becomes a democratic imperative that empowers the people, whereas the rejection of confederal integration equals a refusal to evolve, which historically is a path to extinction only. At the same time, chapter 11 also recognizes that the potential held by the confederal form must still largely be realized. The confederal construct developed in this thesis must be translated, operationalised, and institutionalized, especially at the national level that remains primary in a confederation. How to do so requires far more study than can be done in this thesis, but part III takes some limited and highly tentative steps in this direction.

Part III: application and conclusions

Fully acknowledging the tendency of reality to spoil perfectly good theory, part III therefore applies the confederal approach developed in part I and II to two challenges of reality: Supranational democracy and the EMU crisis.

Chapter 12 explores a confederal response to the challenge of democracy beyond the state. Here our confederal analysis first points to the inadequate incorporation of European integration *at the national level* as the root of the problem. The national constitutional structures of the member states have not been sufficiently refitted for life in a confederal system. This rather remarkable fact has several problematic consequences. To begin with, EU membership now distorts the pre-existing institutional and political balance within national constitutions, which was calibrated for a monopoly position of the state. Even more fundamentally, however, the effects of European integration have also not been translated into the national systems for *acquiring, exercising and accounting for* political power. As a result, there also *cannot be* a full national democratic process on EU issues: There simply are no national EU elections to win or EU powers to conquer. Instead, EU power is included in the spoils of national political victory, like a complimentary cookie with your coffee.

To create a confederal democratic process, therefore, the constitutional systems of Member States should be better adapted to their new functioning within a confederal constitutional system. Here, chapter 12 first suggests that decisions on *whether* authority should be delegated to the EU and decisions on *how* to exercise and control authority once it has been delegated, should be developed into important new content for the national democratic process. Second, chapter 12 provides three general guidelines on how to remedy the current lack of constitutional and institutional imbedding of European integration at the national level, and to create the necessary incentives to ensure that delegation and the use of delegated powers become politicized. The first principle requires the fit of any institutional modifications with the relevant national system and its unique characteristics. The second principle requires the creation of an *institutional nexus* for EU issues to which a national political process can attach itself. This requires that sufficient and real EU related competences are bundled in this institutional nexus, and that sufficient 'events' such as elections, important decisions, and public procedures are created to allow for real political debate over these competences.

The third principle is that control of this EU nexus should remain indispensable for the exercise of national political power. The objective must be to align and merge the national and the EU process, and to allow the EU political process to share in the energy and vitality of the national one.

To illustrate these guidelines and the logic behind them, chapter 12 further suggests one concrete, if highly tentative, way to implement these guidelines: The creation of *EU senates*, which would be based on independent and EU focussed elections, and would provide a national democratic platform for European integration. In addition to such national solutions, chapter 12 suggests several flanking measures at the EU level, which could assist and guide the confederal evolution of national democracy. For example, the delegation of competences could partially be relocated to secondary law, and the EU could actively step in by providing guidelines and incentives for Member States to adapt their constitutional systems to the confederal reality they find themselves in.

Chapter 13 subsequently engages the second challenge: The EMU and sovereign debt crises. It first provides a brief historical overview of the different crises and the responses so far. Subsequently, it discusses some confederal causes, confederal risks, and potential confederal cures for the crises.

As to confederal causes, chapter 13 first shows how the crises logically fit with, and flow from, the confederal weaknesses identified in part I. To begin with, the origins of the crisis fit with the internal and economic focus of the EU, and with the self-deepening federate competences that were granted to pursue this focus. The internal logic and dynamic of economic integration created a push for monetary union, and once established, a powerful incentive to maintain it. At the same time the confederal foundation was not capable of establishing a real economic union, let alone a political one. The resulting schism between a confederal economic union and a federate monetary union reflects, and flows from, the more fundamental schism between the confederal foundation and the federate superstructure discussed in part I. Constitutionally, therefore, what we might be seeing is the internal market engine of the confederal system going dangerously fast, and potentially disappearing over the horizon of its confederal foundation. Yet simultaneously this internal market engine is becoming ever more central to sustaining the integration that has been achieved so far against (political) backlashes. Slowing it down might, therefore, threaten the whole European construct as well. In this way the confederal perspective fits with the broader feeling of the EU being trapped between a dangerous leap forward and an equally dangerous slide backwards.

In addition, the debt and EMU crises precisely hit the weak spots in the confederal armour of the EU: Money, politics, and direct conflict. In addition to the serious money involved, the crises concern budgets: A highly political area where law has, and can, play a secondary role at best. A fact sadly borne out by the spectacular failure of the stability and growth pact. In addition, and partially as a result of its political nature, the crises forced the EU to directly control, and come into conflict with, the Member States, and to do so on the very sensitive issue of the budget. Like the situation in Hungary, this challenges the EU in one of the major confederal weaknesses, the limited capacity of the centre to engage into a direct political conflict with its Member States.

Chapter 13 subsequently warns that, in our desire to combat the crises, we should be mindful of the inherent limits of the confederal form. Two confederal pitfalls, which are illustrated based on the Commission and Van Rompuy Blueprints, should be especially avoided. First, the risk of exploding the federate superstructure in order to stabilize the EMU, which would overburden the confederal foundation of the EU, and undermine its long term viability. Second, there is the related risk of subsequently trying to create a sufficient democratic authority *at the EU level* to support this expanded superstructure. Such attempts are not only doomed to fail as long as the EU retains its confederal foundation, they will also be counterproductive and will destroy far more legitimacy than they will create. Far-reaching authority to control national budgets may, therefore, very well prove a Trojan horse for the EU, as the centre will be unable to provide the required legitimacy, and such authority will induce a countermove from the national political actors that the EU centre will not be able to repulse.

Lastly, chapter 13 then explores two confederal answers to the crises, which are designed to avoid some of the main weaknesses in the modified confederal system of the EU, and instead try to build on its particular strengths. First and foremost, it is proposed to establish the checks on national economic discipline at the national level, and to bring them under more effective but confederal EU control. In addition, such confederal mechanism should rely on automaticity, rather than any form of political decision making at the European level, which would reduce stress on the political process, and respect national autonomy more. Primary responsibility, and the required space to tailor mechanisms to the national system, are left to the Member States, whilst the confederal institutions are used for second-level norm setting and enforcement in a highly legal manner, a tasks for which they are more suited than direct enforcement on politically sensitive fields. Here the 'golden rule' as currently laid down in the Treaty on Stability, Coordination and Governance, forms a good starting point, even though further confederal modifications must be made to this system.

Combining these insights, it becomes vital that the political energy and opportunity provided by the crises is used to improve the confederal foundation of the EU in the national constitutional and democratic systems, and not for a federate power grab. For it is on the stability of these national systems, and their capacity to provide democratic legitimacy for European integration, that the EU largely depends, and a long term investment in the confederal foundation of the EU will, therefore, pay substantially higher and more sustainable dividends than short-term federate responses.

Lastly, chapter 14 summarizes the key findings of this thesis, and provides an overall conclusion. Confederalism and popular sovereignty do allow a constructive and attractive understanding of the EU. Although it needs to be further developed, the EU can be usefully understood as a confederal union of sovereign member peoples, both as a reality and as an aspiration. As a result, our neo-Westphalian reality may indeed be the perfect time for a veritable confederal comeback. A time where this ugly duckling of constitutional theory can finally come into its own, and provide a constitutional model for effective and democratic government in a globalizing world.