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Marek Dobrowolski. *Zasada suwerenności narodu w warunkach integracji Polski z Unią Europejską* [The principle of the sovereignty of the nation in the light of Poland's integration with the European Union]. Lublin: Wydawnictwo KUL, 2014, 335 pages. ISBN 978-83-7702-908-4.

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The reviewed monograph, written by Marek Dobrowolski, is the so-called habilitation dissertation, which crowns the interests and scientific research of the Author in constitutional foundations and consequences of European integration. Like many other publications of the Author, starting with his doctoral thesis *Zasada dwuizbowości parlamentu w polskim prawie konstytucyjnym* [The principle of parlamentary bicamerality under Polish constitutional law (Warsaw: Wydawnictwo Sejmowe, 2003), this dissertation addresses current and weighty problems associated with the Polish system of government, which are analysed both in historical context and in the light of juridical research as well as the case law of the constitutional court.

As mentioned in the introduction to the book, it is concerned primarily with "the principle of sovereignty of the nation under the Polish constitutional law, in particular with changes in the way the principle have been perceived after the Republic of Poland became involved in the process of European integration." The goal of the research was to "establish the way the integration of Poland with the European structures affected our interpretation of the said principle, its normative content, and ultimately its impact on the post-accession legal system of Poland" (page 7).

Chapter 1 of the book, entitled *Klasyczna zasada suwerenności narodu* [The classical principle of the sovereignty of the nation], deals with the idea of people being the subject of the highest authority, starting with the ancient traditions of Greece and Rome with respect to governance, through the Middle Ages and the 16th century, to the revolutions of the 17th and 18th centuries as well as the formation of the "classical" concept of people's sovereignty, a process which the Author deals with later, when discussing the issues of sovereignty of the nation as provided for in the Polish system of government (pages 55–64). The Author's idea was not to limit his research to the native tradition of national government, which is fine because even though this historical section of the book does not offer any innovative thoughts, it provides useful background to analyse present-day phenomena taking place with respect to the system of government.

Notably, the basic formulation of the principle of people's sovereignty in the meaning of art. 4 of the Constitution of the Republic of Poland of 2 April 1997 literally have not undergone any changes after our accession to the EU on May 1, 2004. Therefore the problem is not limited to the influence of the accession and integration on the perception or interpretation of the principle itself but also its normative content. This implicitly suggests that not only the function (meaning, role, regulatory value, etc.) but also the very content of the Basic Law are affected by external factors, which are not enshrined in this normative act or captured in the form of provisions of law. The Author's assumption that the solutions underpinning the functioning of the European Union have an impact on the constitutional system of Poland seems commonplace, yet it validates the necessity to make reference to selected issues and institutions of the EU law, the first being the "legitimizing function of particular EU authorities" in addition to such systemic problems of the EU as the demographic deficit and the nature of this international organisation, or its similarity to state institutions.

Indeed, the principle of people's sovereignty is "the foundation of constitutional law", yet no pre-modern constitutional law existed, for example in the antiquity or Middle Ages, while the evolution of the principle is extremely important for this branch of law, especially from the perspective of the far-reaching integration processes. The Author advances a hypothesis that there exist two qualitatively distinct kinds of this principle, distinguishing classical and post-classical forms. The form enshrined in the Polish Constitution "is based on the early, classical concept of sovereignty of a nation, but the included integration clause (art. 90) and the systemic effects of the accession transform this principle into a post-classical form" (pages 8–9). I believe that the principle of people's sovereignty was not "established" in the Constitution of 1997." Indeed, it is proclaimed here but merely by being confirmed and ascertained rather than constituted! After all, this principle – already present in the Polish Constitution of May 3, 1791 – was restored in our legal order during the recent transitional period, as part of the constitutional review of December 29, 1989; in the following years, the principle was consolidated by specific instances of regulation and legal practice, beginning with the first, free and general presidential elections in 1990, through the dismantling of the "contract" parliament, parliamentary elections of 1991 and 1993 and the presidential elections in 1995, to the national [sic] ratification referendum of May 25, 1997, in which the Polish people adopted the new Constitution. So it was not that the Constitution gave rise to the sovereignty of the Nation but it was, so to speak "the baby" of this sovereignty. Besides, it is not clear what and when was to cause that mutation of the classical principle of sovereignty into its "post-classical" form: was it the heavily disguised integration clause in the Constitution or the "consumption" of it (the system consequences of the accession), or perhaps both? The very terms "classical" and "post-classical" are doubtful with regard to the principle of sovereignty, especially that in the introduction the Author uses the expression "classic international agreements" (page 10) or "classic" institutions of law (page 11). Importantly, the reviewed work advances a profound view that the term "nation" has two meanings in the Polish Constitution: political and cultural one; on the other hand the Author denies the existence of the so-called "European people".

The remaining body of the dissertation is structured as follows. Having established the meaning of the normative provision which expresses the superior authority of the nation, the Author reconstructs the scope of this principle following two stages: in Chapter 2, with respect to the ratification of the integration treaties, and in Chapter 3, with respect to the terms of Poland's membership in the European Union (page 10).

These are clear-cut research targets, adequately reflected in the structure of the work; only the title of Chapter III, namely *Zasada suwerenności narodu w warunkach członkostwa Rzeczypospolitej Polskiej w Unii Europejskiej* [The principle of sovereignty of the nation in the light of Poland's membership in the European Union], has a scope that almost entirely overlaps with the title of the book.

Contrary to possible expectations, the Author does not intend to provide any deeper analysis of the sovereignty of the Polish state in the situation of European integration, thinking that analysis of both aspects of sovereignty and their mutual relationship "requires a distinct scientific treatment and does not lie in the primary circle of his interests," therefore for the purposes of the dissertation, the Author simply assumed that "sovereignty of a state is a prerequisite for the realisation of the principle of sovereignty of a nation" (page 9). Let me not question this rather simplistic approach as it is within the Author's discretion to choose which scientific field to explore; however, I cannot fail to observe that this is a manoeuvre of sorts. The thing is that the issue of state sovereignty constitutes an essential element of debate about the sense, conditions, limits and effects of the accession and European integration, also in the constitutional sense. What is more – as it became apparent while I read on – the Author was not at all going to sidestep discussion of important questions related to this subject, for example, when analysing the potential evolution of the EU towards a unique federative state or a state of states. If he says that the process of European integration is changing the status of the state and imposes a redefinition of such classic legal institutions as the parliament or constitution (page 11) – which begs the unavoidable question about the understanding and actual condition of the state as a sovereign subject on the international stage – it is a pity that the Author did not attempt a comprehensive, even in its basic form, treatment of the issue of sovereignty of the Republic of Poland in the situation of EU integration. To paraphrase a quote by a famous constitution scholar, we can say it is to be hoped that M. Dobrowolski has not said the last word in this matter...

While it is true that the Polish legal doctrine to date does not offer a more thorough study in the nation's sovereignty in the post-accession era, one often hears that the accession of Poland to the EU took place with full consent of the sovereign (pages 12 and 199). Indeed, there is absolutely no doubt that the accession referendum was carried out in 2003 in a legal and democratic manner and it led to a conclusion which is rightly ascribed to the Polish Nation. The figures provided by the Author in this regard cannot be questioned being quoted after the announcement of the National Election Commission on June 9, 2003: the referendum was attended by 58.85% of those entitled to vote, and 77.45% were in favour of the ratification of the Treaty. More specifically, there were 29,868,474 citizens with voting rights, and the number of voters was 17,578,818. The question *Do you consent to the*

accession of the Republic of Poland to the European Union? received 13,516,612 positive replies, while 3,936,012 voters gave a negative reply, i.e. 22.55% of all valid votes. Therefore, the accession was voted for by 45.25% of those with voting rights. This constitutes an impressive figure, for example in comparison with the constitutional referendum of May 25, 1997, in which only 6,396,641 were in favour out of 12,137,136 voters, the overall number of those with voting rights being 28,319,650 (see the announcement of the National Election Commission of July 8, 1997, Journal of Laws No. 75, item 476). In that case the voting result was determined by merely about 22.5% of those entitled to vote, but this organic decision is validly attributed to the whole Nation. To paraphrase (the otherwise unfortunate) statement of a certain politician: "Sorry, this is the beauty of democracy."

Yet, there were substantial differences in the degree of familiarity with the object of the vote, and thereby the possibility to make an informed choice. Prior to the constitutional referendum about a million households in the country received the text of the constitution along with the "message" of the president. Before the accession referendum, Polish citizens got different material, which was signed by the head of the state, in the form of a colour leaflet on the European Union (the total number of copies is unknown to me), which surely was not even an abstract of the Accession Treaty and the entirety of the *acquis communautaire*, which – disregarding the body of case law of the ECJ published Journal of Laws of 2004, No. 90, item 864 – counted more than a thousand pages (1145 to be exact), not free from inaccuracies and substantive errors. Therefore, is it beyond discussion that the Polish nation expressed its consent in 2003 not only to the accession itself but also to all consequences of the accession and European integration, even those – as clearly demonstrated by the reviewed dissertation – which obviously would lead to an abolition of the classical formula of a nation's sovereignty and substitution of a new, post-classical form, which would basically reduce the prerogatives and attributes of the sovereign? This is the question which demonstrates the importance and appeal of the issues dealt with by the reviewed dissertation, a work that lies within the limits of the fundamental juristic reflection.

What deserves a praise in Chapter I is a competent approach to the multidimensional character of the principle of sovereignty that recognises the origins of the idea of people's power in the systems of ancient Greece and Rome. In the course of development of extra-parliamentary forms of constitutionality control, the classic concept of sovereignty of a nation has evolved: the parliament – which represents the nation – expresses the legal intention of the sovereign, but "as long as it complies with the constitution, which is a superior statute, treated as an expression of the "more permanent" (as applicable to issues which are the most fundamental for the state and nation) will of the sovereign" (page 55). In my opinion, the principle of sovereignty in the situation of judicial verification of constitutional of laws is no longer the "classical" form but rather "thoroughly revised", and the Author leaves aside the issue whether the Constitution always unmistakeably expresses the will of the people and the fact that constitutional courts not infrequently interpret both the will of the people and the spirit of the constitution, assuming the role not so much of a negative legislator but even that of "co-constitutional law-giver".

The discussion of the adoption and rejection of the normative conception of the sovereignty of the nation during the period of the Second Polish Republic (pages 57–62) and the subject of authority in the Polish communist state in the years 1945–1989 (pages 62–65) is in principle correct yet too succinct, and it does not have the same degree of historical insight as the Author's doctoral thesis. Regrettably, the formation of Polish national identity during the era of statelessness after the partitions had taken place is bypassed altogether, just like the status of sovereignty of the "people's" state. The reconstruction of the principle of sovereignty of the nation as provided by the Constitution of 1997 received different treatment (page 65ff.). The Author reasonably rejects the exclusively "political", and the more so ethnic interpretation of the Nation, but adopts the "cultural" perception of it as a community which has long evolved to create their own state and searched for the identity of the Polish Republic (pages 75–76). It is only in this context that the Author establishes the meaning of the notion "sovereignty" in the classical sense, making a straightforward declaration that he means the "sovereignty of the period preceding the process of European integration" (page 76). One may question the validity of the terminology which puts into "one bag" the different periods before the European integration when the notion of Nation's sovereignty evolved. It is not clear, either, which model of Nation's sovereignty, where and after what time, can be regarded as "ideal" or perhaps "typical" (the meaning which is conveyed by the word "classic"), and whether it was indeed improved or reduced. We may ask whether the following aspects constitute preconditions for a nation's sovereignty: the form of the state (monarchy or republic), or a sort of parliamentarianism (bicameral with general elections for both houses?), or a specific model of constitutionality control (general or centralised), or in a given constitutional configuration the occurrence of the institution of referendum (of what character and at which tier?). I am sceptical whether we can give a definitely affirmative and well-founded answer to any of the questions above. They are not intended to undermine the Author's conception but only to indicate the immense wealth and diversity of systems of government, based on the concept of Nation's sovereignty and rules of democracy, which, interestingly, are not invalidated by the process of European integration because this process is supposed to respect the common cultural-political heritage of the EU member states as well as the specific traditions and national solutions of individual states.

The finding that the primary role in the decision-making process of the sovereign is played by political parties leads Dobrowolski to believe that citizens have a potentially equal impact on decisions made in the name of the Nation, and these decisions are dependent on their activity, resourcefulness or abilities (page 89). The interpretation of a nation's identity as unique legal fiction seems interesting (pages 92–96), despite the many fictions of this kind contained in the dissertation. As a matter of fact, earlier on, when the Author examines the classic principle (what else?) of political representation, he establishes "legal fiction of representation" because the outwardly expressed will of representatives is attributed to a nation, just as representation of the whole nation by each of its representatives is fiction, too (page 48). Further, a sizeable chunk of Chapter 1 is entitled *Suwerenność narodu jako fikcja prawna* [Sovereignty of the nation as legal fiction] (page 92ff.), in which the Author endorses the

views (among others, those of W. L. Jaworski, W. Skrzydło and E. Gdulewicz) saying that constitutional provisions construe the nation as a sort of "personifying fiction", which makes reference to the community of citizens, and it is "legal fiction because in reality decisions are made by some citizens only (those who enjoy voting rights and have participated in elections, voting in specific constituencies), while we rely on a legal norm to acknowledge that they act on behalf of the entire nation, that is all citizens (page 94). A little further, the Author states: "(...) invoking the principle of representation (yet another legal fiction), it can be said that the decision made by the constitution law-giver (or legislator) who provides criteria for citizenship is a decision made by the very sovereign, albeit indirectly" (page 95).

This implies that M. Dobrowolski believes that both representation and the principle of political representation, the nation in the constitutional sense, and finally the main aspect of the reviewed dissertation, that is the principle of the nation's sovereignty, represent legal fiction. If so, we are faced with a very important question: are we still dealing with a legal entity which at any rate is real or with a... systemic fetish, namely an object considered to be magical and uncritically worshipped, which is not worth rational consideration? This would smack of a *post-modernistic* interpretation, not even *post-classic*...

At any rate, such considerations crown the first chapter of the dissertation, in which the Author remarks that it was only thanks to the growth of constitutional case law that the nation's sovereignty was created as an ultimate constitutional principle, but paradoxically this process was largely due to the so-called integration judicature (page 97). One presented view is debatable, namely that only the parliament has a status of a representative body and its "status is manifested by a practically total governance exercised through statutes over the entire system of law in Poland, and by its exclusive influence on the appointment, composition, and functioning of the government" (page 99). For one, to deny that other authorities of a democratic state have a representative character seems debatable, for example the president in our constitutional system, who is designated by the citizens (not partisan election committees) as a candidate, elected by the nation and constituting the supreme representative of the State. Secondly, not the very existence of a parliament but rather its activity can contribute to the nation's sovereignty; after all, what is the use of a "mute parliament"? Thirdly, collegiality is a value in itself, but in practice members of parliament, who enjoy the same mandate to represent the entire nation, not infrequently present three mutually exclusive options: for, against and "for or even against". Moreover, this "total governance" exercised by the parliament over the system of law is extremely illusory, even doubly: both in the "classical" model, where the legislator is under the constitutional court, and in the model of European integration, within which – as the Author observes elsewhere in the dissertation – the parliament surrenders a lion's share of its legislative powers to the regulatory authority of the EU. Finally, neither our parliament nor its dominating chamber, the Sejm, has no monopoly over the establishment and operation of the government. Indeed, in each of the three constitutional procedures used to compose the Council of Ministers (art. 154–155), the contribution of the Sejm is indispensable and decisive but not exclusive since the president is an essential participant of this process, who has crucial competences, especially at the first

stage. Similarly, although the government cannot do without the confidence of the parliamentary majority, this is not the only determining factor of its composition and operation; suffice to mention the full political responsibility of the members of the Council of Ministers before its Prime Minister (art. 161) as well as the possibility of effecting profound changes in the composition of the government, completely disregarding the position of the Sejm.

As it can be seen, the quoted excerpt from the concluding remarks of Part 1, which is to be interpreted with a large dose of generality, appears correct; however, upon a closer inspection, it becomes doubtful and provokes discussion.

Chapter II of the dissertation contains a presentation of the principle of the nation's sovereignty in the process of ratification of the integration treaties, and it is, in my opinion, the best part of the monograph, since it contains a number of own and creative studies and findings which contribute to the state of research in constitutional law. For example, the Author points to a lack of constitutional preponderance of any of the modes for taking decisions concerning integration (pages 110–112); he notes that the ratification procedures are not sufficient and they in fact are irregular (page 118). He does not stop here, identifying intepretative problems, but presents his own proposals putting forward some postulates *de lege ferenda*. Notably, he proposes that time periods be determined between the signing of an international agreement and the launch of work in the parliament, as well as the minimum and maximum duration of the work of the senate upon a statute authorising the President to sign the integration agreement (page 120).

Interestingly, the Author is critical about the judgement of the Constitutional Tribunal dated June 26, 2013, concerning art. 136 para. 3 of the Treaty on the Functioning of the European Union (file ref. no. K 33/12, OTK ZU 2013/5A/63), and he does so in a sophisticated and intelligent manner. He observes that the dissenting opinions for this judgement permit one to envisage an "alternative method of interpreting the integration clause", and then, amply and with a great deal of sympathy that cannot be concealed, he quotes the statements of three "separatists" (page 131ff.), which actually can justify a view opposite to the position of the Tribunal. In this context, the Author states firmly that the use of the Schengen scheme for the integration processes (i.e. hybrid agreements) given the restrictive interpretation of art. 90 of the Constitution can lead to evasion of the constitutional provisions and "not properly (i.e. as prescribed by the Constitution) controlled manner of reducing the competences of state authorities." In such a perspective, "the use of alternative jurisprudence originating, it seems, in the dissenting opinions referred to above may become necessary to protect the Polish constitution and statehood" (pages 136–137). Bravo!

While examining other procedural issues, including the question of the non-binding result of the referendum (page 143) and a number of contentious issues associated with the adoption of the ratification law (page 145), M. Dobrowolski is entirely in his element; he presents clear-cut views, for example by recognising that a "position strictly based on formal and legal criteria" is decisive, he rejects the exclusiveness of initiative powers of the Council of Ministers, and he formulates an important statement of a universal nature: "Systemic practice can only lead to the elimination of certain decision latitude

contained in the Constitution; it must not question the constitutional solutions or introduce solutions (customs, custom law) that are contrary to it." Specifically, "the dominating role of the Council of Ministers during the project submission phase cannot restrict the constitutional powers of the remaining subjects of legislative initiative", including the President (pages 148–149).

The Author wrestles with the question of permissibility of repeating integration decisions, that is the reinstitution of treaty ratification procedures, which have once been rejected (page 157ff.). This is rounded with an apt remark which excludes the possibility of retaking integration decisions in the manner specified by the parliamentary procedure after a negative result of a referendum, which would be a "form of verification of the sovereign's decision by its representatives", contravening the principle of the nation's sovereignty (page 163). Fully agreed! In an interesting yet somehow succinct study of the application of the integration clause for Poland's egress from the EU, M. Dobrowolski stands for the *actu contrario* principle, claiming that a relevant decision should be taken in accordance with the procedures specified in the integration clause (pages 166–167).

The above and many other observations of the Author have solid grounding and a convincing power. However, I am a little sceptical about, for example, the claim that the integration clause "applies not only to specific competences possessed currently by state authorities but also potential competences of these bodies, that is the competences which in a particular moment were not substantiated in the form of precise competences of national authorities" (page 170). Never mind the tautology ("substantiated in the form of precise competences"), but such a transfer has a blanket character; it takes the form of a cession of sorts, a surrender of "the right to a right" rather than real competences of governance of the Polish State authorities. To put it differently, this kind of operation (accession) would in effect lead to an exclusion of permissibility of exercise of such competences by state authorities if they were immediately, under the previously signed integration treaty, ceded for the benefit of the European Union. In my opinion, such a unique "sever ability clause" definitely transcends the spirit and intent of art. 90 of the Polish Constitution, which – undoubtedly against the Author's intention – would turn the principle of Nation's sovereignty in the state of EU integration not only into legal fiction but a completely virtual being, *nudum ius*, devoid of content, to use the parlance of our constitutional court. I therefore believe that this question calls for more attention and scholarly caution.

We are left unsatisfied by the findings concerning the integration clause of the Polish Constitution with regard to the possibility of conveying the competence of state authorities "in certain matters" to an international organisation. Of course, the Author rightly invokes the findings of the Constitutional Tribunal in the so-called accession judgement dated May 11, 2005 (file ref. no. K 18/04, OTK ZU 2005/5A/49), which rule out the possibility of conveying all of the competences of a particular organ or all matters in a given area, or competences which essentially determine the discretion of a particular state authority, as this would lead to actual elimination of individual authorities through a [alleged – D.D.] transfer of competences, while no public authority can exist without any competences. The

Author validly recognises that as a result of such arrangements Poland "could not function as a sovereign and democratic state (pages 108–109), but he apparently restricts himself to a faithful quotation of the Tribunal's interpretation, failing to offer his own findings, which would go beyond the negative formula. Meanwhile, it would be much more interesting to have a positive study of the meaning of those "certain matters." From the semantic point of view, the term "certain" denotes not only "not all" but also part, typically not large, of a set or a scope, which is juxtaposed with the remaining part of the whole. Therefore, the core of the problem lies in the question whether it is possible to determine, both quantitatively and qualitatively, the scope of legislative, executive, jurisdiction powers and others (controlling, protective, etc.) of the Polish authorities, the transfer of which into the hands of the EU is, for one, permissible under art. 90 of the Polish Constitution with the core of these competences left intact, which, for another, does not infringing the constitutional principle of the Nation's sovereignty.

Leaving these questions unanswered, the Author does discuss the matters related to constitutional control of the integration treaties in a thorough and impartial manner, starting with the very cognizance of the Constitutional Tribunal (page 168ff.), through its meaning for the system (page 173ff.), to the reconstruction of limits of competences in the judicature of our constitutional court (page 182ff.). It is highly praiseworthy that M. Dobrowolski validly disagrees with the Tribunal's suggestion that the high degree of representativeness and the acceptance scale of a particular treaty results in some kind of "special presumption of conformance with the Constitution"; he also disproves the argument that the President is passive because he decides not to initiate preventive control of the treaty; and finally, as *ultima ratio*, he observes that the control of constitutionality is an appraisal of a normative act having legal nature, whereas the proposition about the special presumption of constitutionality is based on "arguments of political nature, which should be irrelevant for assessment of the compliance of a treaty with the Basic Law." The Author (making reference to the dissenting opinion of Judge M. Granat on a Lisbon judgement, file ref. no. K 32/09) also rightly concludes that even the "discipline envisaged by art. 90 of the Constitution does not guarantee that a ratified treaty will be compliant with the Constitution. The kind of commitment created by an international agreement does not directly determine whether a particular agreement is constitutional (pages 172–173). I fully endorse the above argumentation.

The Author boldly defies the way the Constitutional Tribunal sees the EU case law, which has been shaped by the judicature of the ECJ, in whose opinion "the assessment of judicature of any jurisdictional organ of the EC remains beyond the cognition of the Constitutional Tribunal." In his opinion, if the treaties are binding in the form imposed by the Tribunal (ECJ/CJE), the assessment of compliance with the Polish Constitution of the principles extracted by the ECJ from the founding treaties "was not exclusively an assessment of the jurisprudence of this organ, but in fact it constituted an assessment of legal norms 'found' only by the ECJ in the provisions of the primary law" (pages 173–174).

In the context of the Tribunal's findings presented in the justification of the accession judgement of 2005, that is in a situation when there exists an irremovable conflict between

the EU law and the Polish Constitution, the Polish sovereign constitutional law-giver retains the right to take an autonomous decision and can decide to change the Constitution, trigger changes in the EC regulations, or finally exit the European Union, M. Dobrowolski skilfully captures the redefinition of the significance of the superiority of the Constitution: "after the accession the Nation remains the sovereign, but its authority is manifested – as the Tribunal appear to suggest – not so much through the Constitution and its traditionally perceived legal superiority but rather through the right to a 'autonomous decision' concerning the choice of the suitable action when there is a collision of the Constitution with the EU law" (page 178). What a pity that these tremendously important issues were not provided with a more thorough commentary or evaluation by the Author!!!

The study loses some of its impetus in the area of control of constitutionality of secondary legislation which is used as a treaty obligation – its discussion fills merely two pages of the book (pages 180–181). But it is all about the constitutional consequences of our adoption of the treaty commitment to implement the European Arrest Warrant, envisaged by the Council framework decision of 2002 on the European arrest warrant and the surrender procedures between Member States. All right, the Author does notice that the Tribunal faced this problem in 2005 in two separate cases and judgements concerning the Treaty of Accession and the statutory implementation of the decision by amending the Code of Criminal Procedure to introduce the European arrest warrant. All right, the Author aptly remarks that "the Tribunal avoided open confrontation of the constitutional norms with solutions enshrined in the secondary EU law" (page 180), or that "the findings of the Tribunal presented in the two judgements indirectly led to a recognition of the non-constitutionality of the very framework decision concerning the arrest warrant." Lastly, what use is the bold, or even sharp observation of non-constitutionality at different tiers: not only the act implementing the warrant but also the framework decision infringed art. 55 of the Constitution; if the obligation to introduce the institution of the warrant was a commitment undertaken by Poland by way of the Treaty of Accession, the Treaty itself "was at the time of adjudication [by the Tribunal – D.D.] non-compatible with the Polish Constitution" (page 181). Where are conclusions drawn from the fact that the Polish parliament solved the problem using the first of the remedies recommended by our constitutional court, that is via the amendment of art. 55 of the Constitution put into effect on September 8, 2006 (Journal of Laws, No. 200, item 1471? Did this method of "removing pain by... decapitation" not deserve any comment on the part of the Author in the context of the principle of Nation's sovereignty?

M. Dobrowolski believes that the Tribunal is yet to discover the full significance of the integration clause of art. 90. In his opinion, potential transformation of the EU into a state of a federal character and incorporation of Poland excludes the application of art. 90 and "requires a prior amendment to the Constitution", as otherwise this would lead to the "shedding of statehood, and as a result sovereignty and the character of the Constitution, which in turn would become an act of a federal state", and from such a perspective he recommends that it "would be advisable to enact a new constitution" (page 191). Remembering about the other, interesting considerations of features of a typical state, in particular a federal one within the

organisation and operation of the EU (pages 192–195), as well as forecasts concerning the likelihood of the EU evolving in that direction (pages 196–198), let us briefly look at an earlier perspective indicated earlier.

The enactment of a new constitution for Poland functioning as a component state within the EU federal structure, recommended by the Author, is just a "technicality". The core problem lies in the fact that this would involve abolition, or "shedding", to use the Author's words, of statehood and sovereignty. Hence my question: is this still within the discretion of the sovereign, or would it be the last indication of sovereignty if these were abolished leading to self-destruction removing the attributes of national and state sovereignty?! Frankly speaking, I am paralysed by such a vision or even a supposition. By way of analogy, we could assume that the right to life and its legal protection entails an entitlement to commit suicide or request others to do so. Is it likely that the Author derives the subjective "right to suicide" from this implicitly expressed legal permission for suicide (after all, suicide is not forbidden, and when committed out of necessity, it goes unpunished – leaving aside the question of responsibility of instigators or accessories with respect to suicide)? Or on a less drastic note: to recognise the sovereign's right to self-destruction of this kind would be much too close to an abuse of law. In the civil law culture as well legal culture in general, there is a norm whereby "one cannot use one's right in a manner contradictory to its social and economic purpose or the principles of community life. Acting or refraining from acting by an entitled person is not deemed an exercise of that right and is not protected (art. 5 of the Polish Civil Code, act of 23 April 1964, Journal of Laws of 2014, item 121 as amended).

To my mind, it is possible that dr Dobrowolski does not believe that the sovereign "is allowed" to do anything, and he probably shares the conviction that the possibility of deciding about the fate of the homeland, regained quarter of a century ago, is a value in itself and a value that is commonly binding. To do what? Also to protect it. For whom? The Polish People themselves and all state structures. Perhaps, what is missing here is – to invoke the poet Cyprian Norwid's words – an opportunity "to give things proper names!"

In the final part of Chapter II, the Author repeats his creed, sharing the view of the Constitutional Tribunal which states that through the constitutional referendum "the Nation validated the possibility of transferring (by way of a separate decision) the competences of state authorities to international organisations with respect to some matters, and he pointed out further (the most crucial) consequences of the accession, including direct applicability of the law provided by this international organisation in the Republic of Poland" (page 199). Here comes the question again: what and how consciously and consistently did the Polish people endorse in their declarations of will? The Author examines the nature of this transfer in a rather convoluted fashion, admitting that the transfer of competences (surrender of certain rights) does not imply a renunciation of sovereignty (page 201ff.) He abandons his earlier "easy optimism", criticising substantial irregularities accompanying the earlier integration decisions, no access to the final and binding text of the document and the commencement of the ratification procedure on the day of signing the Accession Treaty, while with regard to the Lisbon Treaty – no access to, at the very

least, the consolidated version of the Treaty, and finally the work on the ratification statute at the Senate lasting less than two days. The Author is right in thinking that "this manner of work did not create the elementary environment to make it possible to gain adequate knowledge concerning the decisions to be taken"; he also reveals starkly the domination of the current political perspective in this process (page 207). It is a pity, though, that these apt observations are left without comments in the context of the real meaning of the issues under discussion for the realisation of the principle of a nation's sovereignty, especially when the Author rightly concludes that "integration decisions that are to affect the political framework for the State and Nation for generations to come should be made with enough consideration and sense of responsibility" (page 208).

What is significant and worthy of the reviewer's positive appraisal is that in the course of the research and the composition of the dissertation (which took place over a couple of years), dr Dobrowolski "matured" and nuanced his views. Ultimately, he is in favour of introducing a tighter legal framework for taking integration decisions and, at least, an outline of criteria of their potential repetition (page 210). He also voices his objections with respect to the current regulation of a follow-up control of the constitutionality of integration treaties. Drawing on art. 27 of the Vienna Convention on the Law of Treaties, he claims that the Tribunal's ruling concerning the incompatibility between the "lawfully concluded" agreement and the Constitution does not invalidate its applicability in Poland, therefore he proposes preventive control of respective international agreements as more rational and preventing ratification of a non-constitutional treaty and turbulent international relations (page 211ff.). He ventures an observation that the disadvantage of follow-up control of integration treaties is the "risk of overinterpretation of the Constitution used in order to demonstrate the compliance of its provisions with the currently binding treaties, so that international law issues could be avoided" (page 212). The Author unambiguously postulates (drawing on the doctrine) the establishment of the rule of obligatory verification of the constitutionality of integration treaties, conducted by the Tribunal during the work leading to the approval of the proposed ratification, that is before the final political decision is made. This corroborates the argument of a practical nature: this moment of the ratification procedure could provide an opportunity to attempt negotiations regarding the integration treaty, and it would be more suitable for effecting necessary amendments to the Constitution (page 214); it is also postulated that in such circumstances a referendum be conducted with regard to endorsement of amendments to the Constitution and consent to the ratification of the treaty (page. 215).

These interesting proposals made by dr M. Dobrowolski are no doubt dictated by his real concern for public matters, yet they do not cure all issues. Firstly, obligatory preventive control of the constitutionality of integration treaties would require, as it seems (since the Author does not say it directly), *ex officio* involvement of the Constitutional Tribunal. To oblige the President to take such an initiative would not only require an amendment of the Constitution (art. 133 para. 2), but also profound revision of his role as a guardian of the Basic Law (art. 126 para. 2). If so, this would be the only case of the Tribunal acting *ex officio*, perhaps not upon its own initiative but by the power of law itself, probably after

information about the implementation of a certain stage of treaty ratification procedure has been gained officially. The question is: which stage? Maybe earlier, at the negotiation and signing stage? Frankly speaking, this exception to the principle of accusatorial procedure would radically modify the model of our constitutional court, paradoxically reducing one of its attributes of its high status in the system and finality of judgements, even exposing this institution to allegations of being superior to... law. Secondly, running a constitutional and accession referendum at once is not an easy undertaking. Does the Author suggest asking citizens two or just one question? If one, for example: "Do you consent to the X amendment of the Constitution of the Republic of Poland and to the ratification of the X Treaty by the President?" – these would be two interrelated but not identical questions. Or, why not openly ask about the heart of the matter, that is about consent to changing the Constitution to set aside its non-compliance (sic) with the treaty and ratification thereof as subsequently compliant (or rather: made to agree) with the Constitution – is this not what we are after? So, perhaps, it is unnecessary to resort to social engineering to pull the wool over the sovereign's eyes, but rather the matter should be made clear and stated explicitly?! One more thing, in the version with two referendum questions, the risk that the sovereign will take an inconsistent position is the same as with two separate referendums. Therefore, the issues indicated above have not been resolved effectively and they call for further research, for which no doubt the Author is splendidly prepared.

Chapter III, entitled *Zasada suwerenności narodu w warunkach członkowstwa Rzeczypospolitej Polskiej w Unii Europejskiej* [The principle of Nation's sovereignty in the light of Poland's membership in the European Union], offers new content as well as a continuation of the subjects raised earlier. This is absolutely understandable because both the adopted approach and the structure of the dissertation reflect the development of the Author's thought in time. First, he presents the problem: legitimisation of the European Union versus the sovereignty of a nation (page 217ff). Although the presentation of institutional forms of democratic legitimisation is only an outline of the issue (page 220ff), the Author highlights the most important elements, from the elected European Parliament to the European Council and the Council of the EU. Such information as that concerning competences of national parliaments and rights of EU citizens to use indirect legislative initiative, enshrined in the Lisbon Treaty, seems interesting. The Author regards the role of those parliaments in terms of safeguarding the subsidiarity principle as one of utmost importance. He is being realistic in this respect: "(...) national parliaments will find it hard to fulfil their new role" because if they are to realise this new function they must be able to cooperate effectively (e.g. at the COSAC forum); in order to exert real influence on legislative processes they must react quickly since the time allocated to that is only 8 weeks (page 234). The presentation of the European citizens' initiative leaves no doubts as to its availability; suffice it to say that it takes 2 months to register an initiative on condition that the eligibility conditions have been met, that is the initiative has not been found to manifestly go beyond the competences of the Commission, is not manifestly abusive, is evidently not a joke or it is not annoying or patently in conflict with the values of the EU specified in art. 2 of the Treaty of the Euro-

pean Union. In his analysis, the Author seems to endorse the appraisal presented by C. Mik saying that "the treaty regulation of people's initiative has more ideology or even demagogy than the real substance enabling citizens to be genuinely active" (page 237). In such circumstances, it is regrettable that the Author intentionally "slowed down" by making a reservation that: "The presented dissertation is not intended to offer solutions with respect to EU systemic solutions in terms of their democratic nature. […] Undoubtedly, democracy in its European form must be different from the democracy of national states; yet the question to what extent it is to be so must be left unanswered at this stage" (page 237). Pity!

Dr Dobrowolski exhibits more scientific bravery while presenting issues concerning the "European people" (page 238ff). In this exhaustive analysis he remarks that the fact that EU citizenship has a dependent nature does not constitute an insurmountable barrier for the creation of a political community (page 243); when noting the lack of a European nation in the cultural sense, he claims that the establishment of universal elections to the European Parliament has produced "rather modest results" for the building of the European identity (pages 244–245); he also examines the phenomenon of political parties at the European level (page 246ff), the category of "social partners" (page 250ff), and the phenomenon of "intensification of communication and interaction" in the context of integration (sic) on page 253). Seeing all of these problems, despite some affinity to the solutions used in democratic states with respect to the principle of nation's sovereignty, he precludes the presence of "even a *quasi* European nation" deeming it "unfounded" (page 254), but with a proviso that this appraisal is "one-off" only, bearing in mind that over time it may become apparent that today some foundations for "some form of a European people" have been laid (page 255). Well, the Author's hesitation deserves our understanding.

The fragment that bears an intriguing title, that is *Legitymizacja UE a konstytucyjna zasada suwerenności narodu* [Legitimisation of the EU versus the constitutional principle of the nation's sovereignty] (page 255ff), requires more attention. Our extreme appetite, whetted by the cited title, and our anticipation of the climax of the argument are immediately "cooled down" by the Author's reservation that "these explorations are not about making assessments of the EU systemic mechanisms in the light of nation's sovereignty as presented, in my opinion, by the erroneous approach used by the Constitutional Tribunal [in a treaty-related judgement – D.D], but rather about capturing changes in the interpretation of the principle referred to in the said title that have taken place under the influence of these systemic institutions of the EU." Well, it is a pity because the word "versus" suggested not only a description but also an appraisal. Again, it is a pity because this categorical and high-handed repudiation of this particular approach presented by the Tribunal is not convincing at all. Anyway, dr Dobrowolski is not consistent in the least since he goes on to say: "From such a perspective, the question of increased participation of national parliaments in EU decision-making looks relatively clear. It cannot be doubted that these competences must be qualified as new forms of exercising authority in the name of nations. However, this is a *paltry recompense* of the "lost", that is conveyed competences of national parliaments to the EU. The significance of citizens' initiative *should be evaluated* differently. Only with *a great*

deal of effort, that is by using "far-reaching" interpretative methods, *could one assume* that they are a form of exercising the authority of the sovereigns of the member states" [pages 255–256, emphasis by D.D.]. What on earth are those italicised phrases but not appraisals? Moreover, apart from their "light language", they are some of the most profound qualifications, which in the context of the entire dissertation contribute to its value, demonstrating the Author's passion, competence and academic freedom!

The dissertation contains a decent presentation of the systemic position of the Polish parliament after our accession to the European Union (page 266ff), concluded with the statement that with regard to the EU exclusive competences and matters settled by means of EU regulations, the statute is no longer a tool for the regulation of the rules of community life, whereas in the area that is directive-regulated it is no longer an act whose necessity and time of publication is decided by the parliament under the general scheme that requires that the provisions of the Constitution be realised. The Author also devotes some space to the statutory means that the parliament has to influence the content of the EU legislation, including regulations of the so-called co-operation acts, the original one enacted in 2004 and the new act of 2010, which result from the provisions of the Lisbon Treaty concerning the place of national parliaments in the "EU architecture" (page 269ff).

Much more complicated matters are discussed with respect to the control of the constitutionality of the EU secondary law (pages 275–282). The line of reasoning here is solid; it accounts for some evolution which has taken place in the position of our constitutional court in respect of permissibility of direct control, evident when the substances of the so-called accession judgement of 2005 and the judgement of November 16, 2011 are compared with regard to constitutionality control over EU regulations (file ref. no. SK 45/09, OTK ZU 2011/9A/97). M. Dobrowolski draws on our Tribunal to underscore the independent and subsidiary character of its control in relation to the adjudicative competences of the European Court of Justice, yet unfortunately he does not provide his own conclusions. For example, what is lacking here is a thorough analysis of the effects of such a judgement issued in a procedure of constitutional appeal, and in particular drawing a link between these issues and the principle of nation's sovereignty, which apparently should be the thing. Especially that constitutionality control with respect to the EU secondary law (i.e. statues implementing the EU law (pages 280–282)), which is discussed subsequently, is much simpler and less controversial anyway.

The next portion of the dissertation is *Konstytucja RP w warunkach integracji europejskiej* [The Polish Constitution in the circumstances of European integration] (page 282ff). It has a lofty but unfortunately definitely exaggerated title. After all, it was impossible to arrive at such fundamental conclusions spanning nearly three and a half pages of text, despite the promise contained in the title. Indeed, the Author continues his earlier threads associated with conflicts arising between the EU law and the Polish Constitution. This is not unnecessary since the Author does notice some complications connected with the removal of such conflicts or even impossibility of effectively getting rid of them by amending the Constitution if a conflict with its principles were at stake (page 283). This is associated with the danger

of somehow forced adjudication with regard to compliance of the acts of secondary law with the Constitution since "a finding of non-conformity would necessitate an amendment of the Constitution, and this may easily turn out to be impossible to achieve due the character of those norms." We should stress – which the Author does not – that the above would be a symptom of legal relativism or even nihilism. On the other hand, he acknowledges that the cure for the unconstitutionality of the secondary law (described by our Tribunal), which is an aspiration to amend this law, "is actually only potential – in practice impossible to achieve" (page 284). I fully endorse the last opinion.

Finally, the systematic portion of the monograph is crowned with the last section bearing a bold title: *Znaczenie zasady suwerenności narodu po przystąpieniu Rzeczypospolitej Polskiej do struktur Unii Europejskiej* [The significance of the principle of the nation's sovereignty after Poland's accession to the EU structures]. And also in this very important area, M. Dobrowolski manifested... overly moderation – which he rarely does – bordering on being skimpy, if not skimping on argumentation, spanning merely four pages, that is slightly more than 1% of the whole book. Why? How does this part contribute to the monograph? Frankly speaking, not much. Having started with the conclusion of the Constitutional Tribunal with regard to the so-called Lisbon judgement saying that if sovereign authority belongs to the Nation then "the handover of it to another sovereign" cannot be ruled out, and used some concise argumentation, the Author reaches a conclusion which is... different to the one of the Tribunal. Namely: "These findings do not imply that the ban on transferring the Nation's sovereignty to another entity is absolute; they suggest "only" that the only lawful way to shed the sovereign's authority is through informed and explicitly expressed intent to hand over its authority to another sovereign, which would necessitate amendments to the Constitution" (page 287).

I principally and absolutely disagree with this view, and this is the main area where we disagree. I have alluded to this problem earlier, so it should be reiterated that I do not believe the sovereignty of a nation living in an independent and proper state is "disposable" – it may be reducible, evolving, or even perishable, but not voluntarily, as the Author supposes. He is also somewhat inconsistent in that. Although later on he claims that solutions in the election law of the European Parliament which would "make it possible for integration processes to move towards the creation of a new supreme authority (a European people)" are not permissible. These would be such solutions which do not respect the integrity of the former holders of supreme authority" (page 289). But why? What causes such impossibility? Could this be prevented by factors of a legal nature, especially constitutional considerations? If so, then no issue is at stake: it would be enough to change the Constitution, in the name and by permission of the Nation, and there you are!

The final section of the book, entitled *Podsumowanie* [Summary] (pages 291–301), contains a reliable digest of the fundamental grounds and conclusions used throughout this book, as discussed in six substantial points. They do not constitute new and original conclusions concerning the theoretical-dogmatic sphere or in the area of institutional practice. It is worth citing the Author's observation that in the post-accession order the sovereignty of

the nation is expressed not so much through the Constitution but rather through a right to choose one of the three modes of conduct in a situation when the norms of the EU law are at conflict with the Constitution, but the application of any of them is extremely difficult in practice. Additionally, the summary provides an accurate remark that "the sovereign's latitude of choice in the situation under discussion is very narrow, and of the three colliding norms indicated by the Tribunal, the retention of the provisions of the Constitution without introducing any amendments is the most difficult task to achieve (page 295). The Author also stresses that the "transfer of competences to the EU is permissible insofar as both the EU and the Member States retain their current status following such an operation, and as a consequence the nations of the Member States retain their position of sovereigns" (page 297).

Finally, the Author concludes that "the question which inspired the work on this dissertation actually implied the determination if and to what degree this foundation of modern constitutionalism, that is the principle of the Nation's sovereignty, can still constitute a valid point of reference for the development of integration processes by Poland as an EU member state." On the basis of the presented considerations the Author gives an affirmative reply: "the principle in question can still set framework conditions for these processes, in other words, fulfil not only the basic and traditional role of the constitutional principle of law but, more broadly, of the very Constitution" (page 301).

In the concluding part, M. Dobrowolski does not repeat the idea, which has been featured throughout the book, or the sentence which actually crowns the Author's main considerations, so let us reiterate that: "the only lawful way to shed the sovereign's authority is through informed and explicitly expressed intent to hand over this authority to another sovereign, which would necessitate amendments to the Constitution."

I am convinced it is necessary to make reference to this fundamental statement. If we understand the Nation's sovereignty not only as another kind of legal fiction but a fundamental principle and constitutional value which is not only instrumental but also autotelic, it may not be arbitrarily used by the "beneficiary"; if so, the admissibility of self-destruction must be ruled out as consisting in its abandonment even if a complete array of democratic procedures was maintained for whatever purposes – even the most befitting and pragmatic ones, such as European integration.

Therefore I believe that sovereignty of the people is by analogy inalienable, just like the innate and inalienable dignity of a human being; the latter can be subjected to interference, restrictions, and even repression, yet a person cannot be effectively deprived of it, neither can he renounce it, even through the most improper and base conduct – even then he will remain human. Similarly, the nation cannot shed its sovereignty, or subjectivity, because otherwise it would cease to be a nation both in the legal-political and cultural sense; it would lose not some kind of attributes or some authority but its identity and existence. And this is not allowed not only by the current Constitution of Poland, even though its respective regulation may be defective or subject to subsequent amendments, but also by the Polish history and our responsibility for its future fate.

Therefore, what is at stake here is not only the interpretative wringing of normative significance and a practical formulation out of the defective integration clause contained in art. 90 of the Constitution; one should also bear in mind that the preamble calls for its application "for the good of the Third Polish Republic", which after all – as envisaged by the first article of the Act – "shall be the common good of all its citizens;" the crucial constitutional "duty of every Polish citizen" (art. 82) is none other than loyalty to the Republic of Poland and concern for the common good. It is also useful to recall that the Constitution (in art. 6 para. 1), somewhat casually but accurately, captures the sense and value of culture as being "the source of the Nation's identity, continuity and development." It is to be hoped that the wealth of national culture also encompasses legal culture, as well as in the tiniest degree the science of constitutional law.

Keeping as scientifically unbiased as possible, but also leaving aside the only legal-dogmatic dimension or the positivistic mannerism, we need to recall the perfectly relevant words uttered by Pope John Paul II as early in 1983 (the patron of the Author and reviewer's university), who showed "the path to follow which allows a nation to live the fullness of its civic rights and possess social structures corresponding to its demands; this will release support which the nation needs in order to fulfil its role and through which the Nation will be able to manifest its sovereignty." This was fulfilled in the course of systemic transformations of 1989, but the Pope's call still is of relevance: "[…] I feel responsible for this remarkable, common heritage which is called Poland. This name defines us all. This name obliges us all."

In the closing part of the work, the Author provides a few remarks on the bibliography and the language side of the book under review. The body of bibliographical data for the dissertation written by M. Dobrowolski is impressive since it covers 469 items spanning a variety of sciences: law, history, political science, including several tens of foreign language publications and seven by the Author himself, as well as a great deal of Polish and foreign normative acts, international agreements, rulings of the Polish Constitutional Tribunal, German Federal Constitutional Court, and those of CJE and CJEU. The choice of the bibliographical entries is careful and complete; it would be difficult to pinpoint any significant omissions with regard to literature items or sources of law, while the decent handling and thorough documentation in footnotes amounting to an overall number of 955, showing not only the wealth of data but also the Author's honesty, does not give rise to any objections. Infrequently, the monograph betrays some bibliographical or source omissions, or unnecessary repetitions or larger or small fragments of the book.

The reviewed work was written using nice, elegant, smooth and clear language, which makes it a pleasant read, although linguistically it is not free from formal errors. Occasionally, language register is inconsistent as the Author slips into the colloquial, overusing such everyday expressions as "on the whole," "in the meantime," "for the time being," or "besides"; also typing errors occur as well as ordinary misprints. These faults are just minor flaws. Indeed, too frequent and at times quite annoying for the reader, these errors should not be found in a work of this kind, but on the whole they are easy to rid (e.g. in the second edition of the book) and as such do not reduce the value of this great work significantly.

In conclusion, the reviewed book presents the most comprehensive monographical study of the complex and important issue of sovereignty of a nation in the circumstances of European integration of the last quarter of the century or so, involving Poland for a dozen years, with a rich historical and comparative background. The theoretical considerations are skilfully confronted with implications and events in the area of institutional practice that constantly give rise to new challenges. This kind of treatment, combined with a novel approach (a post-classical treatment of the principle of sovereignty), has not been, as yet, presented in our literature of the subject, so it fills a substantial gap in the literature of the subject and undoubtedly forms a considerable contribution to the development of the science of constitutional law, both from the European and Polish perspective.

The currency of the issues raised by M. Dobrowolski is demonstrated by phenomena occurring after the book was published, especially the so-called Brexit, the EU dimension of the Polish struggle for the Constitutional Tribunal, or the European debate concerning the issue of immigration – phenomena which beg questions about the identity and solidarity of the Member States and other perspectives of the integration or disintegration of the European Union.

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