

**Overcoming Anarchy? Popular Sovereignty and the Hierarchy of
Democratic Legitimacy in the US and EU States Unions**

Paper to be presented at workshop on
'Sovereignty and European Integration in the Post-Constitutional Era'
Edinburgh Law School
Friday 29 May 2009

Dr Andrew Glencross
International Relations Program
University of Pennsylvania
aglenc@sas.upenn.edu
All Comments Welcome

ABSTRACT

This paper explores the conceptual relationship between democracy and sovereignty. It does so by examining this interrelationship in the case of the US and EU understood as anti-hierarchical "states unions". In such systems, the retention of the units' sovereign status is fundamental yet subject to ongoing contestation, leading to ambiguity over the nature and extent of units' sovereign status. In this context of trying to overcome anarchy, the paper analyzes how mechanisms for invoking popular sovereignty – the democratic process of appealing directly or indirectly to the people to settle political conflict – bring to the fore the question of the hierarchical relationship between the system and the units in the US and EU. In the antebellum US, the original settlement for preventing hierarchy broke down as both the Union and the units sought to justify their positions in an appeal to the people to settle political conflict. Similar appeals by EU member states and European institutions during treaty negotiations have likewise led to a clash over the proper locus of popular sovereignty. Hence the US and EU experiences serve to expose how reconfiguring representation – the mechanism that most obviously links sovereignty and democracy – has potentially adverse consequences on a states union supposed to overcome anarchy by maintaining ambiguity over units' sovereign status. Consequently, the paper suggests that direct democracy and presidentialization are unpromising avenues for extending democratic practices in the EU system.

Introduction

In the standard taxonomy of modern international relations theory, inter-state anarchy and a hierarchical ordering of political authority are considered the distinguishing features of international and domestic politics respectively (Waltz, 1979). Within this framework of two opposed structural principles of political organization no middle ground is typically considered possible. Yet there are historical examples of political organization that call into question this supposed antinomy. At least such is the case in two instances of “states union” (Forsyth, 1981): the contemporary European Union and the United States prior to the Civil War. In these – admittedly rare¹ – systems, sovereign states opt to form a union of both individual states and citizens collectively (Fabbrini, 2007). The novelty of such an arrangement is that it is deliberately anti-hierarchical; the objective is not to replicate a monopoly of legitimate coercion at a level of government beyond that of the units (Deudney, 1995).

In the US case, Publius famously described this system as a “compound republic”, in which “the different governments will control each other, at the same time that each will be controlled by itself” (Federalist 51). Similarly, the origins of European integration lie in the attempt to replace a highly imperfect balance of power with a system of entrenched inter-state cooperation that would ‘not create a new kind of great power’ (Monnet, 1962: 206). Hence this enterprise was founded on the “community method”, that is supranational institutionalism, rather than the historically plausible alternative of a purely confederal institutional model (Parsons, 2003). In both instances of states union, therefore, the exact sovereign status of the units remains unclear because there is no undisputed and unequivocal hierarchy of political authority established at the level of the union.

¹ For excellent surveys of other historical instances of unions of states, notably the Swiss Confederation, the Dutch Republic and the Holy Roman Empire see Forsyth (1981), Goldstein (2001) and Lister (2001).

Thus states unions seek to overcome anarchy without replicating a standard domestic hierarchy characterized by a pyramid of internal sovereignty atop of which stands an institution or actor with ultimate decision-making authority. Overcoming the antinomy between anarchy and hierarchy is considered possible by creating an institutional structure that combines representation of the discrete territorial units with representation of citizens (directly or indirectly) *qua* citizens of the union. Under this framework of dual representation, neither principle of representation is supposed to trump the other, thereby eliding the question of a hierarchical authority relationship and enabling ambiguity over territorial units' sovereign status to persist. Likewise, anarchy is no longer the order of the day since dual representation institutionally obliges co-operation amongst elites across the units as well as, in the case where mass political parties emerge, across a large swathe of citizens throughout the units.

The ambiguity of these sovereignty arrangements is what makes for a promising context in which to explore the relationship between sovereignty and democracy. This relational aspect of sovereignty has become a more integral feature of IR and legal scholarship lately (Werner and de Wilde, 2001; Wind, 2001) and especially when the EU is viewed through the lens of sovereignty (Walker, 2003). However, the mutually constitutive relationship between sovereignty and democracy remains under-explored, largely because democratic states have developed a settled hierarchy of democratic legitimacy amongst their political institutions to correspond with their unambiguous external sovereignty. As a result, the question of how reconfigured state sovereignty can be reconciled with democratic procedures is most often the preserve of debates over possible democratic world government (Acrhibugi, 1992) or the uncertain impact of international law through institutions such as the International Criminal Court (Ralph, 2005). Thus it is also unsurprising to see that in EU studies the democratization literature often ignores the subtle scholarship on the constitutional status of sovereignty in the EU polity and *vice versa*.

Yet this paper does not seek merely to parse the conceptual relationship between these two fundamental units of political theory and practice. Instead,

the aim is to explore what the mutually constitutive relationship between democracy and sovereignty means for the contemporary EU, notably from the perspective of proposed institutional change. The argument is that democracy, as a political principle ultimately seeking to make the exercise of power accountable to a *single* sovereign political community, poses an acute challenge to the successful functioning of an anti-hierarchical states union. This can be seen in the examples of constitutional contestation in the antebellum US and the contemporary EU. The risk, it is claimed, is that such appeals to the people will demonstrate whether what can be deemed the “hierarchy of democratic legitimacy” lies with the people of the individual states or in their citizens combined. Consequently, this move makes the retention of ambiguity over units’ sovereign status – on which the art of straddling anarchy and hierarchy depends – highly problematic. Hence this argument deliberately seeks to avoid replicating the hoary dispute over whether a pre-political bond, or “demos”, is a pre-requisite of democratic accountability in the EU (Preuss, 1995; Miller, 2000). Rather, the purpose of the paper is, firstly, to explain the interrelationship between democracy – understood here in terms of popular sovereignty i.e. the representation or direct exercise of the will of a particular political community – and sovereignty in an anti-hierarchical context. The second objective, thereafter, is to use this discussion of the relationship between democracy and sovereignty to shed new light on current constitutional debates in the EU.

Currently, the EU is torn between three mechanisms for democratizing its contested constitutional structure: presidentialization, direct democracy or politicizing integration in domestic politics. Yet on the basis of the analysis presented here, it appears that the first two options are liable to destabilize the EU order as they imply the establishment of a hierarchy of democratic legitimacy that is at odds with continued ambiguity over sovereign status. Rather, a successful states union needs to be cautious in its attempts to invoke popular sovereignty as a means of settling political disputes. Indeed, it seems that whereas democracy within states is associated with the improvement of relations between such states (Doyle, 1983; Lipson, 2005), the extension of democratic practices beyond the state poses profound difficulties for political

and constitutional stability. Consequently, the analysis presented here suggests that enhancing democratic legitimacy without raising the spectre of hierarchy necessitates better politicization of the integration project in national politics.

The paper is organized as follows. Section one uses examples from both the antebellum US and the EU to explain why finding an ambiguous settlement over units' sovereign status is the lynchpin of a states union's anti-hierarchical constitutional arrangement. The second section then sets out why this ambiguity becomes harder to sustain in the wake of democratization, the process of appealing directly or indirectly to competing notions of the people in order to resolve political conflict. Such appeals to a single political community, as seen in the antebellum US, cleave the principle of dual representation thereby bringing to the fore the thorny question of the hierarchical relationship between the union and the units. Nonetheless, as the third section discusses, the contemporary trend in EU studies is to assume that democratizing this states union is the best response to continued despondency over its lack of democratic legitimacy. The proposed models for this are either direct democracy (engaged popular sovereignty), whether at the national or the European level, or else the harnessing of (recessed) popular sovereignty through representation in the form of a presidential figurehead. Yet such reasoning ignores the fact that in a union of states and citizens neither constitutive element is supposed to trump the other since the preponderance of one principle would be tantamount to hierarchy. Rather, as explained in section four, it seems necessary to find an alternative mechanism for securing democratic legitimacy whilst still preserving the ambiguity over sovereign status that it is difficult to maintain when popular sovereignty is invoked to settle political conflict. A final section concludes briefly with the implications this argument holds for the theory and practice of integrating sovereign states.

1. The Significance of Sovereign Status in the Antebellum US and EU States-Unions

The Antebellum US

Notoriously, the US constitutional founding did not specify a single locus of sovereignty in the classic hierarchical sense of ultimate and indivisible political authority. As Walter Bagehot put it, the American founding fathers purposefully ‘shrank from placing the sovereign power anywhere.’ (Bagehot, 1963: 218). In this way, the constitution symbolized the retention of the Tudor principle of a government of ‘separated institutions sharing powers’ (Huntington, 1966: 393), which the colonists had fought to preserve in the face of the new-fangled British doctrine of parliamentary sovereignty. The resulting “dual federalism” (Corwin, 1934), the establishment of two levels of government in dynamic tension, was the basis for a republican system designed to ‘avoid the extremes of anarchy and hierarchy’ (Deudney, 2004: 342).²

The constitutional history of the antebellum period, therefore, was dominated by vexing conflicts over what status the states retained within this compound, rather than hierarchical, system of government. Essentially, these disputes represented a continuation of the original cleavage over federalist and so-called “anti-federalist” visions of how the US republic should be organized in the aftermath of the revolution (Storing, 1985). The anti-federalists who opposed the Philadelphian system had sought to maintain a purely confederal arrangement between the former colonies. In other words, these pamphleteers were hostile to the constitution’s establishment of a direct relationship between citizens and the federal level through the creation of a federal administrative and judicial system as well as the invention of a federal level of political representation in the form of the presidency. These proposed constitutional changes overhauled the existing confederal relationship, under the Articles of Confederation (1781-89), in which states were the sole political actors and legal subjects of the inter-state order. As a result, anti-federalists believed such novelties abolished the sovereignty of the states, thereby rendering the government unitary and hierarchical rather than federal. This is why the “anti-federal” label is a misnomer: they considered themselves advocates of “true

² Of course, this republican project also had an international dimension. The new compound system not only represented a peace pact amongst the former colonies (Hendrickson, 2003) but also a way of ensuring the new republic’s credibility in an international system dominated by European balance of power considerations (Onuf and Onuf, 1993; Deudney, 1995; Hendrickson, 2003).

federal” principles (Storing, 1985). Consequently, they interpreted the US Constitution as the blueprint for an overweening and distant government that diluted the republican bond between states and citizens, potentially just as much as British parliamentary sovereignty had done (Huntington, 1966).

Nevertheless, the anti-federalists lost the struggle to reject the federal constitution, whence their eventual appellation. But the resulting form of government was far from a unitary state. Rather, as Publius explained, the new system had to be distinguished from a confederation or “league” of sovereign states that could not recognize a direct legal and political relationship between individual citizens and the union. The compound republican alternative rested instead on appreciating the fact that ‘we must extend the authority of the Union to the persons of the citizens, the only proper objects of government’ (Federalist 15). In practice, however, the question of the states’ sovereign status owed much to fundamental constitutional ambiguity about the nature of the units within the federal union. This was largely a consequence of the abandonment during the Philadelphia Convention of the “nationalist” Virginia plan and especially its proposed federal veto over state legislation (Robertson, 2005: 95-8), which would have constituted a clear denial of states’ sovereign status.

Not surprisingly then, the question of sovereign status, in the guise of “sovereign immunity” to suits in the federal courts, came to the fore shortly after ratification of the constitution. This dispute arose because the founding document declared that ‘the judicial power of the United States shall extend to ...Controversies between a State and Citizens of another State’ (Art. 3, Sec. 2. 1). Although this principle was upheld in a 1793 Supreme Court Case, *Chisolm v. Georgia*, it caused such a stir that an amendment to the constitution was swiftly passed to restore states’ sovereign immunity.³ In fact, this was one of only two amendments enacted between the Bill of Rights and the Civil War; most significantly, this is the only antebellum example where the constitution

³ The amendment reads: ‘The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State.’

was revised as a result of state defiance. It is, therefore, worth examining this dispute in more detail as it tellingly reveals how issues of sovereign status – directly related to the republican practice of the sovereignty of the people – mattered in the antebellum states union.

The first amendment to the constitution after the Bill of Rights was the product of Georgia's stubbornness in refusing to accept the Supreme Court's ruling in *Chisolm v. Georgia* that federal courts could hear non-state and foreign creditors' suits against a state. States feared that British and Tory creditors would seek redress for confiscated property in the federal courts (Orth, 1987). On the other hand, committed federalists believed state immunity to such suits would exacerbate fiscal irresponsibility by allowing states to repudiate much of their debt. In addition, as Chief Justice John Jay stated in his opinion on the *Chisolm* case, it was considered the responsibility of the federal government to control the actions of the states in order to uphold obligations under international law, notably towards foreign creditors (*ibid.*, 16).⁴

Alexander Chisolm was a citizen of South Carolina and executor of an estate seeking repayment for war matériel supplied to Georgia during the revolution. Rebuffed by the local courts, he took the case to the Supreme Court. As is obvious from the opinions of the justices, especially Justice Wilson, the Court recognized it was deciding upon a matter of great importance for the federal system. In fact, Wilson argued that the question at stake ultimately implied resolving whether 'the people of the United States form a Nation'. Unsurprisingly, therefore, his rejection of state sovereign immunity was intimately connected to a theory of the sovereignty of the people.

Justice Wilson grounded his argument in the republican notion that 'the supreme power resides in the body of the people'. This allowed him to claim that 'the citizens of Georgia, when they acted upon the large scale of the Union, as part of the "People of the United States", did not surrender the supreme or

⁴ Debts owed to Britain proved a particularly vexing issue for the early US republic as the settlement of those monies was linked to the British evacuation of certain forts on the American side of the Canadian border. Eventually, in 1802, the federal government agreed to compensate British creditors directly to the tune of 2,664,000 dollars (Orth, 1987: 17).

sovereign power to that state, but, as to the purposes of the Union, retained it to themselves'. In other words, if sovereignty lay anywhere, it was in the people of Georgia as part of the greater collective body of US citizens; sovereignty was thus not an attribute of a particular state. As a result, there were no restrictions on what powers Georgia's citizens could vest in the federal government because the states themselves were the creation of popular sovereignty. To put it another way, there is no residual sovereign status required for the individual states to continue to exist as states; their status is simply the product of what their people, in concert with the people of the other states, have decided it should be. Hence as long as the constitution affirmed the Supreme Court's jurisdiction for such suits it could not be argued that this was based on an illegitimate transfer of sovereignty. Consequently, Wilson was fully satisfied that 'the people of the United States intended to form themselves into a nation for national purposes'.

Yet if this reasoning was so self-evident there would have been no eleventh amendment. Instead, within a month of the final judgment both houses of Congress had proposed amending the constitution to uphold state sovereign immunity in suits of law or equity (Orth, 1987: 20). The amending text found sufficient support amongst state legislatures, in a union that had grown to fifteen states by this stage, in under a year although presidential proclamation of ratification had to wait until 1798 (ibid.).⁵ In fact, the eleventh amendment marked the beginning of several decades' conflict over the status of the states within the federal union. This uncertainty was connected to the fundamental ambiguity of the tenth amendment and its reference to powers 'reserved to the States respectively, or to the people'. Opponents and critics of states' rights alike, therefore, attempted to make sense of the implications of this amendment through rival interpretations of where popular sovereignty lay and the extent to which sovereign status was necessary to maintain a properly federal union. Moreover, it must be borne in mind that throughout the antebellum period the actual right of the Supreme Court to consider itself the final arbiter over the

⁵ 'At the time, the states had no agreed-upon mode of informing the federal government of their ratification decisions. Therefore, the Amendment slumbered for a few years before Congress initiated an inquiry into its status in January 1797. That inquiry led to the Adams proclamation' (Pfander, 1998: 1271).

boundaries between state and federal government as well as the right to strike down state law remained contested, a further telling indication of the republican anti-hierarchical design of the states union (Warren, 1913; Miller and Howell, 1956; Goldstein, 2001). Indeed, often the Court was viewed solely as a mechanism for reviewing the constitutionality of federal law, that is, 'with power over cases and controversies arising under the Constitution itself, laws enacted in pursuance thereof but not cases arising from state laws, which were reserved to state courts' (McDonald, 2000: 78). This explains why in 1809 the Pennsylvania Legislature called for an amendment to the constitution because 'no provision is made in the Constitution for determining disputes between the general and the state governments by an impartial tribunal' (quoted in Rabun, 1956: 59). Thus in the absence of an accepted judicial mechanism for settling these issues, it was the debate over states' sovereign status, as will be explained in section two, which ultimately culminated in both the secessionary creed of the southern states and the unionist determination to maintain a perpetual federal union.

The European Union

Seen in the light of the antebellum US, the European Union evinces several similar characteristics as an "in between order" (Wind 2001, 103) that is neither a strict confederation nor a pure federal state. Consequently, the sovereign status of the units is in a similar fashion subject to ambiguity and forms a constant backdrop to the politics of the integration process. As the only contemporary example of a states union, the existence of the EU typically poses a quandary for scholars debating the challenges to state sovereignty in world politics today. However, as the following discussion demonstrates, the sovereign status of the EU member states remains shrouded in ambiguity in both theory and practice.

The impact of integration is most often understood in dichotomous terms (Jackson 1999). For some, the EU does not compromise essential state sovereignty (Sørensen, 1999); others regard the EU as the symbol of a fundamentally changed, post-sovereign order (MacCormick 1999). Typically,

this polarized debate also has recourse to some form of quantification of the extent to which sovereignty has been pooled (Börzel, 2005:221-3). However, such a debate does not necessarily tell us much about the sovereign status of the units since the arguments largely revolve around questions of substantial statehood as a capacity for certain actions (Sørensen 1999; c.f. Deudney, 1995: 197-200). Hence they have little to say about sovereignty as a claimed status from which other things follow, namely prerogatives and responsibilities such as the right to invoke the exercise of popular sovereignty.

An alternative conceptual framework has tried to bypass this antinomy of the EU as either a threat or cipher for the sovereignty of its member states by using the notion of “interdependence sovereignty” (Krasner 1999). This move follows Keohane (1995) in treating sovereignty as a bargaining resource. Conceptualized in this way, the aim is to explain the somewhat perplexing situation whereby European states are losing individual control over certain transnational interactions whilst gaining a collective capacity to deal with them. Yet there are very good reasons for thinking that conceptualizing sovereignty either as a resource that can be transferred or as a commodity that is diminishing in quantity is a solecism.⁶ This is because, as Werner and de Wilde (2001: 287) explain, ‘the inability of states to rule is a poor indicator of their vanishing sovereignty. If the authority were absolute, there [would] be no reasons to say so’. Likewise, it is misleading to portray developments in European integration, which above all concern matters of economic policy, as a transfer of certain sovereign powers because the tools of economic policy-making, such as monetary policy, are only contingently and not conceptually related to sovereignty (Jackson, 1999: 432).

Hence to understand the question of the constitutional status of the units in a states union such as the EU, it is more appropriate to consider sovereignty as ‘a status, i.e., a legal standing, and thus a right to participate and engage in relations and to make agreements with other sovereign states’ (Jackson, 1999: 453). This is of course the understanding that the states had of their

⁶ MacCormick (1999), famously, has taken a more nuanced view by likening sovereignty to virginity, viz. something that is lost but not gained by another party.

sovereignty in the antebellum US when they reacted so vehemently to the suggestion that they could be sued without their consent in federal courts. Likewise, the complex process of negotiating an EU states union, treaty by treaty, has had to take account of the residual sovereign status of its members at various critical junctures. The outcome is a measured ambiguity within a patchwork of complex rules and pragmatic compromises.

One element of sovereign status that is unequivocal – unlike in the antebellum US – is the possibility of a member unilaterally withdrawing from the EU as enshrined in the Lisbon Treaty (Article 49A).⁷ This puts the EU at odds with virtually all historical examples of federalism since only the USSR (in theory) permitted voluntary withdrawal of a territorial unit (McKay, 1999: 126). Despite this feature of the EU states union, however, most legal scholars are adamant in their claim that the constitutional order of this new polity functions in the same hierarchical manner as in any ordinary nation-state.

All students of EU law are familiar with the development of the constitutional doctrines of the legal system of the European polity through a series of seminal judgments. Proceeding in this manner, the Court found that European treaties and the secondary law of European political institutions had a direct effect in national legal systems – meaning that they could be relied upon in national courts just like national law (*Van Gend en Loos*, 1963) – and, perhaps more strikingly, that the law of the European polity was to be supreme over national law in cases of conflict (*Costa v. ENEL*, 1964). In both instances, the coercive apparatus of the member states is supposed to be put to use to enforce compliance with the EU legal order. Ultimately, this is the explanation for why in 2001 a greengrocer in Sunderland was convicted for selling one pound of bananas, in violation of an EU directive (secondary law) mandating that all loose fruit and vegetables be sold in metric weights alone (Morgan, 2005: 1).

These doctrines have long formed the basis of the constitutionalization of the EU legal order and as such have provided the starting point for legal analyses

⁷ Although formalized in the Lisbon Treaty, the possibility of withdrawal was thought to exist previously *de facto* (De Witte, 2004b).

of constitutionalism and sovereignty with respect to the European polity. Added to this, the Court's designation of the Treaty of Rome as the EU's "constitutional charter" (*Les Verts*, 1986), have resulted in it becoming an article of faith among EU lawyers that the polity has a sovereign *Grundnorm* which makes the treaties the supreme law of the land in the now 27 EU Member States. Significantly, therefore, the tenor of this constitutionalization of the EU's legal system through ECJ jurisprudence corresponded neatly with the Kelsenian concept of an internal legal order. Thus, much of the treatment of sovereignty and constitutionalism in legal scholarship on the EU is predicated on the assumption that a treaty system presupposes a *Grundnorm* and that as such the EU is now sovereign. Indeed, a recent historical comparison with the acquiescence of the US states to federal sovereignty suggests that EU member states' submission to the authority of the European Court of Justice has been far less fraught (Goldstein, 2001).

Against the peremptory judgments of academic lawyers,⁸ and even without relying on the unilateral possibility of exit as the acid test for sovereign status, it is easy to query the case that the EU has recreated a hierarchy akin to that of the nation-state. To this end it is only necessary to point to the fact that when it comes to responding to international crises such as the break-up of Yugoslavia or more recently the 2003 Iraq war, opting out of certain treaty provisions (the single currency, the free movement of people from new member states after 2004) or even re-negotiating the treaties themselves, it is the units that have the final say. Nonetheless, the integration process is a dynamic one and the impetus for continued treaty renegotiation in the last two decades has to a great extent come from the need to legitimize the new institutional structure that has clearly impacted upon the traditional shibboleth of national sovereignty. Yet attempts to introduce mechanisms of democratic accountability, in response to the altered sovereign status of the EU's member states, complicates efforts to leave behind anarchy without replicating hierarchy. This was precisely the case in the antebellum US as well, where changes in the mechanisms for invoking

⁸ Of course, when challenges to this assumed EU sovereignty have been acknowledged, lawyers have generally consigned resolution of the clash of competences (*Kompetenz-Kompetenz*) either to the realm of politics or have unsuccessfully tried to adopt a pluralist method for solving conflicts of laws.

popular sovereignty led to a fractious debate over the sovereign status of the units. Hence this debate became a zero-sum contest over whether democratic legitimacy lay with the citizens of the entire union or else those of an individual state.

2. Contesting Sovereign Status in the Antebellum: The Competition over the Hierarchy of Democratic Legitimacy

In the antebellum US, state sovereignty was incontrovertibly an acutely contentious issue. Traditionally such contestation is interpreted as a clash about the nature of the federal constitution (Elazar, 1962; Stamp, 1978; Goldstein, 2001), i.e. the proper specification of the competences exercised at different levels of government. Yet a more recent strand of thought presents the tussle over state sovereignty in the antebellum as a republican debate about the appropriate relationship of citizens to their various governments (Deudney, 1995; Fritz, 2008). It is this latter interpretation that is followed here, and which helps to explain why the invocation of popular sovereignty undermined the anti-hierarchical basis of the US states union. Finding a *via media* between hierarchy and anarchy required a great measure of ambiguity over the states' retention of sovereign status. But this ambiguity became harder to maintain in the face of a heated contest to establish whether popular sovereignty was more rightfully expressed at the federal or the state level.

By definition, a successful claim to sovereign status is above all relational: it depends on negotiating this claim in the face of various audiences. Thus what matters most for the politics of sovereignty is the extent to which political units 'rely on their sovereign status and whether relevant audiences accept their claims to sovereignty' (Werner and de Wilde, 2001: 304). In the republican tradition, the domestic audience is understood in terms of popular sovereignty (Morgan, 1988; Yack, 2001). But this same power or audience can be conceived as engaged (active) or recessed (passive), depending on whether the actual exercise of political authority is delegated or not (Deudney, 1995: 197-200). Only in the latter case, therefore, can popular sovereignty be represented by actors or institutions. Hence in anything besides a small

democratic polity the politics of sovereignty is closely bound up with the mechanism of political representation, which negotiates a state's claim to sovereign status in the context of different audiences.

However, in a states union such as that created at the Philadelphia Convention there is no single recessed popular sovereign to be represented (Schmitt, 1992; Fritz, 2008). This situation allows institutions and actors at both the unit and union level to invoke popular sovereignty to buttress their claims to sovereign status. In the antebellum, therefore, claims to sovereign status arising from competence clashes had to make reference to the republican doctrine of the sovereignty of the people in order to legitimize the status claim in the first instance. What ensued, therefore, was a struggle over sovereignty characterized by *competing attempts to invoke recessed popular sovereignty* as units and the federal government tried to determine their respective claims to sovereign status. Conducted against a backdrop of changing mechanisms of political representation, this competition to define the proper locus of popular sovereignty wreaked havoc with the states union and its anti-hierarchical foundations.

The whole debate over the republican basis for units' sovereign status was encapsulated by the standoff between Daniel Webster and Robert Hayne on the Senate floor in 1830. It was the nullification crisis – a tariff dispute between South Carolina and the federal government – that provoked the two men's clashes over the states' residual sovereign status. The situation arose as a result of Congress' protectionist tariff on manufactured imports, which South Carolina thought unfairly targeted plantation states.⁹ Consequently, Hayne and Webster disputed whether popular sovereignty – the trump argument in republican theory – lay with the states or at the federal level. To answer this question meant re-examining the history of how the constitution was originally adopted: in particular, the people(s)'s role in authorizing the change in constitutional structure (Fritz, 2008: 224). Excavating the past in this fashion

⁹ South Carolina objected to the tariff because – although this form of revenue-raising was a legitimate federal competence – instead of being designed to enhance the general welfare of the union, the tax on foreign manufactured goods unfairly discriminated against the import-dependent southern states.

allowed the crisis over nullification to spark a full-blown theoretical reflection on the proper connection between states' sovereign status and popular sovereignty within the union.

On the one hand, Webster espoused the “popular” or “people’s” conception of the founding. According to this interpretation, the constitution ‘was not the creature of the states’ (*ibid.*) but rather the product of the American people in the aggregate. South Carolina’s attempt to justify nullification – the sovereign right to refrain from applying a federal law, in this case the tariff – was from this perspective mere ‘revolution or rebellion’ (*ibid.*) because it contravened the sovereignty of the American people collectively. On the other hand, Hayne argued (following the republican theory of John C. Calhoun) that popular sovereignty was and remained in the possession of the people of the various individual states. Historical evidence for this claim was provided by the fact that the states had convened special conventions in order to adopt the constitution. This interpretation became known as the “compact” theory of the founding, according to which popular sovereignty at the state level was the ultimate arbiter of the terms of the constitutional compact between sovereign states. Logically then nullification, if the result of a special convention as indeed occurred in the South Carolina case, was merely an expression of republican self-government: an instance of active rather than recessed popular sovereignty. Moreover, the traditional understanding of the US Constitution was that no such active mobilization of popular sovereignty was possible at the federal level.

However, fundamental changes in the structure of political representation in the antebellum states union meant that by the 1830s a case could be made for locating active popular sovereignty in the American people collectively. Two significant and interrelated developments in democratization made Webster’s argument about the true locus of popular sovereignty – and thus the hierarchy of democratic legitimacy – compelling in practice. Firstly, there was the rise of mass, cross-unit parties formed to contest the presidency as an increasingly national institution, itself the second fundamental shift.

In 1804 eight of the seventeen states provided for the direct election of presidential electors; by 1824 only six out of a total of twenty-four did not allow for direct election. Only Delaware and South Carolina did not follow suit by 1828 (Aldrich, 1995: 106). In this way the state legislatures lost control over the selection of presidential electors, enabling politics to become both more populist and national. Furthermore, as the parties in the post-Jacksonian era organized to mobilize political support they turned the election of presidential electors from one based on congressional districts to a winner-take-all principle so that the winning candidate received all the Electoral College votes (Gienapp, 1996: 87). This made it much easier for a candidate to win a landslide of states' Electoral College votes with only a relatively small percentage of the popular vote, as Lincoln did in 1859 when 54 percent of the popular vote in the free states was enough to give him 98 percent of the North's electoral college votes (ibid.). With these democratic developments the presidential office therefore became the scene for hotly-contested elections pitting rival parties and candidates against one another in the race for winning enough Electoral College votes across the union. Unsurprisingly, therefore, Andrew Jackson's 1832 proclamation response to South Carolina's nullification claim was to argue that, thanks to the increasing majoritarianism made possible by a move to the direct election of presidential electors, "We are ONE PEOPLE in the choice of the President and Vice President" (Elliot, 1836, vol. 4: 589)..

Another reason the system shifted towards collective popular sovereignty was the difficulty states had in reining in their own representatives in the Senate. Bicameralism was supposed to be, according to Publius, 'an instrument for preserving that residuary sovereignty' belonging to the states (Hamilton et al., 1974: 408). But as William Riker (1955) has shown, state legislatures, the bodies originally responsible for electing senators, lacked the ability to instruct their own representatives. Whereas the Articles of Confederation (1781-1788) allowed states to recall their delegates, meaning that instructions could be backed by effective sanction, the US Constitution did not provide such a mechanism.

Thus the antebellum states union had changed markedly by mid-century. Institutions like the Senate and the Electoral College system for electing the president had originally been intended to preserve the states as the dominant actors in a public sphere inhabited mostly by quasi-aristocratic landowners. Democratization unleashed a fierce intellectual challenge to this changed republican system, which was deemed a hierarchical deviation from the original constitutional blueprint by the champion of states' rights, John C. Calhoun. In the light of this unexpected change – the presidency was initially designed to be anti-populist whilst cross-unit parties were supposed to be stillborn in an “extended republic” – Calhoun ‘thought that it was essential to revise republican theory and constitutional arrangements to fit these new circumstances’ (Ford, 1994: 45). The American union had to adapt to a novel situation in which despite the size of the republic and the founders’ constitutional devices the federal government was now potentially the instrument of a partisan majority, at least over the slavery question. As a result, in his famous *Discourse on the Constitution and Government of the United States* (1850) Calhoun developed not only a theory of ‘concurrent majorities’ as the cornerstone of federalism but also set forth *ex post* anti-majoritarian proposals to counterbalance the development of a system of representation more centralized and majoritarian – by activating popular sovereignty at the federal level – than at its origin.

Calhoun’s gambit only served to further exacerbate the contest over defining where popular sovereignty was located. Eventually, the debate between Webster and Hayne was replayed thirty years later in the confrontation between newly-elected President Lincoln and his southern antagonists. In his inaugural address, Lincoln spelt out clearly his position – reminiscent of Jackson’s attack on the nullification doctrine – that popular sovereignty was exercised at the federal level and embodied in the office of the president. There he explained that as ‘unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left’ (Lincoln, 1991: 58). In return, the southern states drew on their own understanding of the appropriate level where republican popular sovereignty was located and formed special conventions to withdraw from the union.

In other words, as the debate over units' sovereign status invoked appeals to determine the proper locus for the exercise of popular sovereignty, the ability to maintain an ambiguous compromise over the respective status of state and federal authority alike was put in jeopardy. Republican arguments to invoke an engaged popular sovereign at either the state or federal level no longer allowed for a *via media* as in James Madison's conviction that in a republican states union 'a state acted in its "highest sovereign capacity" only when the sovereign people of a state acted in combination with the sovereign people of other states' (Fritz, 2008: 225).¹⁰ Indeed, a similar phenomenon can be observed in the last decade or so of European integration. Attempts to bring the EU closer to its citizens have provoked an increasingly contentious clash over where popular sovereignty is more legitimately exercised. Particularly vexing in this context has been the growing reliance on national referendums to determine the ratification of re-negotiated treaties.

3. The Debate over the Locus of Popular Sovereignty in the EU States Union

Ever since the negotiations over the Maastricht Treaty in 1992, Europe's political elites have been wrestling with the issue of the EU's democratic shortcomings, notably the marked separation between mass political participation in national politics and EU-level decision-making. In the absence of substantive trans-national representation and participation, the resulting complex structural nature of the EU appears to fate European government to be *for* the people rather than *by* the people (Schmidt 2006). Remedying this democratic deficit has not proved easy but it has also unleashed a heated debate over the proper location of popular sovereignty in the EU states union. In particular, member states have supposed that their residual sovereign status entitles them to hold national referendums to decide whether to be bound by changed treaty rules. However, this practice has engendered grave political difficulties when national electorates have rejected treaty ratification. In these

¹⁰ Madison's position is thus reminiscent of Justice Wilson's position in *Chisolm vs Georgia*.

circumstances, not only have member states been pressured to re-vote to acquiesce to treaty changes but there have been growing calls to strip states of the right to use referendums or else to introduce pan-European direct democracy (Trechsel, 2005; Auer, 2007).

Referendums have been held on enlargement, accession, continued membership, treaty reform and the euro but is most politically problematic in the context of ratifying new treaties. Since this form of ratification is neither prescribed nor proscribed by EU rules, referendums in principle embody the autonomy of member states in choosing how to deal with the political challenge of integration. However, a government's decision to call a referendum can also be influenced by domestic political considerations far-removed from EU constitutional politics, which makes them unpredictable and hard to handle (Ivaldi, 2006). Regardless of this dark side of referendums, their increasing use has made it much more difficult for governments to reject out of hand this mode of ratification for treaty revision. Indeed the increased reliance on referendums is to a large degree a tactic to prove to post "permissive consensus" national electorates (Mair, 2007) that, despite deeper integration, member states retain their sovereign status. For what better proof of such status can there be than the fact that it is popular sovereignty exercised at the national level that determines continued participation in the integration project? Consequently, the resort to direct democracy at the national level is a fundamental part of the increased emphasis on complementing changes in the sovereignty regime with new democratic procedures for invoking popular sovereignty (Schmitter, 2000; Glencross, 2008). With this new concern for democratic legitimacy paramount, national elites have been forced to accept the outcome of these referendums even when consultative rather than legally-binding, as in the case of the Dutch rejection of the EU Constitution.

However, referendums constitute a paradox because although they symbolize the sovereign status retained by member states the use of such a device can run counter to the confederal principle of state equality. This is because votes in one member state, at least on the issue of treaty ratification, have important ramifications for others. This is exactly what occurred in the aftermath of the

French and Dutch popular rejections of the draft EU Constitution in 2005. Member states that ratified the EU Constitution – the outcome of a strictly confederal, that is, unanimous and equal, process – were prevented from putting into operation this new treaty as a result of the exercise of popular sovereignty at the national level in two member states. Plans to rely upon a slimmed-down version of the EU Constitution – stripped of its constitutional garb, notably the name itself but also the EU anthem and hymn – have likewise been stymied by Irish voters' rejection of the Lisbon Treaty in 2008.

In the past, as when Denmark rejected Maastricht or Ireland refused the Nice Treaty in 2001, referendum setbacks have been surmounted by inter-governmental pressure to make these countries vote anew. But in the context of diminished confidence in the integration project and dwindling trust in national elites (Mair, 2007), such a solution makes a mockery of national politicians' protestations that popular sovereignty exercised at the national level vindicates their nation-state's enduring sovereign status. Instead of constituting proof of sovereign status, therefore, referendums suggest merely that national electorates 'can put an issue to bed, but only if they vote with their political masters' (Runciman, 2003). The fact that national electorates are no longer as permissive towards their elites' assurances about the merits of deeper integration is thus likely to lead to more tense moments where a referendum in one country scuppers the prospects for treaty change for all.

Hence the increasingly frequent resort to referendums in the name of democratic legitimacy has provoked a growing stand-off within the EU states union. On one side of the debate – identical to the republican argument for states' rights in the antebellum US – lie those who believe that the residual sovereign status of the member states must be matched by the exercise of popular sovereignty at the national level. Opponents of this position, conversely, seek the creation of new avenues for allowing popular sovereignty to be exercised at a level beyond that of the member states. The fact that national referendums on treaties have implications stretching beyond the borders of the member state in question has thus been used to argue that it is simply irresponsible to subject the constitutional future of the EU to national

votes (Weiler, 1997; Auer 2007). This explains why the federal alternative, a pan-European popular sovereignty, is so attractive. The formula sounds perfect: supranational legitimacy for a supranational project via some kind of dual majority principle. That is, a threshold of a certain number of both states and citizens would be required in order to change the treaty system, as currently is necessary to revise the Swiss constitution (Trechsel, 2005). However, to explicitly deny member states the option of resorting to direct democracy at the national level to decide upon treaty change would be a clear circumscription of their sovereign status. It would gainsay the very notion of the national political community as a *pouvoir constituant* capable of changing the very form of government of a state (Yack 2001). This proscription would seem all the more incongruous in the context of a continued right to exit the EU.

The point here though is not to decide which of these two alternatives is the more democratically legitimate. Rather, the purpose of this analysis has been to demonstrate that the language of appealing to the people – *vox populi vox dei* – to solve various democratic shortcomings has only served to heighten the clash over sovereign status. Exactly as occurred in the antebellum US, the invocation of popular sovereignty in the EU appears to have polarized the debate over where the proper locus of self-government is located. In both states unions, therefore, the issue of democratic legitimacy kindled conflict over sovereign status to the extent that only a formal specification of where the hierarchy of democratic legitimacy lies could settle the matter. Yet such a specification runs precisely counter to the anti-hierarchical *raison d'être* of a states union. Obviously this very issue provoked an insurmountable crisis in the US system. No such conflict is fated to happen in the EU, if only thanks to the accepted legitimacy of unilateral withdrawal. However, given the enduring and highly warranted soul-searching over improving the quality of democratic practices in the EU, it is imperative to consider whether enhancing democratic legitimacy invariably entails moving towards a more hierarchical system that diminishes ambiguity over member states' sovereign status.

4. Can the Hierarchy of Democratic Legitimacy Problem be avoided in the EU?

As previously mentioned, in the wake of lingering democratic deficit anxiety, the impetus for reconfiguring the role of popular sovereignty in the EU system has resulted in three templates for change. These are a Swiss-style system based on direct democracy, a US-inspired presidential regime or a more *sui generis* model of politicization in the context of national politics. Of the three, given the tension between ambiguity over units' sovereign status and democracy analysed above, it is the third option that seems most able to reconcile lingering ambiguity over sovereignty arrangements alongside enhanced democratic legitimacy.

The Swiss option for enhancing democracy in a states union, by relying on the periodic activation of popular sovereignty through direct democracy, is an unpromising path for the EU to follow. In the modern Swiss system, a dual majority of both cantons and the national population is required for constitutional amendment (Kriesi and Trechsel, 2008). Such a system clearly suggests the hierarchy of democratic legitimacy belongs at the federal level because the exercise of popular sovereignty at a cantonal level is not decisive. As a result, the sovereign status of the units in what is still technically known as the Helvetic Confederation is unambiguously circumscribed. Indeed, this was one of the principal aims of the double majority principle, which was introduced in the 1848 Swiss Constitution at a time when the cantons recognized the need for greater centralization (*ibid.*).

Applied to the EU states union, a similar double majority principle would constitute a radical departure precisely because of the circumscription of sovereignty that it would bring about. After all, according to standard international public law, notably article 40.4 of the Vienna Convention on the Law of Treaties (1969), the treaty system of the EU ensures that member states cannot be forced to become parties to amended multilateral treaties to which they have not consented (De Witte 2004b). Thus introducing a double majority principle in the EU as suggested by some (Trechsel, 2005; Auer, 2007) would only add to the polarization of the debate surrounding the proper locus of popular sovereignty.

The other commonly touted method for fixing the EU's democracy deficit is that of *presidentialization* (van Gerven, 2005: 375-384). This is best thought of as the American solution. Constitutionally, of course, the United States is prevented from holding national referendums. In the course of the democratization of the states union, therefore, it is the institution of the presidency that has functioned to activate recessed popular sovereignty at the federal level. As outlined in section two, the nature of that institution changed fundamentally already in the course of the nineteenth century, transforming the contest for the executive into a competition for the popular vote rather than an indirect election of the most suitable candidate by those who should know best (Aldrich, 1995; cf. Glencross, *forthcoming*). As a result, the legitimacy furnished by this unique connection between the presidency and the united sovereign US people has enabled various presidents to reform the US body politic (Ackerman, 1991, 1998) as well as overcome policy impasses within the legislature by mobilizing citizens directly (Schain, 2006). In fact, such was the democratic legitimacy bestowed by election to this office that one president's ability to create new institutional forms of government *ex nihilo* was mistakenly taken to be a foreshadowing of a global reconfiguration of governance (Mitrany, 1943).¹¹

Compared with Swiss direct democracy, the US presidential system constitutes a subtler bond between popular sovereignty and federal authority as there is no explicit hierarchical demand that popular sovereignty at the unit level defer to a greater majority. Thus, in the US the national popular sovereign remains much more recessed than in Switzerland: it is only actively constituted every four years in what are still a set of largely independently-organized state elections.¹² The rest of the time it is recessed although constantly appealed to by the leader of the federal executive. However, it is important to remember that the

¹¹ Mitrany extolled Roosevelt's Tennessee Valley Authority as an extra-constitutional exemplar of bypassing sovereignty issues to solve practical problems of common action (Mitrany, 1943: 21-23). But in so doing, functionalism crucially overlooked the president's unique electoral mandate for political innovation. As a result, functionalist theory failed to appreciate the connection between political authority and democratic legitimacy.

¹² States are largely autonomous in orchestrating their own contribution to the presidential election, as was infamously demonstrated by various "hanging chad" debacles in the 2000 vote.

development of this representative bond between the citizens of the union and their president only came to be accepted after the Civil War. That is, after the Union's victory had unambiguously determined that no appeal to popular sovereignty at the unit level could legitimize certain pretensions about sovereign status, notably the right to nullify federal law or quit the states union (McDonald, 2000). Moreover, on a day-to-day level, it is the Supreme Court not the president that is called upon to adjudicate in most issues of clashing sovereignty and its legitimate right to do so stems precisely from the same source. As Forrest McDonald explains, 'from a constitutional perspective, the truly revolutionary consequence of the Civil War and Reconstruction, one that was entirely unforeseen, was the general public's acceptance of the idea that the [Supreme] Court was the sole and final arbiter of constitutional controversies' (ibid., 224). Finally, the mechanism for enabling the direct, cross-unit mobilization of citizens – mass political parties – arose in a spontaneous fashion (Wilentz, 2005). This development has no parallel in the EU despite proposals to employ financial inducements to create such a platform for supranational representation through transnational parties (Schmitter, 2000).

Thus both presidentialization and the resort to direct democracy necessarily entail a move towards the establishment of a clear hierarchy of democratic legitimacy. Of course, this may be the inevitable price that has to be paid for democratization, as has been the case in the last two centuries of US history. Nonetheless, this analysis of the inter-relationship between sovereignty and democracy has profound implications for understanding the EU's attempt to overcome anarchy without replicating a hierarchical mechanism of political authority. For a start, it shows that neo-realism's prediction that the successful political integration of states is dependent on mimicking the functions of the nation-state – notably the monopoly of legitimate coercion – is wide of the mark (Waltz, 1979: 88).

Whereas historical attempts at European unity stumbled on the enforcement mechanism for coercing potentially recalcitrant units (Arcidiacono, 2005), post-war European integration has transcended the question of coercion. Rather, the dominant assumption in contemporary EU studies is that integration will

only be able to continue by replicating the nation-state's ability to represent either an active or recessed popular sovereign in order to overcome the democracy deficit problem. However, replicating this particular feature of the nation-state, as this paper has shown, invariably creates a hierarchy of democratic legitimacy to the detriment of maintaining the ambiguity over sovereign status that is so crucial in a states union. It seems somewhat perverse then that in the current context of popular mistrust in the current direction of the European integration project (Mair, 2007; Schmidt, 2006) most scholars back constitutional change that will inevitably diminish units' pretensions to sovereign status. The implication is that constructing a democratic hierarchy of legitimacy is a precondition to better governance. But this seems to beg many questions not only about the causal mechanism involved but also as to why citizens would believe in such a promissory note written by elites they are no longer so quick to defer to.

Fashioning an alternative solution, one that might allow for the maintenance of a constructive ambiguity over sovereign status whilst nonetheless improving the democratic legitimacy of EU governance, is no easy task. There is perhaps one under-explored venue for such a venture: national politics. Understood from this perspective, the challenge for national elites in Europe, as befits their participation in a non-hierarchical system, is to take up the mantle of nurturing constructive political engagement and debate on the subject of integration. This approach is known as "politicization" (Hix, 2008). Unfortunately it is not clear whether integration has already become too "depoliticized", that is, detached from party political competition and electoral mobilization, to enable elites to pursue such a strategy. Moreover, the evidence from recent referendums is that European elites have failed to provide persuasive and coherent justifications for the latest round of treaty reform (Ivaldi, 2006; Glencross, 2009). Thus not only do national referendums provoke polarization over sovereignty arrangements but they also have traditionally failed to provide a suitable occasion for politicizing the integration process.

At the very least, for such a strategy to be effective, elites have to be capable of emplotting this supranational project into their national narratives of politics. For

instance, as the Prodi government in Italy, seeking to join the single currency, justified the necessary austerity measures by declaring it was time for Italy to join the rank of normal European countries and stabilize its public spending (Ginsborg, 2003: 304-308). A similar logic has been in play with Germany's attempts in the last decade to "normalize" its foreign policy stance by advocating a strengthening of the EU's Common Foreign and Security Policy, which would allow Germany to play a greater role on the world stage through EU action. It is also apparent that prospective members of the EU, past and present, have followed this path of politicization in order to advocate and prepare for membership as part of a new direction in their country's history. Of course, it is not a given that all member states have the ability or, perhaps more importantly, can continue to emplot European integration into their domestic political context. However, when contrasted with a national referendum vote on treaty reform, the strategy of persuading national publics – through domestic partisan electoral processes – about the merits of continued integration does have the fundamental merit of not provoking stark continent-wide battles lines over the question of the hierarchy of democratic legitimacy.

Conclusions

This paper explored the relationship between sovereignty and democracy in the context of an anti-hierarchical states union. In doing so, it argued that the anti-hierarchical design of states union necessarily entails maintaining a certain ambiguity over the residual sovereign status of the units. Without a certain residual sovereign status for the units, the constitutional system would be tantamount to a unitary government; this was the fear that drove the "anti-federalist" campaign against the US Constitution and a fear certain scholars claim is vindicated by today's overbearing federal government (McDonald, 1988: 206). However, there is certain to be a tension in a states union between the territorial units and the union over what the scope of this sovereign status entails. Yet processes of democratization, by which is meant here appeals to an active or recessed notion of popular sovereignty, were shown to exacerbate these inherent tensions over sovereign status. In particular, appeals to allow popular sovereignty to determine the proper status of the units engender a

clash over the hierarchy of democratic legitimacy. This is because designating a particular level of government as the proper locus of popular sovereignty invariably identifies that level as the true sovereign authority in the states union.

Hence the appeal to popular sovereignty, whether through presidential representation or direct democracy, diminishes the scope for maintaining ambiguity over where sovereignty resides in the states union. This was seen to be the case in the antebellum US, where the states and federal government developed polarized readings of the location of popular sovereignty to buttress their claims to final political authority. Likewise, in the EU, the use of direct democracy at the national level to render treaty amendment more legitimate sparked a counterclaim that suggests the only appropriate locus for holding a referendum is pan-European. So in both cases the move towards invoking popular sovereignty implies the imposition of a more rigid hierarchy of authority, whether at the unit or union level. In this way it seems that enhancing democratic procedures between states undermines the ability to maintain a non-hierarchical states union. Consequently, whilst democratic norms and institutions constitute a formidable resource for pacifying relations between states (Doyle, 1983; Lipson, 2005), the democratic appeal to popular sovereignty poses a profound dilemma for unions of states. Invoking the authority of the people will inevitably polarize the debate over the residual sovereign status of the units. As such, it is a move to be attempted with great caution.

REFERENCES

- ACKERMAN, B. (1991) We the People: Foundations (Cambridge, MA: Belknap).
(1998) We the People: Transformations (Cambridge, MA: Belknap).
- ALDRICH, John (1995) Why Parties? The Origin and Transformation of Political Parties in America (Chicago: University of Chicago Press).
- ARCHIBUGI, D. (1992) 'Models of International Organization in Perpetual Peace Projects', Review of International Studies, 18 (5): 295-317.
- ARCIDIACONO, B. (2005) Les projets de réorganisation du système international au XIXe siècle (1871-1914), Relations internationales, 123: 11-24

- AUER, A. (2007) 'National Referendums in the Process of European Integration: Time for a Change', in A. Albi and J. Ziller (eds), The European Constitution and National Constitutions: Ratification and Beyond (The Hague: Kluwer Law International), pp. 261-272.
- BAGEHOT, Walter (1963) The English Constitution (London: Fontana).
- BÖRZEL, Tanja (2005) 'Mind the Gap! European Integration between Scope and Level', Journal of European Public Policy, 12 (2), pp. 217-36.
- CORWIN, E. S. (1934). The Twilight of the Supreme Court (New Haven: Yale University Press).
- DEUDNEY, D. (1995) 'The Philadelphian State System: Sovereignty, Arms Control, and Balance of Power in the American State System', International Organization, 49 (2), 191-229.
(2007) Bounding Power. Princeton: Princeton University Press.
- De WITTE, B. (2004a) 'Treaty Revision in the European Union: Constitutional Change Through International Law', Netherlands Yearbook of International Law, 35, 51-84.
(2004b) 'The Process of Ratification of the Constitutional Treaty and the Crisis Options: A Legal Perspective', EUI Working Paper, LAW 04/16.
- DOYLE, M. (1983) 'Kant, Liberal Legacies, and Foreign Affairs', Philosophy and Public Affairs, vol 12 (4): 205-232.
- ELAZAR, D. J. (1962) The American Partnership (Chicago: University of Chicago Press).
- FABBRINI, S. Compound Democracies: Why the United States and Europe Are Becoming Similar (Oxford: Oxford University Press).
- FORD, L. K. Jnr. (1994) 'Inventing the Concurrent Majority: Madison, Calhoun, and the Problem of Majoritarianism in American Political Thought', Journal of Southern History, 60 (1), 19-58.
- FORSYTH, M. (1981) Unions of States: The Theory and Practice of Confederation (Leicester: Leicester University Press).
- FRITZ, C. (2008) American Sovereigns (Cambridge: Cambridge University Press).
- van GERVEN, W. (2005) The European Union: A Polity of States and Peoples (Oxford: Hart Publishing).
- GIENAPP, W. E. (1996) 'The Political System and the Coming of the Civil War', in G. S. Boritt (ed.), Why the Civil War Came (New York: Oxford University Press).
- GINSBORG, P. (2003) Italy and Its Discontents 1980-2001: Family, Civil Society, State (London: Penguin).

- GLENCROSS, A. (2008) 'Consensus to Contestation: Reconfiguring Democratic Representation in the EU in the Light of Nineteenth-Century US Democratization', Democratization, 15 (1), pp. 123-41.
- (2009) 'The French Referendum on the EU Constitutional Treaty and the Problem of Justifying EU Integration', Government and Opposition, 44 (2): 243-261.
- (forthcoming) What Makes the EU Viable? European Integration in the Light of the US Antebellum Experience (Basingstoke: Palgrave).
- GOLDSTEIN, L. (2001) Constituting Federal Sovereignty: The European Union in Comparative Context (Baltimore: Johns Hopkins University Press).
- HAMILTON, A. (2003) with John Jay and James Madison The Federalist with Letters of Brutus (Cambridge: Cambridge University Press).
- HENDRICKSON, D. (2003) Peace Pact: The Lost World of the American Founding (Lawrence: University Press of Kansas).
- HIX, S. (2008) What's Wrong with the European Union and How to Fix It? (Oxford: Polity).
- HUNTINGTON, S. (1966) 'Political Modernization: America vs. Europe', World Politics, 18 (3), pp. 378-414.
- IVALDI, G. (2006) 'Beyond France's 2005 Referendum on the European Constitutional Treaty: Second-Order Model, Anti-Establishment Attitudes and the End of the Alternative European Utopia', West European Politics, 29 (1), 47-69.
- JACKSON, R. (1999) 'Sovereignty in World Politics: a Glance at the Conceptual and Historical Landscape', Political Studies, XLVII, pp. 431-456.
- KEOHANE, R. (1995) 'Hobbes's Dilemma and Institutional Change in World Politics: Sovereignty in International Society', in H-H. Holm and G. Sørensen (eds), Whose World Order: Uneven Globalization and the End of the Cold War (Boulder, CO: Westview).
- KRASNER, S. (1999) Sovereignty: Organized Hypocrisy (Princeton: Princeton University Press).
- LINCOLN, A. (1991) Great Speeches (New York: Dover).
- LIPSON, C. (2005) Reliable Partners: How Democracies Have Made a Separate Peace (Princeton: Princeton University Press).
- LISTER, F. (2001) The Later Security Confederations: The American, "New" Swiss and German Unions (Westport: Greenwood Press).
- MACCORMICK, N (1999) Questioning Sovereignty: Law, State and Practice Reason (Oxford: Oxford University Press).

- MAIR, P. (2007) 'Political Opposition and the European Union', *Government and Opposition* 42 (1), 1-17.
- MCDONALD, F. (1988) 'Federalism in America: An Obituary', in F. and E. McDonald, Requiem: Variations on Eighteenth-Century Themes (Lawrence: University of Kansas Press), pp. 195-206.
- (2000) States' Rights and the Union: Imperium in Imperio, 1777-1876 (Lawrence: University Press of Kansas).
- MCKAY, D. (1999) Federalism and European Union: A Political Economy Perspective (Oxford: Oxford University Press).
- MILLER, A. and R. Howell (1956) 'Interposition, Nullification and the Delicate Division of Power in a Federal System', Journal of Public Law, 5 (1), 2-48.
- MILLER, D. (2000) Citizenship and National Identity (Oxford: Polity).
- MITRANY, D. (1943) A Working Peace System: An Argument for the Functional Development of International Organization (London: Royal Institute of International Affairs).
- MONNET, J. (1962) 'A Ferment of Change', Journal of Common Market Studies, 1 (3), 203-211.
- MORGAN, E. S. (1988) Inventing the People: The Rise of Popular Sovereignty in England and America (New York: Norton)
- MORGAN, G. (2005) The Idea of a European Superstate: Public Justification and European Integration (Princeton: Princeton University Press).
- ORTH, J. V. (1987) The Judicial Power of the United States: The Eleventh Amendment in American History (New York: Oxford University Press).
- PARSONS, Craig (2003) A Certain Idea of Europe (Ithaca: Cornell University Press).
- PREUSS, U. (1995) 'Citizenship and Identity: Aspects of a Political Theory of Citizenship', in R. Bellamy, V. Bufacchi, and D. Castaglione (eds) Democracy and Constitutional Culture in the Union of Europe (London: Lothian Foundation Press).
- RABUN, J. (1956) 'Documents Illustrating the Development of the Doctrine of Interposition', Journal of Public Law, 5 (1), pp. 49-89.
- RALPH, J. (2005) 'International Society, The International Criminal Court and American Foreign policy', Review of International Studies, 31 (1): 27-44.
- RIKER, W. H. (1955) 'The Senate and American Federalism', American Political Science Review, 49 (2), 452-469.
- ROBERTSON, D. (2005) The Constitution and America's Destiny (Cambridge: Cambridge University Press).

- RUNCIMAN, D. (2003) 'Politicians in a Fix', London Review of Books, 4 September.
- SCHAIN, M. (2006) 'Immigration Policy', in A. Menon and M. Schain (eds), Comparative Federalism (Oxford: Oxford University Press), pp. 339-64.
- SCHMIDT, V. (2006) Democracy in Europe: The EU and National Politics (Oxford: Oxford University Press).
- (2007) 'Trapped by their Ideas: French Elites' Discourses of European Integration and Globalization', Journal of European Public Policy, 14 (7), 992-1009.
- SCHMITT, Carl (1992) 'The Constitutional Theory of Federalism', TELOS, 91 (Spring), pp. 26-56.
- SCHMITTER, P. (2000) How to Democratize the European Union – And Why Bother? (Lanham: Rowman & Littlefield).
- SORENSEN, G. (1999) 'Sovereignty: Change and Continuity in a Fundamental Institution', Political Studies, 47 (3), pp. 590-604.
- STAMPP, K. (1978) 'The Concept of a Perpetual Union', Journal of American History, 65 (1), pp. 5-33.
- STORING, Herbert (1985) The Anti-Federalist (Chicago: University of Chicago Press).
- TRECHSEL, A. H. (2005) 'How to Federalize the EU...and Why Bother', Journal of European Public Policy, 12 (3), 401-418
- TRECHSEL, A.H. (2008) and Hanspeter Kriesi The Politics of Switzerland (Cambridge: Cambridge University Press).
- WALKER, Neil (2003) 'Late Sovereignty in the European Union' in Neil Walker (ed.), Sovereignty in Transition (Oxford: Hart), pp 3-32.
- WALTZ, K. N. (1979) Theory of International Politics (Reading, MA: Addison-Wesley).
- WARREN, C. (1913) 'Legislative and Judicial Attacks on the Supreme Court', American Law Review, 47 (1), 1-34.
- WEILER, J. (1997) 'The European Union Belongs to its Citizens: Three Immodest Proposals', European Law Review, 22 (2), 150-156.
- WERNER, W. (2001) and Jaap de Wilde 'The Endurance of Sovereignty', European Journal of International Relations, 7 (3): 283-313.
- WILENTZ, S. (2005) The Rise of American Democracy: Jefferson to Lincoln (New York: Norton).
- WIND, M. (2001) 'The Endurance of Sovereignty', European Journal of International Relations, 7 (3): 283-313.
- YACK, B. (2001) 'Popular Sovereignty and Nationalism', Political Theory, 29 (4), pp. 517-36.