EUROPOLIS

The Old Continent a Town, with the Union Its City Hall[1]

> The polis, properly speaking, is not the city-state in its physical location; it is the organization of the people as it arises out of acting and speaking together, and its true space lies between people living for this purpose, no matter where they happen to be.
>
> H. Arendt, *The Human Condition*

On Thursday morning February 2nd, 1653, New York came into being as a city. From a dependent trading outpost run by the Dutch West Indies Company, it turned itself into a self-governing political community. Seven local magistrates went into the fort, swore an oath of service to the Dutch States General and said a prayer. Then they signed a municipal charter and conducted their first piece of business, putting their signatures to a statement 'herewith [to] inform everybody that they shall hold their regular meetings in the house hitherto called the City Tavern, henceforth the City Hall, on Monday mornings from 9 o'clock, to hear all questions of difference between litigants and decide them as best they can'.

The name of this new city was not New York, nor New Netherlands, as the Dutch colony in full was called. The seven magistrates started out by asserting a function of attributing justice. In this they followed the model and traditions of municipal charters in Europe in general and of one Charter in particular: that of the city of Amsterdam, then 350 years old. And the town would be called New Amsterdam.[2]

[1] Ideas in this editorial were first presented in a venue of the *European Constitutional Law Network* at NYU Law School, 11 and 12 Oct. 2012, on the theme of Reconceptualizing Europe and the Union.

[2] Russell Shorto *The Island at the Center of the World. The Epic story of Dutch Manhattan and the Forgotten Colony that Shaped America* (New York, Random House 2004), p. 257-258. The book shows how the spirit of religious tolerance, civil hospitality and equality between all inhabitants Dutch and foreign, a spirit which is now part of the American heritage, was not taken from puritan England but was a transplant from the Dutch Republic into the first city government of now NYC and later into the US as a whole. The US Declaration of Independence of 1776 in turn would be

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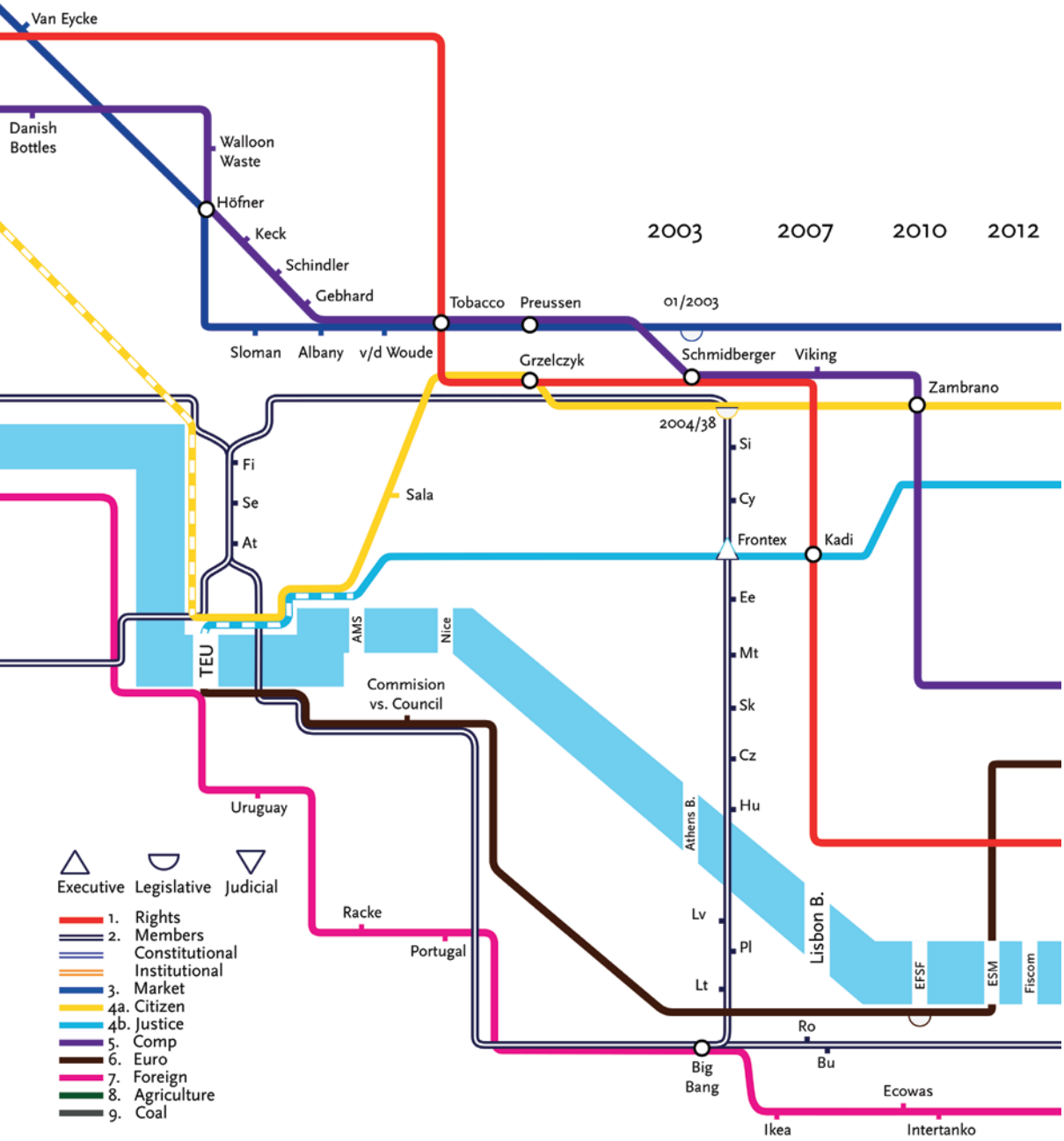

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What if we try to model the European Union's foundation on the event of the birth of New York City or, generally, on the creation of a city, by way of a proclamation, and a charter? What if we understand the EU's autonomy from its member states with the help of the analogy to New Amsterdam and both its autonomy from and its remaining relationship with the provinces of the Dutch Republic? That is the venture that this editorial would invite its readers to undertake.

What does it take to conceptualize Europe in this way? One must widen the scope of inquiry from law alone to history at large, of which law is seen to be a part and a specific form, and to constitutional history in particular.

What are the possible rewards? Some puzzling phenomena in the EU's constitutional evolution will fall into place; some conundrums and ambivalences will vanish. Europe would become a place, a dwelling and meeting place, a city in becoming; the EU would become its municipality, its town hall. Europe would not need to become a country, the Union would not be seen in the perspective of becoming a state or something fitting the logic of states and their derivatives of confederations or federations. There would be no need of a European people: the extant collective of European Union citizens would fit the bill. EU law would not be in a fight for supremacy with the laws of its member states, but involved in a live competition and synergy between the member states and their cities, the way it was between the medieval cities and their overarching state authorities.

The Union would have been, originally, a trading outpost operated under the combined sovereignties of its home states, in the executive mode. It would then turn into a municipality with its own political structure on the basis of its own first legal, then *political* autonomy and life. Its inhabitants would evolve from its employees into its citizens.

It would be a matter of mere ornamental coincidence that the *Van Gend & Loos* judgment, EU's proclamation of itself into an autonomous legal order capable 'to hear all the differences between litigants and decide upon them as best they can', was made almost 310 years to the day after the proclamation of the city Charter of New Amsterdam by an equal number of seven magistrates, followed up a year later, now just fifty years ago, by *Costa ENEL*. It would also be a coincidence that, like New Amsterdam, the EU would take off as a free public authority from the platform of the judicial function of government, not from that of the executive.

All such analogy and coincidence is not enough for us to leave the safe intellectual harbour of the Union conceived as a statal authority, including territorial

modelled on the document justifying the Dutch revolt, the 'Act of Abjuration' of 1581, *see*: Stephen E. Lucas, 'The Act of Abjuration as a Model for the Declaration of Independence: Thomas Jefferson and the Art of Imitation', in Paul Brood and Raymond M. Kubben (eds.) *The Act of Abjuration: Inspired and Inspiring* (Wolf Legal Publishers 2011), p. 173-189.

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preconceptions, under federal and confederal logic and even their ambiguity, such as found in the 'federation of states'. But let it suffice for a spark. Even a coincidence, or a similarity, may open a new course of thinking and discovery once the need is pressing enough.

After a cursory demonstration of the pressing need to read the EU as a public authority in *other* terms than those of states, federations and confederations, let alone *federations of states*, this editorial sets out to show how the EU can be conceived of as a city government, with Europe its town, its *polis*. Its relationship with the member states can be conceived of following the examples set between free cities and states in the course of Western constitutional history.

The EU Law Tube Map, used as an illustration, following the model of the London Tube Diagram by Harry Beck (1902-1974), is a prototype which may help to convey the symbolism of the EU as a city.[3] It fits with this theory of Europe as a city or town: EU law is the city's most developed system of communication, linking up the boroughs into a functional and live whole, as did the London underground and the New York subway. The map is to be further developed over the coming years. Harry Beck, as an aside, spent 28 years on the London tube map from his first (then rejected) sketch, in 1931. His final version (1959) continues to be developed and sophisticated to this day.[4]

This EU Law Map uses purposive distortions and simplifications to show up relationships, connections, developments. It is historic; the river is the timeline. Bridges across the river represent EU treaties. Lines are mainly the chapters of EU law: institutions and fields of substantive law. Then there are the other stops and nodes such as Court cases and legislative acts. And there is the MS line, stringing up the member states.

Limits to the logic of state, federation, etc.

The labours of public legal and constitutional thought over the phenomenon of EU law are overly documented and need not be rehearsed. Most thinking proceeds from the concept of the state and is driven by the problems centring on sovereignty, by the hopes set on pluralism, by the inspiration of federal thought, including confederal theory. Not seldom does it end in the aporia of scholarly audiences, unconvinced by the next new theory, however sophisticated, about the

[3] Map shown only partially here. Courtesy of Anna Eijsbouts, MA (RCA).

[4] Ken Garland, *Mr Beck's Underground Map. A History* (Capital Transport Publishing 1994). For a vivid talk about such map making: <www.ted.com/talks/aris_venetikidis_making_sense_of_maps.html>.

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nature of EU law and of its relations with member state laws. In the meantime, experts and insiders of European integration prefer their 'sui generis' notion of the Union, uninclined to see a problem to conceive the world in which, after all, they move around with great ease.

Some plain facts are impervious to any sophistication of theory. On the one hand, the Union is not on its way to becoming a state. No amount of EU law can make up for the Union's lack of physical and financial clout, to wit the absence of any monopoly of the legitimate use of physical force and a minimal budget. On the other hand, its development does not conform to that of an international agency. There is an undeniable and defining autonomous development, both in terms of law and of politics and government. As to law: the Court's leap of faith in *Van Gend & Loos* has landed well and the autonomy of EU law is accepted by the member states. As to politics and government: there are unmistakable beginnings of a political life and of political authority, most obviously and recently visible in its defence of the euro against the financial markets' onslaught. No matter that it solicited the attacks itself by showing obvious flaws in the defence.

So do we fall back upon the cherished *sui generis* idolation of the Union? That may be fine for the experts and insiders of Union life, happy with every complication, the more fluently to navigate it. But that is not an option for the public. Nor, one needs to add, is it an option for scholarship. Increasing complexity of developing institutions is a fact of life. But life and history also provide for a contrary trend: that of simplification. While following complexity is a talent of our intuitions and our sense organs, capturing and expressing new simplicity from growing complexity and in spite of it is the job of our intelligences and expressive faculties. The great Danish film-maker and champion of simplicity Carl Dreyer (1889-1968) said that 'to simplify reality, you need to understand it very well'. Harry Beck, creator of the Tube Map, would have agreed with him. The experts of the London Tube found Beck's map unacceptable for its distortions. The public knew better and accepted it avidly. In this, scholarship needs to side with the public, to allow and hike on to a means of presenting a situation in its simplicity.

In the following sketchy remarks on reconfiguring the Union as a subject of constitutional law, simplicity is made the leading virtue. As in the Tube Map, this simplicity will distort reality. Once that distortion is taken as a property of all-powerful expression, it disappears as a problem and returns as a potential. To see Europe as a dwelling place for 500 million people certainly requires a twist of the imagination. And seeing EU law as a system of communication available to those 500 million requires a further twist. Mr Beck's Tube Map is claimed to have had a share in saving the London Underground from bankruptcy in the hard times of

the 1930s. Let us not claim that this is what is now needed for Europe. But every little bit may help. Hannah Arendt's insight about the *polis* depending not on territory but on people, quoted at the top of this editorial, may do some of the necessary relaxing.

Constitutionalism before the state

Most current constitutional thinking, including that about the EU, proceeds from the state constitution. It starts constitutional history towards 1800, with the American and French constitutions, including the American individual state constitutions, as points of departure. States existed before, with the state system formalized in 1648, but it took a good century for them to be touched by the magic wand of constitutionalism.

From the American constitutional experience also springs the keen distinction between federal and confederal constitutions, and the later distinction between states and international organizations, as legally qualified forms of original public authority. All these notions belong to a single system of thought, expressed in law as the separation and distinction between domestic and international public law. This system of thought wants an original authority of public law to be either a sovereign state or a confederation (viz. an organization of states under public international law). When the US switched from a confederation to a federation in 1789 it conformed to this logic by operating a keen switch.[5]

It is not to be held against this doctrine that many phenomena of public law do not neatly conform to the analytical ideal. That is normal for analytical schemes such as this, serving legal and historic structure. This one has proven extremely effective in governing the legal reality of states and their system for a very long time. The real challenge to the doctrine arises as reality tests the ideal beyond where it can go. Then the system starts spawning doctrinal writings merely for the sake of defending itself from the one novelty that seems to slip away from its control, *in casu* European Union. Created for the sake of, among other things, simplicity and intelligibility, it has successfully served to master the complexities of actual government by providing simple notional and normative building blocks such as the *trias politica* and forms of state and systems of government. Now constitutional doctrine seems to surrender to scholasticism and complexology.

How to claw back simplicity for EU constitutional law? Part of the answer starts from the acknowledgement that constitutional history has started well before the

[5] *See*, characteristically, C.F. Strong, *Modern Political Constitutions* (London 1966; first edition: 1930).

state. In fact, it started out in Greece, 2500 years ago, with the invention of the *polis* and with the first constitution of democracy by Athens' Cleisthenes. The Athens constitution was put into writing by Aristotle, along with more than a hundred others, of which it was the only one to survive on record.

The constitution thus entered history in the form not of an account and form of *state* government but of *city* government. Not long after Athens, the Republic of Rome was born, as a city with its own constitution, featuring powerful constitutional evolution. Rome became an empire, with an emperor, and still with a constitution, if not with one that we would fully acknowledge as such.

R.C. van Caenegem's *Historical Introduction to Western Constitutional Law* (1995) starts its tale at the end of the Roman Empire, when Europe was a vast territory of dispersed powers, with only the central sway of the Church remaining, and subject to a repetition of attempts at new aggregation. In the 'Second Middle Ages' (twelfth to fifteenth century), the foundations of the modern state structure of Europe were laid. But in the beginning of this period there was a sudden and massive flourish of cities across Europe, starting from Italy, which managed to gain autonomy from the territorial powers. Harold Berman writes in his magnificent *Law and Revolution*:

> Some thousands of new cities and towns came into existence in the late eleventh and the twelfth centuries – in northern Italy, Flanders, France, Normandy, England, the German duchies [...] however diverse their character, they all had a common consciousness of themselves as urban communities and they all had similar legal institutions: they were all governed by a system of urban law.

And, writes Van Caenegem: 'So the cities developed their own municipal Constitutions, in the midst of frequent struggles between oligarchy and democracy [...].'[6]

Three forms of autonomous public authority. To cut a long story short, constitutions and constitutional law have come about, historically, in three different forms of original public authority: empires, cities and states. To see how these were different in nature, it is easiest to look at the different realities that they each controlled and defined in terms of space & time, people, and action.

An empire, the most ancient form of autonomous public authority, is held together by power and is maintained and enlarged for the benefit of the centre. Its

[6] Harold Berman, *Law and Revolution* (Harvard UP 1983), p. 357. R.C. van Caenegem, *An Historical Introduction to Western Constitutional Law* (CUP 1995), p. 74.

constitution consequently is aimed at control of diversity, including that of its human capital, offering neither political freedom nor equality.

A city government is geared to and held together by development and wealth creation. Defined less by its borders than by its centre, the town features a concentration of economic and political activity in space, in the *agora* or *forum* and similar places. And it features concentration of time, in the events of all nature and the excitement and hectic life it offers its inhabitants and its passers. Its constitution is often a charter, wrested from the territorial rulers or from another establishment in the form of rights and privileges, embedded in practices which set off the city, its way of life and its form of authority, from the country and its ways and authority. Its essential human capital consists of free citizens/burgesses. The town is driven by integration, emancipation, development. The city is complex and sophisticated legally, distinguishing rights and statuses for different classes of its inhabitants.

A state is the most modern and radical form of original public power. Compared to the city, it is defined more by territory, less by its centre than by its borders. Its powers of action are aimed less at temporal & spatial concentration than the cities' powers are, and more at homogeneity, regularity, control. The state will tend to organize its human or popular element through the status of subjects. Lately, with the nation state, this has led to the collective of a state people or nation, and to formal equality among them as a dominant characteristic.

Of course there is no neat difference between the three forms in practice; there are mixed forms, overlaps and relationships. At the end of the reign of emperor Charles V (1555), to give a single example, you had his Holy Roman Empire, with its own constitution. This empire then comprised, in its fashion, a great part of Europe, in which there were states, such as the kingdom of Spain which was to devolve upon Charles' son Philip. And you had cities with great clout and power, such as the city of Amsterdam, with its own constitution, formally under the same Philip's lordship, yet with great freedom and autonomy.

How would, in turn, New Amsterdam as a city relate to The Dutch Republic? Formally it did as a *derivative* authority, obtaining its rights from a grant, or charter. In fact, of course, its foundation on February 2, 1653, was an act of freedom, won on a foreign shore, from the Dutch authorities on the basis of Dutch law by a Leiden law scholar. It turned colonists into citizens. It turned the law from an agency of control, of territory and of reason into a language of migration, integration, emancipation, development; in short, into a language of city life.

The hero of New York's origin as a city is Adriaen Van der Donck. Native of the city of Breda, he went to study law in Leiden in 1638, where, a year before, Descartes made a sensation with his *Discours de la Méthode.* The University there was a meeting place for the intellect of Europe and a breeding ground for the Dutch elite. Then Van der Donck sought to go overseas and in May 1641 boarded *Den Eyckenboom* with a stack of instructions from his patron Van Rensselaer to run his property ('Rensselaerswyck') located now in upstate New York, then in the middle of the wilderness. After a voyage of ten weeks, Van der Donck landed at Manhattan.[7] In 1644, frustrated with the feudal practices of his patron in his property, and ousted by him as a consequence of his remonstrances, he joined a resistance cell in the town of New Amsterdam, the base from which he became the pivotal figure in a movement to win city rights from the Dutch authorities for the germinal town of New Amsterdam. After a first clampdown from the Dutch Republic in the person of the better known Peter Stuyvesant, sent over to restore order, the resistance would grow and eventually lead to the proclamation from which this tale took off.

Remember, this was in the time when states such as that of France and England were creating their system of monopoly over public authority, gradually suppressing also the cities' autonomies. The Dutch republic, creating itself in a breakaway revolt from the same Philip, in a sense went against this trend. As a republic, it was an island in a European sea of kingdoms and other pre-statal entities such as counties and duchies. And the republic was driven by the wealth and the generative powers of its cities, autonomous under their charters.

In *The Federalist* 20, Madison reads this Dutch republic in the key of state authority, and finds it to have the weakness of a confederation. In his day, it certainly was a weak state. But in the previous century, this Dutch Republic had lived its golden age and was a world power. Is was then better understood as a 'city-republic', that is to say, a republic whose life, wealth and power rested on the dynamic of its cities, organized superficially by an incipient form of state. Statal power was fighting to assert itself in the person of the Stadtholder, originally the representative(s) of the Burgundian Dukes in the provinces. It became monopolized by the House of Orange and would ultimately win the fight only with the establishment of the Kingdom of the Netherlands in 1814.

It was around 1750 that the Netherlands had gradually turned away already from being dominated by the cities, to a system dominated by the landed interests and the nobility. This is the situation Madison knew. It announced the conversion of the Dutch form of public authority from a free republic, with burgesses or citizens, to a kingdom, with subjects for human substrate.

[7] Shorto, *supra* n. 2, p. 103-104.

This extremely cursory treatment is meant to serve three purposes. First, to break away from the constitutional monopoly of the doctrine of law and state.[8] Second, to show that, over time, *only* three distinct forms of autonomous public authority have asserted themselves, each controlling its specific reality in a characteristic way: empires, cities, states.

Categories in fact are never pure, neither internally nor externally, even if they have a strong normative and factual grasp upon reality, as do the above three. As to the internal variety within each category: there have been different kinds of cities and different kinds of empires and states throughout history. And there are states which are also cities and empires (like ancient Rome), in other words, there is no waterproof separation between the categories. Still, the tripartition makes sense and somehow, as tripartitions do, asserts itself in reality with the aid of history and human intelligence.

The third and now most important purpose is to start a brief inquiry into the possible *relationships* between specimens of the different forms of public authority: empires, cities, states. What counts most for us lawyers is that the three forms have shown themselves to be capable of coexisting and interacting, politically and legally, apart from, of course, violently. Between them, there was no legal hierarchy. This is the essential insight into the relationships found to exist among Western legal systems by Harold Berman (above).

Only when the state as a form of authority asserted its monopoly, between the peace of Westphalia and the end of colonialism halfway through the last century, did this coexistence become more difficult. That is probably because the law, more than before, came under the sway of logic, hierarchy and efficiency, at the expense of the charm of time (to which the law will always pay tribute as well). Sovereignty as a key, absolute, attribute of the state is a clear symbol of this development, suppressing earlier relative notions centring on 'freedom' or 'autonomy'.

It has only been for about sixty years that the state, as the dominant form of public authority has been completing its campaign of covering the globe; it was only twenty years ago that the last great empire, the Soviet Union, broke up. It is ironic that just now that the state rules the globe, the world is rapidly and definitively urbanizing. Thus a reality springs up which calls again for the public authority of the nature of a city, autonomous and ready to coexist with the states'

[8] When Mr Barroso briefly toyed with the idea of the Union being a 'non-imperial empire', on 10 July 2007, he made a mistake of category, but he was right to try to jump the monopoly of statal thinking.

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authorities. An awareness of these wider developments helps to frame some of the legal developments in Europe, in the context of the European Union. It should be no surprise that these developments show up most markedly in the field of human rights law and involve a legal interaction between the different authorities active in the field, to wit the judiciaries of the states, of the Union and even the European Court of Human Rights.[9] Human rights owe much of their history to city life.

Law can be seen as a part and a form of human history. Relations between legal systems and their development are best understood as part of the relations between the public authorities these systems uphold. It is the force of history in the context of Europe that now rekindles the old faculty of communication between autonomous legal orders, as part of the communication between their political patron-institutions, and that allows us to frame the Union as a city.

The Union a city

There are several elements lying ready legally and conceptually to underpin the notion of the Union as a city, of which the most obvious and accessible to us lawyers is that of its citizenship. Let us start developing this only. Citizens belong to a city. The notion of citizenship started gradually to slip into thinking about Union law in the 1970s and was formalized in 1992 (Maastricht). Since then, EU citizenship, not just as a legal notion but as an Union institution, and as a more than merely legal reality, is slowly fighting its way up. The Union's citizenship is not only a bundle of rights for individuals, nor even only a status. It is not only the property of individuals. Union citizenship also belongs to the Union as an institution and as a part of its status and character. This is important. It individualizes the Union as a singular body politic. By contrast to nationality, citizenship is not standardized by the state system, but is specific to every city and helps to define it.

Thus Union citizenship has come to contain a square refusal to define the Union's electorate in terms of a state-people. When the Constitutional Treaty introduced the citizens as a sort of 'constituant', in its exordium 'reflecting the will

[9] This is the theme of several recent editorials in this journal, such as 'The Law of Laws. Overcoming Pluralism', *EuConst* (2008) p. 395-398; 'Watching Karlsruhe/Karlsruhe Watchers', *EuConst* (2012) p. 367-374; 'The Dance of Justice', *EuConst* (2013) p. 1-6; and 'Between Frankfurt and Karlsruhe: The Move, the Law and the Institutions', *EuConst* (2013) p. 355-357. Time allows claims of system and hierarchy to be relativized in legal interaction and to find normative commonality among them. *See* P. Eeckhout, 'Human Rights and the Autonomy of EU Law: Pluralism or Integration?', *Current Legal Problems* (2013) p. 1-34.

of the citizens and the states of Europe', an intended echo from the US Constitution's *We the People*, this was refused by the French and the Dutch, and hence removed from the Lisbon version. The EU is not to become a form of popular sovereignty, even in a watered-down version. The difference is not one of formality but one of foundation (*non pas une question de* forme *mais de* fond, as the French aptly say). It defines the nature of the European polity.

For affirmative underpinning it is rewarding to go back to Greek, Roman and medieval citizenships. A structural split characterized citizenship in those cities, which is strikingly similar to the one that marks EU citizenship. It was the split, or duality, between what in the context of the European Union is conveniently called 'market citizenship' and 'political citizenship' (Articles 21 and 22 TFEU respectively), not unlike that the French notions of *bourgeois* and of *citoyen*.[10]

Union citizenship thus harkens back to the constitution before the state. It helps define the Union as something different from a state. Its strongest inspiration is the notion of autonomy. This shows up clearly in case-law. We can read the development of Union citizenship in the key of two forms of incipient and no doubt increasing autonomy. One is the autonomy of EU citizenship from the EU internal market law and its logic (*Ruiz Zambrano*). The other is the autonomy of EU citizenship from its parent status, the nationality of a member state (*Rottmann*).

Let us finish with a pointer of non-legal nature, concerning the nature, the status and the promise of the European Union and, more importantly, about Europe. Like a state, the European Union is a servant institution. What is the reality it serves? In the way that the *state,* the Kingdom of The Netherlands is meant to serve the reality of The Netherlands or Holland as a *country* (including its economy, its culture, its territory, its population, its history and future), the EU as a public authority is meant to serve the reality of Europe, as a social, cultural, economic and territorial entity. What is this wider meaning? Is Europe a sort of country? If European Union is not on the way to become a state, Europe is not on the way to become a country. So what sort of *place* is Europe to become?

In his recent book with a very counterintuitive message, based on thorough factual and statistical underpinning, Steven Pinker has made a few points of optimism about our current world. He demonstrates that in all of human history to date, there has been no time less violent and more prosperous than now, with violence diminishing almost linearly through history. In this world of least violence and highest prosperity of today, the least violent and most prosperous place is Europe.[11]

[10] Peter Riesenberg, *Citizenship in the Western Tradition. Plato to Rousseau* (North Carolina Press 1992).

[11] Steven Pinker, *The Better Angels of Our Nature. The Decline of Violence in History and Its Causes* (London, Allen Lane 2011). On p. 289: 'The internation entity with the best track record for implementing world peace is probably not the United Nations, but the European Coal and Steel Community [...].'

Let us consider this Europe not as a state, a federation, or a confederation, but as a town, a dwelling place for 500 million people, and the Union as the public authority helping them to develop, to communicate, to exchange, to thrive, to migrate and integrate, in the way *not* of a national people, but of a city population. And let us consider European Union law as one if its essential systems of communication, whose lines and nodes and transfers we may help to map and make more useful for the public.

WTE

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Note from the Editorial Office

The regular reader of our editorial comments will have noticed that the editorial in this issue is signed WTE, but also that it is not countersigned. This is indeed unusual. At the birth of this journal, the obligation of the countersignature was introduced to ensure that the thoughts expressed in editorials would not be those of a solipsist and that they would be shared by another member of the board, at least sufficiently so. In fact, most of the editorials are the result of some sort of collaboration between the co-signing editors, and often in some measure of the whole editorial team – the drafts circulate among all members and it is not uncommon that they solicit numerous remarks and suggestions. This time, however, we waived the requirement of the countersignature. It is not that no member of the board was willing to sign off on the text, which is vintage WTE: masterly written, thoughtful, witty, playful and provocative, all this at the same time, and coupling a fine sense of constitutional history to an exquisite understanding of EU constitutional development. No, the reason is that we want to mark an important event in the life of this journal: Tom Eijsbouts' resignation as editor-in-chief.

Now this is not an obituary. Tom is alive and kicking and remains a member of the board – to our great joy. Nevertheless, some words of appreciation are appropriate.

Where would this journal have been without Tom Eijsbouts? Certainly not where it is by now. Presumably it would not have existed at all. Ten years ago to the very day of this writing, on 16 February 2004, this journal was given the go-ahead. On that day Philip van Tongeren, publisher, e-mailed to the editor-in-chief-to-be and Jan-Herman Reestman that 'Asser Press is very interested in this journal'. Soon, Cambridge University Press joined in. A frantic and exciting period followed. In a very short time a journal had to be put together. The first issue, with short comments by distinguished scholars on various chapters of the then still-thriving European Constitutional Treaty, dated 2005 but actually appearing in October 2004 in order to be presented at an Asser conference on the 15th of that month, was Tom's idea. The *capo*, as he was teasingly called in the minutes of one of the first editorial board meetings, not only kept the broad outlines in view, but also looked after every detail. Take a look at the cover of this journal. Then read the following fragment of an e-mail to Van Tongeren dated 28 April 2004: 'There must be a cover. I will make a rough sketch. Colours: grey underground, bright red headlines. It must be graphically vivid. What do you think of a fragment of the staff notation of Beethoven's 9th, enlarged?' In the ensuing years he continued to infuse his intellectual vigour and physical and mental energy into the journal, in order 'to get this plane up in the air and flying', as we used to say. Well, it is flying now. Thank you, Tom.

LB, MC, JHR (co-editors-in-chief)

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