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Still sui generis? The comparative turn in European Union studies

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The future of the European Union. Lessons from comparative federalism

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Abstract

Wide confusion exists on the difference between federalism and federation, which are often used synonymously. While there is consensus that the EU is more than a simple international organisation but less than a traditional state, there continues to be academic debate about the degree to which the EU is a federal system. This paper starts by providing a definition of federalism and of the different forms a federal system can take. I argue that the EU is not a federation but fulfils all necessary criteria to be called a federal system. Moreover, it is shown that existing concepts of comparative federalism research can be and have been effectively and fruitfully applied to the study of the EU. Finally, this paper refers to some of the research that has conducted comparative studies of the EU, both conceptually and methodologically, and concludes by referring to the Canadian federation, which is particularly suitable for comparison with the EU.

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1. Introduction

While the European Economic Community, the predecessor organisation of the European Union (EU) founded in 1957, could still be characterised as a ‘simple’ international organisation, like the United Nations or NATO, this view increasingly lost its validity in the following decades. With the steady transfer of competences to the EU level and the strengthening of the supranational character of the EU, i.e. institutions and decision-making procedures that do not require the consent of each individual member state, the “sui generis” term became established to describe the EU. This expression was intended to illustrate the uniqueness of the EU entity, which is more than an international organisation, but which lacks the decisive characteristics of a state. Other formulas to describe the European Union, some of which are still in use today, are “confederation of states” (‘Staatenverbund’) (Federal Constitutional Court 1993), “neo-medieval empire” (Zielonka 2007) or “multi-level governance” (Marks and Hooghe 1996). Most recently, the EU is also increasingly understood as a federal system of a conventional kind and examined with a corresponding lens (Fossum and Jachtenfuchs 2017).

Although there is no consensus in academia on the concrete conceptual definition of the EU, two aspects can be identified on which there seems to be agreement: Firstly, the EU does not (yet) correspond to a state if one follows the most common academic definition by the state theorist and sociologist Max Weber. Secondly, however, the EU fulfils all the criteria to be understood as a political system (Hix and Høyland 2011). Recognising the EU as a political system has led to the so-called ‘comparative turn’ in European Union studies, i.e. the increasing use of comparative politics approaches, theoretical and methodological, to study the EU.¹ This paper, which was prepared as a background for the first DAFEUS conference in Montréal in 2018, is structured as follows. I will first briefly refer to the convergence of European Union studies with comparative politics, i.e. the comparative turn in EU studies, and give an overview of the advocates for such a comparative approach in EU research. The second section will show how, in the course of the comparative turn, more and more scholars have pleaded for bringing the comparative federalism literature into the study of the EU and illustrate how federal concepts have been applied to EU politics. I will also discuss the multiple definitions of what the concept of federalism actually means, differentiate between federalism and federation and introduce different forms a federal system can take. I will argue that the EU is a federal system that applies the federal principle without being a federation. I conclude by referring to the lack of studies that explicitly compare the EU and present Canada as a convenient case to compare the EU with.

2. The European Union and comparative politics

With the emergence of the predecessors of the European Union in the middle of the last century, research on EU integration was dominated by approaches of the field of International

¹ See Müller Gómez and Wessels forthcoming.

Relations (IR). With the progress of the integration process and especially with the negotiations and the entry into force of the Maastricht Treaty in the 1990s, which created the EU, led to a further vertical transfer of competences and strengthened the supranational institutions, voices were raised in favour of moving away from studying the EU from an IR to EU research that applies comparative politics approaches.

The starting point was that the EU fulfilled more and more the necessary criteria to be considered a 'political system' (Easton 1953) rather than a 'simple' international organisation. Relevant features of a political system are a stable institutional architecture with a mature set of rules through which binding decisions with direct effects for the citizens (and member states) are adopted (i.e. output), which in turn citizens try to influence through various mechanisms in order to assert their preferences and demands (i.e. input). In addition, the decisions taken are accompanied by a feedback effect, by means of which citizens are informed about the political output of the EU via various media channels and, on this basis, form new preferences and demands and address them to the EU system (see Figure 1).

Against the backdrop of these developments, Sbragia argued that

“thinking about the Community comparatively will prove to be more fruitful analytically than simply describing the Community as "unique" and consequently analysing it exclusively on its own terms. Theories, concepts, and knowledge drawn from the study of other polities can in fact be illuminating when applied to the study of the Community” (Sbragia 1992 quoted in Hix 1994, 24).

He further claimed that

“[a]lthough the Community is unique [in terms of other democratic political systems], analysis is more likely to suffer from studying [the EU] in isolation than from using the comparative method in less than ideal circumstances” (Sbragia 1992 quoted in Hurrell and Menon 1996, 398).

Similarly, Hix called for comparative research in the area of EU studies and contended that “[a]lthough the political system of the European Community (EC) may only be 'part formed' and largely *sui generis*, politics in the EC is not inherently different to the practice of government in any democratic system (Hix 1994, 1)” and that “comparative politics paradigms often produce more profitable insights for the study of EC 'politics'” than IR approaches (Hix 1994, 22). Against this backdrop, Keeler (2005, 567) argues that

“it was logical for IR specialists to dominate the field during the era when 'Europe' represented 'a unique experiment in international relations and what seemed to justify theoretical attention was the question of how its "would-be polity" might develop [through integration] at the expense of the nation-state'. However, the very success of that venture – that is, the movement toward an 'ever closer union' with ever more state-like properties and an ever more complex system of governance – led many

scholars of the ‘renaissance era’ to assert that the EU could and should be viewed as an ever richer research focus for comparativists.”

Hurrell and Menon (1996) directly reacted to Hix’ plea for a comparative study of the EU and his claim regarding the superiority of comparative politics over IR approaches. They specifically criticised that Hix underappreciates the linkage between IR and comparative politics, the centrality of the states in the EU systems and the international pressures on European public policies. They conclude that EU scholars need to know the theories of both subfields to study the EU (see also Jupille and Caporaso 1999).

As a result of this debate and ‘change of heart’ in EU research, more and more scholars have studied the EU from a comparative and less and less from an IR perspective. Kreppel confirms this trend, which she calls the ‘normalisation of EU studies’, by finding that more and more EU-related articles have appeared in general political science journals and less in IR journals:

“This underscores the extent to which the EU has to a large degree become viewed in the scholarly community as more than a sui generis case to be analysed in isolation or solely as a unique form of international organization. It is now more generally understood as a political system, understood as a political system, which means it can – and should – be studied from a variety of perspectives using a broad array of methodological tools. The growth in non-IR publications highlights this changing trend in EU studies” (Kreppel 2012, 638).

She concludes that

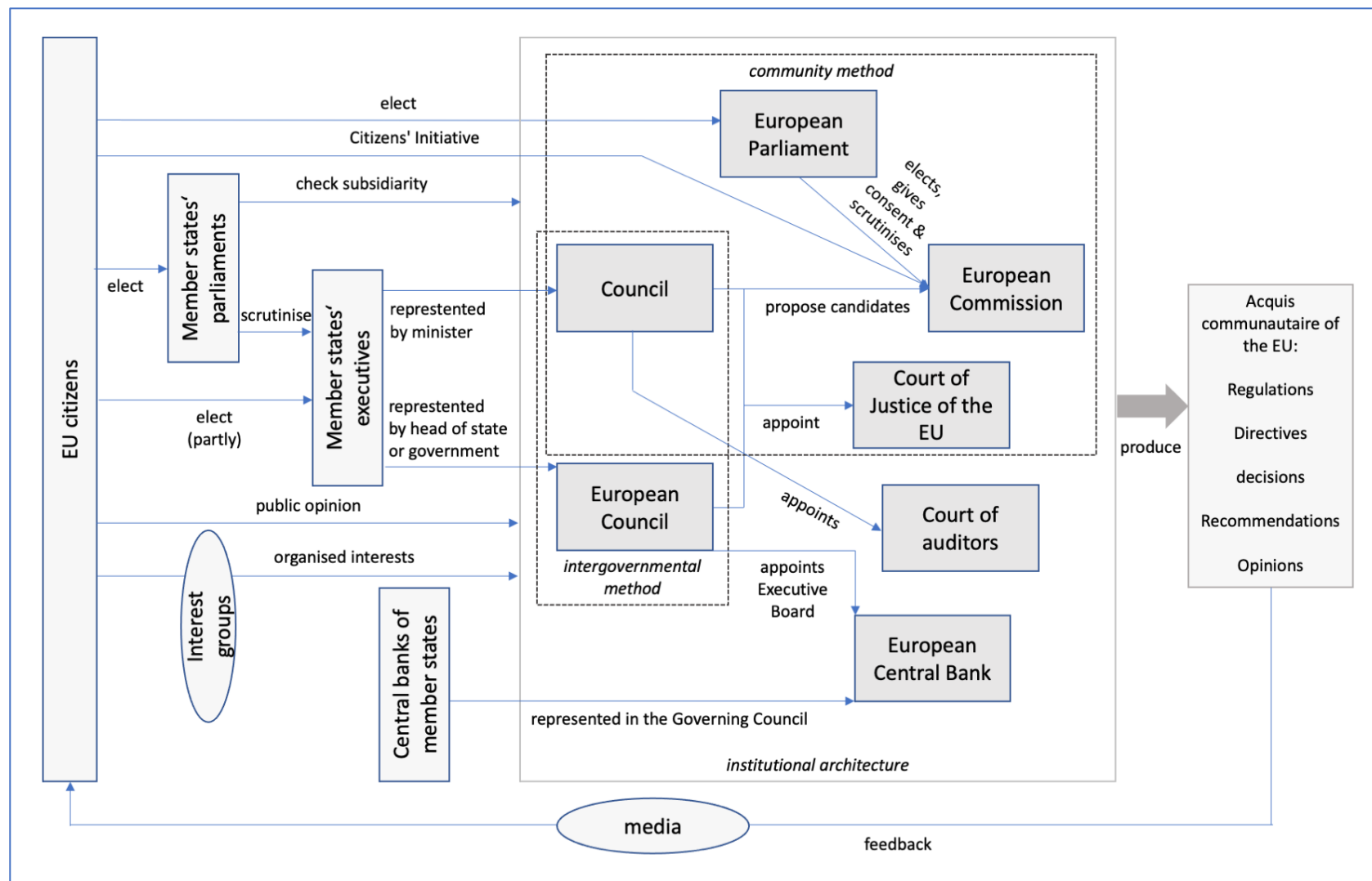
“the theoretical paradigm has shifted from an understanding of the EU as a unique or sui generis form of international organization to an increasingly normalizing (if not yet fully normal) political system that can best be understood from within a comparative framework” (Kreppel 2012, 640–41).

Similarly, Keeler (2005) finds that the number of EU-related publications in journals of comparative politics and comparative public policy and the number of EU-related dissertations in the field of comparative politics in the US have increased.

While EU scholars now regularly apply comparative theories to study the EU, analyses that explicitly compare the EU with other systems still do not seem to be the default. Among the existing comparisons, the US occupies a special position. We will address this issue later.

“Rejecting by definition the ‘N = 1’ problem – the idea that European integration is a unique political phenomenon to be” studied in isolation and interpreted through ad hoc theories – EU-US scholarship is, at least prima facie, a key component of the ‘normalization’ of EU studies – namely the opposite tendency to analyze and compare the Union as an ordinary polity” (Tortola 2014, 1342–43).

Figure 1: Political system of the EU



Source: The author, based on Müller Gómez and Wessels forthcoming.

3. The European Union and comparative federalism

In the course of the debate on the need to grasp more on comparative politics (and less on IR) to understand the functioning of the EU as a political system, comparative federalism more and more became a source of inspiration for EU studies, and federal concepts have increasingly been borrowed to analyse the EU. However, the use of federal theories and concepts also requires a discussion on whether the EU can actually be considered a federal system without one's research becoming conceptually flawed.

3.1. The European Union and federal concepts and theory

The 'comparative turn' has also contributed to the debate on whether EU studies should turn to the comparative federalism literature and apply federal theories and concepts to study the EU. After all, the EU's architecture and functioning were resembling more and more those of a federal system or even federation.

"Some policy areas remain in the domain of member-states sovereignty, while others have reached the level of full political integration. This resembles the division of powers in federal states. Legislation now almost invariably requires co-decision by two bodies: the Council of Ministers and the European Parliament. This resembles bicameral or dual representation in federal states. As is the case in most of the established federal states as well, the EU practices a system of revenue sharing and redistribution; its regulations have direct effect on member states, citizens, and corporations; a high court, the European Court of Justice, not only adjudicates compliance with EU laws and regulations but, moreover, has acquired powers of judicial review" (Hueglin and Fenna 2015, 5).

Despite some critical voices, for instance, Moravcsik (2001), who considers the EU only as a "very weak" federal system and thus sees no basis for comparing the EU with federations, a relevant number of scholars has pleaded for the application of federal theories to study the EU. Börzel² has been one of the main advocates for such an approach:

"The concept of federalism is not only useful for reflecting about Europe's *finalité* politique, it also provides a good tool for understanding the current structure and functioning of the European system of multi-level governance. [...] Federalism provides a

² Börzel (2005, 248) also recognises that "the EU currently lacks two significant features of a federal polity. Firstly, EU member states remain the 'masters' of the treaties, in terms of holding the exclusive power to amend or change the constitutive treaties of the EU on the basis of unanimity rule (and domestic ratification is mandatory). Secondly, the EU has no real 'tax and spend' capacity. In addition, rather importantly, it lacks an essential element of democratic control: the composition of the European Commission as the 'EU executive' is not determined by the European citizens, either directly, through the election of a president, or indirectly e.g. by the EP."

better way of understanding political relationships that are neither purely domestic nor purely international than most theories of International Relations or European integration do, precisely because federalism does not rely on a state-centric ontology” (Börzel 2005, 246).

Similarly, Kelemen (2007) argues that EU students should overcome the treatment of the EU as a unique case and study the EU as a federal system despite its lack of statehood. He further pleads to break with federalism as a normative concept and contends that the application of comparative federalism theory is useful for the study of the EU. He concretely refers to the shift of authority to the EU level and the EU’s approach to constraining member states’ discretion as research areas that can be studied by applying federalism theories (Kelemen 2003). More recently, Fossum and Jachtenfuchs (2017) have campaigned for studying the EU from a federal perspective which they consider possible and productive. According to Fossum (2017, 361),

“federalism provides a better understanding of what the EU is, the nature of the challenges facing it, and the realm of possible solutions than do alternative conceptions such as multilevel governance.”

Against this backdrop, federal theories and concepts which had been used to study the functioning of federal systems have increasingly been applied to the EU.³ One of the most prominent approaches differentiates between integrated and divided federalism – sometimes also referred to as the cooperative or intra-state and dual or inter-state models (for concepts, see Schultze 1990; Kaiser 2002, 150–51). This distinction touches upon multiple features of federal systems (see Table 1): How are competences divided between both levels of government? How is the collection of taxes organised? (How) Is the sub-federal level involved in federal decision-making? How do intergovernmental relations work?

A divided federal system is characterised by a strict political and institutional separation of both levels of government. The federal and the sub-federal levels have clearly defined and distinctive competences and resources. This also implies a legislative division of competences, i.e. each level of government is responsible for every step of policy-making (initiation, formulation, implementation and administration), and each level collects its taxes independently. As a result, each level has its own public administration (Hueglin and Fenna 2015, 53–55). Further, if there is a second parliamentary that represents the sub-federal units at the federal level, it is composed of directly elected representatives. Finally, cross-level and inter-state cooperation generally operate on a voluntary basis. Due to this (at least theoretical) separation of both levels, the image of a ‘layer cake’ has been sed.

³ For other concepts used to analyse and categorise federal systems (including federations), see Colino 2013; Hueglin and Fenna 2015.

By contrast, in the integrated model, both levels are interlocked. The taxing system follows a ‘tax sharing’ logic, and a relevant share of competences are of concurrent or shared nature – in contrast to a clear-cut division between exclusive competences. The division of power regularly follows a functional logic, i.e. the sub-federal level is responsible for the implementation and administration of its own legislation and of the laws adopted at the federal level, which accordingly lacks an own administrative infrastructure (Hueglin and Fenna 2015, 53–55). Consequently, the regional entities are highly involved in federal decision-making procedures, for example, by means of a second chamber. There is strong cooperation and coordination both across the levels and among the regional actors. As a counterpart to the image of a layer-cake, integrated federalism is also referred to as ‘marble cake’ federalism. When looking at the constitutional provisions (not the political practices), Canada and the USA have traditionally been considered as examples of the divided model and Germany as a case that is very close to the ideal type of integrated federalism.

Table 1: Integrated and divided federalism

	Integrated federalism	Divided federalism
Division of competences	Relevant share of concurrent or shared competences	Clear division of competences
Logic of division of competences	Functional division of competences	Legislative division of competences in line with policy-fields
Financial resources	Centralised collection of taxes and ‘tax-sharing’	Independent collection of taxes at each level
Federated entities’ involvement in federal decision-making	Participation of sub-federal level at federal decision-making, e.g. via a second parliamentary chamber	Second parliamentary chamber (if any) directly elected
Intergovernmental cooperation	High willingness and functional need for cooperation between sub-federal entities and between sub-federal and federal level	Voluntary intergovernmental relations between sub-federal entities and between sub-federal and federal level

Source: Hoppe and Müller Gómez (2015, 32) (own translation), based on: Schultze 1990, 480, and Kaiser 2002, 150-151.

From the perspective of these two ideal types, the European Union follows a very similar logic to German federalism. While relevant policy fields, particularly the ones with high levels of expenditure, remain in the hands of the member states, important areas have been transferred to the EU level, most of which are part of the so-called shared (i.e. concurrent) competences (see Table 2). While the EU has gained relevant powers, it lacks a relevant administration to execute its own legal acts. Implementation of EU law is mostly the responsibility of the member states (Article 291 TFEU). Moreover, the member states are an essential part of EU policy-making by means of the Council.

Table 2: **Distribution of competences in the European Union**

Policy areas	
Exclusive EU competences (Article 3 TFEU)	<ul style="list-style-type: none"> • customs union • the establishing of the competition rules necessary for the functioning of the internal market • monetary policy for the Member States whose currency is the euro • the conservation of marine biological resources under the common fisheries policy common commercial policy • common commercial policy • conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope
Shared competences (EU and member states) (Article 4 TFEU)	<ul style="list-style-type: none"> • internal market • social policy, for the aspects defined in this Treaty • economic, social and territorial cohesion • agriculture and fisheries, excluding the conservation of marine biological resources • environment • consumer protection • transport • trans-European networks • energy • area of freedom, security and justice • common safety concerns in public health matters, for the aspects defined in this Treaty • Special provisions in the areas of research, technological development and space as well as development cooperation and humanitarian aid
Coordinative and supportive role of the EU (Article 5-6 TFEU)	<ul style="list-style-type: none"> • Economic, employment and social policies • protection and improvement of human health • industry • culture • tourism • education, vocational training, youth and sport • civil protection • administrative cooperation
Special provisions	Foreign and Security policy (Article 2 (4) TFEU)

Source: The author, based on TFEU.

These models have not only been used to describe the constitutional design of the European Union but also to explain its decision-making procedures and policy outcomes. For instance, Scharpf (1988, 2006) argues in his comparative analysis of Germany and the EU that the involvement of the German Länder and the EU member states in federal decision-making and

the tendency to adopt decisions unanimously lead to sub-optimal policy outcomes, which he dubs the ‘joint-decision trap’. Similarly, Börzel (2005), drawing from the German experience, studies the EU as a case of integrated federalism and explains why this had led the EU into a ‘double legitimacy gap’.

3.2. Defining federalism and federation

A necessary starting point to include the EU in comparative federalism research and to study the EU in comparison with federal systems is the question of whether the EU actually is a federal system. This requires a proper definition of federalism and federation. However, wide confusion exists on the difference between these two concepts.

One problem in the conceptual debate on what federalism actually means has been, according to Stepan (1999, 20), a “misleading picture of federalism”, which is partly due to biased definitions based on the US model. In this piece on the chances of federalism for new democracies, he states as follows:

“Unfortunately, some of the most influential works in political science today offer incomplete or insufficiently broad definitions of federalism and thereby suggest that the range of choices facing newly democratizing states is narrower than it actually is. In large part, this stems from their focusing too exclusively on the model offered by the United States, the oldest and certainly one of the most successful federal democracies” (Stepan 1999, 21).

A prominent conceptual work highly influenced by the US federal model is Wheare (1953), whose definition emphasises the strict separation of the levels of government and their independence from each other in a federal system (i.e. ‘layer cake’ federalism):

“[The] test which I apply for federal government is then simply this. Does a system of government embody predominantly a division of powers between general and regional authorities, each of which, in its own sphere, is co-ordinate with the others and independent of them? If so, that government is federal” (Wheare 1953, 32–33).

As a result, a large number of political systems we are used to considering as federal today were excluded from Wheare’s definition, which Riker (1975) criticised.⁴ Riker himself defined federalism as

⁴ For instance, Wheare (1953, 19-21) argues that Canada’s constitution formally is not federal because of the federal government’s rights to disallow provincial legislation and to appoint the provincials’ Lieutenant-Governors and highest judges. In practice, he, however, recognises Canada’s functioning *de facto* as federal.

“a political organization in which the activities of government are divided between regional governments and a central government in such a way that each kind of government has some activities on which it makes final decisions” (Riker 1975, 101),

or as he did earlier:

“Federalism is a system in which “(1) two levels of government rule the same land of people, (2) each level has at least one area in which it is autonomous, (3) there is some guarantee (even though merely a statement in the constitution) of the autonomy of each government in its own sphere” (Riker 1964, 11).

Wheare’s and Riker’s definitions lead us to a second problem in the conceptual debate in the comparative federalism literature: the lack of distinction between federalism and federation, which were long used interchangeably and partly still are. Probably the most important attempt to consequently break with this tradition was King’s book of 1982. King (1982, 146) pleads for referring to “federalism as ideology or philosophy and to federation as institutional fact”. He further argues that federation is only one possible arrangement that follows the federal principle. “Although there may be federalism without federation, there can be no federation without some matching variety of federalism” (King 1982, 76). King’s definition of federation reads as follows:

“A federation is a state which is constitutionally divided into one central and two or more territorial (regional) governments. The responsibility of the centre is nationwide, while that of the territories (regions) is mostly local. The central government (p. 139) is not sovereign in a manner which excludes the involvement of the regional units. This is because these units are constitutionally incorporated into the centre for certain purposes, as to do with the way in which the centre’s legislature is constituted or its executive appointed or constitutional amendment enacted” (King 1982, 140).

Similarly, Elazar distinguishes between the federal principle and concrete political arrangements, in which this federal principle can be inherent and which include, among various others, federations. He also underlines that federalism is not a state-centric concept.

“[U]sing the federal principle does not necessarily mean establishing a federal system in the conventional sense of a modern federal state. The essence of federalism is not to be found in a particular set of institutions but in the institutionalisation of particular relationships among the participants in political life. Consequently, federalism is a phenomenon that provides many options for the organization of political authority and power; as long as the proper relations are created, a wide variety of political structures can be developed that are consistent with federal principles” (Elazar 1987, 11–12).

We thus refer to federalism as a principle, which is consequently situated on an abstract or ideological level. But what do we exactly mean by federal principle? “The simplest possible definition is *self-rule plus shared rule*” (Elazar 1987, 12). More specifically:

“Federal principles are concerned with the combination of self-rule and shared rule. In the broadest sense, federalism involves the linking of individuals, groups, and polities in lasting but limited union in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all parties principles” (Elazar 1987, 5).

Elazar’s concept of ‘shared rule’ has often been wrongly understood as the involvement of the regional entities in federal-decision making, for instance, by means of a second parliamentary chamber (Mueller 2017). Originally, Elazar, however, referred to the existence of a federal level with decision-making powers. In other words: there are areas in which the regional entities decide autonomously (i.e. ‘self-rule’), while, in other areas, the federal government takes binding decisions for the whole territory (i.e. ‘shared rule’).

Next to federations, which he defines as “a polity compounded of strong constituent entities and a strong general government, each possessing powers delegated to it by the people and empowered to deal directly with the citizenry in the exercise of those powers” (Elazar 1987, 7), Elazar (1987, 60) identifies confederations, federacies, associated statehood and condominiums as concrete arrangements which apply the federal principle. He further refers to leagues and unions as organisations that use federal principles without being proper species of federalism (Elazar 1987, 6–8).

Such a distinction between federalism and federation seems to have had an impact on scholars who had approached the field differently. For instance, Watts first had lacked such a distinction when he stated that “what distinguishes federal from other forms of government is that neither the central nor the regional government is subordinate to the other as in unitary or confederal political systems” (Watts 1966, 355). Three decades later, he distinguishes between federalism as ‘a normative term’ which “refers to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule. It is based on the presumed value and validity of combining unity and diversity and of accommodating, preserving and promoting distinct identities within a larger political union” (Watts 1996, 6). Consequently, he also considers federal systems as political systems that follow the normative principle of federalism, with federations being one “particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other, i.e. each has sovereign powers derived from the constitution rather than another level of government, each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers and each is directly elected by its citizens” (Watts 1996, 7). Watts even includes the EU in his list of federal political systems, which he considers a hybrid form between confederation and federation (Watts 1996, 9).

This leads us to the conclusion of this section on the distinction between the federal principle and the concrete political system. As for the federal principle as defined by Elazar, there can

be no doubt that the EU is a federal system, i.e. a political arrangement which applies the federal principle of combining shared rule with self-rule. Both EU member states and EU institutions are committed to cooperation to find solutions to common problems and challenges and to institutionalised decision-making procedures that produce binding decisions for the whole Union, on the one hand. On the other hand, no actor or institution questions the fact that there must be areas where decisions are taken at the national, regional or local level without adopting Europe-wide rules. It is this combination of shared rule and self-rule that makes a federal system. These commitments have been formalised in the EU treaties, which clearly define areas of exclusive competency of the EU, such as external trade and monetary policy, and areas of joint jurisdiction, in which both the EU and the member can decide – with EU decisions priming over national legislation and laws. On the other hand, there are also sufficient areas of self-rule, in which member states decide autonomously, such as education and cultural policies.

Based on the existing definitions, we can define a federation as a political system that is characterised by sovereignty being distributed at two (or more) different levels of government. Both levels are independently legitimatised, for instance, by means of elections, and equipped with competences and resources that are laid down in the constitution. Modifications thereof require approval by a large majority comprising both levels. Consequently, the European Union is not a federation. Relevant features that the EU lacks are resources that are not provided by its member states and the constitutional guarantee of its competences: the EU member states, albeit unanimously, can withdraw competences from the EU level without the agreement of the supranational institutions. After all, the member states remain the ‘masters of the treaties’ (Wessels 2016, 161). What kind of federal system is the EU if it is not a federation? We will turn to this question in the following section.

3.3. A typology of federal systems

Following King, Elazar and more recently Watts, there are multiple political arrangements that can apply the federal principle. Elazar (1987, 38–64) and Watts (1996, 8–9) propose concrete lists of such arrangements, which they describe qualitatively. Here, I propose to develop a typology that is based on clear criteria, which are either present or not in the different types of federal systems. Other existing typologies are mostly based on the degree of one criterion. Schultze (1990, 477), for instance, proposes a typology of federal systems based on their principal objectives and functions, ranging from centrifugal models aiming at regional autonomy and diversity to centripetal models seeking integration and equality (see Table 3).

Table 3: **Federal models according to Schultz**

alliance	Federalism				unitary state	
	← centrifugal		–	centripetal →		
	aiming at autonomy and diversity			aiming at integration and equal living conditions		
	Confederation	Confederal federation	Unitary federation	Decentralised unitary state		
	(‘Staatenbund’)	(‘konföderaler Bundesstaat’)	(‘unitarischer Bundesstaat’)	(‘dezentraler Einheitsstaat’)		

Source: Schultze (1990, 477) (own translation).

Inspired by existing terminology, I propose a typology that a) differentiates in accordance with the degree to which the federal principle is inherent to a political organisation, and b) is based on three key criteria that essentially affect the functioning of a political system from a federalism perspective (see Table 4). The first criterion refers to the question of electoral accountability and legitimisation. Are both or only of both levels of government directly legitimised by their citizens and consequently accountable to them? Secondly, who has the right to change the division of competences between the different levels of government and consequently the nature of the political system? Is there a constitution that determines the division of competences, and do both levels of government have to give their consent to respective modifications? Lastly, the third criterion refers to the concrete division of competences. Do both levels of government have policy-making powers (i.e. the ‘right to decide’) and/or implementing powers (i.e. the ‘right to act’)? (Keman 2000, 191–92)?

Based on these three criteria, I identify seven federal arrangements in which the federal principle is inherent to at least some extent – with the federation being the political organisation that applies the federal principle to its fullest. The characteristics of the federal arrangements and of the two forms of organisation that are situated outside the federal spectrum, i.e. alliances and centralised unitary states, are summarised in Table 4. But I want to highlight two particular types, which I dub ‘quasi-federations’ or ‘*de facto* federations’, i.e. confederal federations⁵ and federalised unitary states. In these systems, both levels of government have policy-making powers. This means that neither of the levels is only in charge of implementing the decisions taken at the other level. In other words: There are two levels of government that have the right to decide and to take binding decisions. Also, in both systems, both levels of government are directly legitimised by their citizens and are accountable to them. The difference of a federalised unitary state and a confederal federation in comparison to a federation lies in the authority over changing the division of competences. In the case of the unitary state, it is still the central government that has the constitutional right to define the competences

⁵ The term is borrowed from Kincaid (1999), who uses it in his analysis of the representation of citizens in the EU.

of each level of government; in the case of the confederal federation, it is the member states that decide which competences they assign to the upper level.

When does a devolved or decentralised unitary state become federal? I propose to refer to the question of whether the achieved degree of decentralisation⁶ is politically reversible and whether the process of decentralisation has been accompanied by a strengthening of the direct democratic accountability of the regional institutions, e.g. by means of elections of a regional parliament. Scotland and the UK's devolution process are a case in point. Although Westminster has the legal power to revoke the competences delegated to the Scottish parliament and to abolish it, it is politically virtually impossible that it would do so without the consent of the Scottish people.

The European Union is an example of a confederal federation. From a legalistic perspective, it is not a federation since the authority over the transfer of competences lies exclusively with the member states. However, the member states have created strong supranational institutions which have become veto-players in European decision-making procedures and which are partly directly elected by the EU's citizens. Moreover, it is hardly conceivable that the member states will withdraw relevant competences from the EU in the short term. As a result, in day-to-day political business, the EU functions very much like a federation, as does a federalised unitary state.

⁶ Federalism and decentralisation are conceptually and empirically different concepts (King 1982; Ke-
man 2000; Ehlert, Hennl, and Kaiser 2007).

Table 4: **Types and degrees of federalism**

<i>Federal principle</i>				←	Federalism	→			
<i>Political organisation</i>	Alliance	League	Confederation	Confederal federation	Federation	Federalised unitary state	Decentralised unitary state	Deconcentrated unitary state	Centralised unitary state
<i>Description/rationale</i>	Loose cooperation between state governments	Institutionalised coordination and cooperation	Decision-making by national delegates	Quasi-federation, supremacy of member states	Sovereignty and authority shared between two levels	Quasi-federation, supremacy of central government	Devolution of 'right to decide' to regional level	Delegation of 'right to act' to regional level	Single-level system with power monopoly
<i>Authority over competences</i>	Member states	Member states	Member states	Member states	Joint authority of both levels	Central government	Central government	Central government	Central government
<i>Division of competences</i>	No vertical transfer of competences	Supranational level without policy-making competences	Both levels with policy-making competences	Both levels with policy-making competences	Both levels with policy-making competences	Both levels with policy-making competences	Regional level with policy-making competences	Regional level with executive functions	No vertical transfer of policy competences
<i>Electoral accountability</i>	Member state level	Member state level	Possible, but not necessary at federal level	At both levels	At both levels	At both levels	Possible, but not necessary at the regional level	Possible, but not necessary at the regional level	Possible, but not necessary at the regional level
<i>Example</i>	Visegrád Group	NATO	US Confederation	EU	Canada	UK	Sweden	France	Monaco

Source: The author.

4. Comparing the European Union

With the theoretical ‘comparative turn’ in EU studies, also the number of empirical studies in which the EU is explicitly compared to other political systems, mostly federal systems, has increased. There are several examples of scholars having analysed (parts of) the EU polity comparatively – i.e. as a “case” of a wider population of political systems. But this explicit use of a comparative methodology to analyse the European Union is still not very common. Moreover, Fossum and Jachtenfuchs (2017) argue that such comparative EU research lacks a systematic approach.

“When contrasting this important body of research with the enormous volume of studies on the EU, the federal dimension in EU studies is clearly underdeveloped in comparison to other fields and subfields. Systematic comparisons of the EU with federal states [...] are present, but they have hardly developed into a vibrant research program in the sense of staking out a systematic program of research that ensures a truly cumulative development of knowledge” (Fossum and Jachtenfuchs 2017, 469–70).

A special focus of studies comparing the EU has been the US federal system. As Tortola (2014) has shown, there has been a considerable growth of EU-US comparative literature (for instance, Nicolaidis and Howse 2001; for instance, Fabbrini 2005a; Menon and Schain 2006). One reason for the predominance of the US as a case to compare the EU with is most certainly the general bias toward the US in comparative federalism literature mentioned above. Moreover, researchers willing to conduct comparative analyses of the EU have looked for cases that, like the EU, are characterised not only by a vertical but also by a horizontal separation of powers. Consequently, the US, with its presidential system (in contrast to the parliamentary systems in Belgium, Canada or Germany), offered itself as a case for comparison (Fabbrini 2005b).

Less common than the comparison with the US, but increasingly prominent, are the analyses comparing the EU with Canada (for instance, Fossum 2018; Crowley 2004). Canada lends itself to comparison with the EU for multiple reasons. From a disciplinary perspective, Canadian political science and EU studies have followed an interestingly similar path. Canadian political science was highly introspective, insular and idiosyncratic, with the academic debate long underlining Canada’s specificity and uniqueness (Vipond 2008). This focus on looking inwards was also due to Canadian political developments, most notably the constitutional debates (Simeon 1989; Vipond 2008). It was not until the 1980s and 1990s that Canadian researchers increasingly saw the value of embedding Canada in comparative studies and turned to comparative politics tools for their Canada research (Vipond 2008). In the context of this development, Canadian politics has also undergone a theoretical transformation: After a rather atheoretical approach had long dominated Canada related research, the use of comparative politics theories increased. Canadian political science has thus also undergone a ‘comparative turn’ (White et al. 2008).

Another theoretical aspect that makes Canadian political science special – and interesting for EU research – is that IR approaches have also found their way into Canadian research to help explain intra-Canadian dynamics. Most prominently, Simeon (1972) has compared negotiations between Canadian provincial governments and the federal government to intergovernmental negotiations in the international arena.

Lastly, the development of the Canadian federation and the functioning of Canada's political system also invite comparison with the EU from an empirical perspective. Despite relevant differences, Canada and the EU have many similarities and face common challenges (Fossum 2004, 2018; Hueglin 2013). Prominent, but not exclusive examples are the constitutional transformations and treaty reforms Canada and the EU have undergone, the constitutional contestation that both systems face, the common commitment for differences and diversity, the relevance of intergovernmental relations and the role of executives, executive-legislative relations and the question of accountability, constitutional asymmetries and opt-outs, the decentralised structure of the party system, the recurrent calls for secession and exit, the struggle of balancing self-rule and shared rule and the lack of agreement on the nature of the respective union, among many others. This comparability of the EU and Canada has been recognised not only by EU scholars but also by specialists in Canadian politics. The evolution of the EU, its institutional structures and the challenges the EU has in common with Canada have encouraged Canadian political science to engage with EU politics and to deal with the EU from a comparative perspective (Simeon 2002; Vipond 2008). On the part of EU studies, Fossum (2018) is probably the loudest proponent of EU-Canada comparisons for the same reasons.

5. Conclusion

The European Union is a federal system but not a federation. Based on King's fundamental work, I distinguish between federalism as a principle on an abstract, ideological level and different political arrangements on an institutional-legalistic level. On the basis of three criteria, i.e. the constitutional authority over changing the division of competences, the division of competences and the question of democratic accountability, I develop different political models that follow the federal principle to varying degrees. I propose to categorise the EU as a confederal federation, which I consider – next to the federalised unitary state – as a *de facto* or quasi-federation.

Does this distinction inhibit comparisons of the EU with other federal models, such as federations? Comparative politics scholars have warned from stretching our concepts, the creation of diminished subtypes, the lack of clear cut-off points based on qualitative criteria and the problem of degreeism, which might lead to arbitrary cutting points between different categories. Otherwise, our research might produce wrong findings about causes and consequences of our analytical concepts (Sartori 1970, 1991; Collier and Levitsky 1997). I do indeed suggest regarding the principle of federalism as a continuum. The federal principle is more inherent in some political arrangements than in others. However, this degreeism at the abstract level has no negative implications for our comparisons as long as the degree of the federal principle is 'similar enough'. A comparison of federations with confederal federations or with federalised

unitary states is unproblematic – under one condition: We are aware of the qualitative differences between our types at the concrete, institutional-legalistic level. Does the fact that the EU does not have constitutionally guaranteed competences have an effect on the political phenomenon we are trying to explain, for instance, on public policies produced at the EU level? If this is the case, we can consciously take this difference into account in our research, for example, when comparing the EU with a federation, and include it as a potential explanatory variable. Consequently, we can also draw generalisations from a comparison of the EU with other federal systems. Lastly, by considering the EU as a confederal federation, we do not create a diminished subtype of federal systems. The model of the confederal federation fulfils the criteria to be understood as a federal system, as it inherently combines shared rule and self-rule.

Against this backdrop, it is not surprising that academic work that has used existing concepts of federalism research to study the EU already exists. Especially the distinction between integrated and divided federalism has proven to be very fruitful for understanding the functioning of the EU.

Comparative federalism has dealt with a broad range of relevant and interesting questions: Why do federal systems emerge? How do federal systems accommodate cultural diversities or economic heterogeneity? How does the federal level interfere with sub-federal affairs or try to control sub-federal decisions, for instance, via financial incentives? How can we explain processes of decentralisation or centralisation and the development of allocation of competences? What are the driving forces of integration, disintegration and differentiation and what are their consequences? How can we explain the dynamics and outcomes of cross-level cooperation and intergovernmental negotiations? How should we deal with questions of accountability and democratic representation? Does asymmetric federalism prevent or promote secession movements? We should leave behind the dogma that the EU is unique and incomparable. The European Union is a federal system. A look into the federal literature and comparisons of the EU with other federal systems can help answer such questions that we also ask in EU studies. Conceptually, the EU fulfils all necessary criteria for us to do so. Let me conclude with a claim that Fabbrini already pronounced some 15 years ago, but which has not lost any of its validity.

“[I]t does not seem convincing to claim that the EU is a polity without any precedent, in the modalities of both its formation and its functioning, in the history of the democratic world. This is for empirical and analytical as well as methodological reasons. In the past, the outcome of the exceptionalist approaches has been the unfortunate parochialism of political analysis. Each and every political system is exceptional per se. However, this idiosyncratic approach cannot help us to understand the specific nature of each of them. [...] In fact, we know a lot about the EU, but we understand much less about its nature and logic” (Fabbrini 2005b, 6).

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The DAFEUS project has four objectives. It enhances the debate on the future development of the EU, fosters public knowledge and awareness of EU politics, promotes EU studies in new research areas, and strengthens the exchange between both academics and practitioners as well as civil society and the general public.

By comparing the EU to federally organised countries, the project will shed new light on strengths and deficits of the EU's political system. On this basis, DAFEUS develops concrete recommendations how to make the EU and its federal elements more effective, more efficient and more democratic.

DAFEUS will focus on three key topics:

- 1) Institutions and decision-making in federal systems
- 2) Democracy in federal systems
- 3) Differentiation in federal systems

DAFEUS combines academic research, public outreach and policy dialogue by organising three DAFEUS weeks, each of which includes a policy lab and an annual conference. The events will bring together senior and junior experts with diverse academic and professional backgrounds, policy-makers, civil society organisations and the wider public.

The project's output will comprise a set of webcasts, including expert interviews and speeches, three background papers on the project's key topics, three policy papers with recommendations from the policy labs, three conference reports with key results, a journal article and an edited volume gathering contributors to the project's events. A state-of-the-art website and a corresponding online platform for debate via Facebook complement DAFEUS' outreach activities.

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