

The European Union as a Federal Polity?

An Input to an Unfinished Symphony

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Abstract

Federalism is a Trojan horse of European integration: instead of giving way to a consensual characterisation of the European Union (EU), it is profoundly divisive. Some hate the concept (for long, the reverberated 'f-word'), while for others federalism is clearly within the aims and nature of European integration. Still others neglect federalism in the EU context, as they purport a distinctive pathway for European integration, one that stands outside current, state-centric stereotypes. Left outside the realm of consensual issues of European integration, federalism is though a promising intellectual journey.

The goal of the paper is to find out whether the EU currently incorporates federal elements. I am aware of the difficult task ahead, since there is no single theory of federalism. Assuming the existence of several models of federalism, the paper starts from a level playing field of federal features in order to understand whether the EU already matches with federalism. To that purpose, the paper surveys three federal criteria – legislative, teleological and institutional – and examines the EU through them.

Nevertheless, additional difficulties arise for it is important to test to which mode of federalism the EU suits better (or, should one say, which mode of federalism matches with the EU?). New confederalism, cooperative federalism and regulatory federalism are the hypothesis under assessment. A methodologically coherent approach requires a final step: to seek the *finalité* of European integration, to put it differently, what is the EU as a polity. The paper surveys asymmetric confederation, federation without a federal state and emerging federal state as the working hypothesis.

Generally, the more the degree of homogeneity within a society the greater the powers that have to be allocated to the federal government, and the more the degree of diversity the greater the powers that have been assigned to the constituent units of government.

(Watts, 1999: 35)

(...) (T)he constitutional discipline which Europe demands of its constitutional actors – the Union itself, the Member States and State organs, European citizens, and others – is in most aspects indistinguishable from that which you would find in advanced federal states.

(Weiler, 2000: 2)

INTRODUCTION

Is the European Union a federal polity? For some this is an important question, especially when they seek European integration's genetic footprint (Follesdal, 2005; Trechsel, 2005). For others this is not an issue at all: federalism is a state-centric concept and the EU is by no means a state but an international regime (Magnette, 2005). Yet, in both cases a comparative dimension comes to the surface. When federalism is mentioned in connection with European integration scholars look elsewhere and try to grasp examples of federal states to which the EU might be compared. Uniqueness is perhaps the most important ingredient of European integration. And uniqueness, if strictly understood, discards any comparison with other countries and international organisations. Nevertheless, I claim that the comparative method is appropriate to find out whether European integration encompasses or not federal aspects, whether the EU is already a federal polity or not.

The paper is structured as follows. Section 1 seeks a definition of federalism. Section 2 asks whether the EU qualifies as a case of federalism. This section emphasises how differentiation in European integration makes it difficult to strictly compare the EU with existing categories of federalism. Finally one important question is addressed: what features of federal systems are detected in the EU? The answer to this question is crucial to understand whether the EU qualifies as a federal system.

Section 3 searches for a category of EU federalism. Here the attention is on a survey of the literature that has endeavoured to categorise European integration according to the federalist theory. The aim is twofold: to examine the type of federalism that exists in the EU; and to assess the 'nature of the beast'. Finally section 4 addresses a relevant subject for the categorisation of EU federalism: *does European integration entail centralisation or decentralisation?* To that purpose methodologies used by political scientists to measure the (de)centralist nature of existing federal countries are brought into the analysis.

1. THE DEFINITION OF FEDERALISM

Assembling a definition of federalism is an intricate, almost unmanageable task. Reference scholars of federalism use a wide variety of methodologies, ranging from a

procedural definition, to an *institutionalist approach*, ending up with a *hybrid approach* (it merges both conceptions). Furthermore federalism is not a consensual concept, not only from the diversity of modalities but also because the practice of federal countries shows how federalism faced adjustment in the course of time. No such thing as 'federalism' exists, but instead '*federalisms*'. This illustrates the difficulty in achieving a unanimous definition of federalism. In fact, Sawyer warned that '*(...) attempts at defining either the word or the thing are likely to be futile*' (Sawyer, 1969: 2). Nevertheless, it is important to define federalism, at least to raise common denominator features. This is not a futile mission, especially when the distinctiveness of European integration is added to federal theory insights. The important aspect to acknowledge is *the absence of a generally accepted definition*. The review of reference scholars of federalism sheds light on such characteristic, given that definitions are diverse and they use a wide array of methodological frameworks.

Three different methodologies operationalise federalism: '*federalism as process*', '*federalism as institutional building*', and '*federalism as an hybrid*' (a mixture of process and institutional building). '*Federalism as process*' encompasses several features. It ranges from i) a constitutional division of powers between different tiers of government (Duchacek, 1970), to ii) a distribution of powers that results in shared competences in the decision-making and executive processes (Elazar, 1984), to iii) a guarantee of lower governments' existence and autonomy (Elazar, 1984), and to iv) states addressing joint solutions for common problems they face, using the federal level for that purpose (Friedrich, 1968).

Turning into the *institutional building approach*, diversity is also the keyword. Different understandings of the federal polity include i) the merging of sovereign units of government into a new one (the federal) endowed with sovereign powers (King, 1982; Elazar, 1984); while ii) others focus on the institutional outcome of federalism as a unitary political community that becomes a federally organised whole (Friedrich, 1968); or iii) federalism is the result of an institutional agreement that leads to a sovereign state where the federal government constitutionally integrates lower tiers of government into its own decision-making procedure (King, 1982).

From the comparison between the institutionalist and the procedural approaches it becomes clear that *while the former is dominated by centralisation, the latter envisages federalism as a roadmap for decentralisation* (or at least preventing the excesses of centralisation). According to the procedural approach, federalism should preserve lower governments' autonomy. The emphasis is on a (federal) polity that ensures non-central units of government's survival and participation in central government political and decision-making processes. As it will be noted later, the connotation with decentralisation becomes useful. On the opposite side stands the institutionalist approach. The emphasis is on the creation of a new polity – the federation – that gathers lower units of government. The federalist layer plays the prominent role, whereas sub-national units of government are subordinated. Clear signs of this hierarchical relationship emerge from the institutionalist approach: words and expressions like 'merging', 'unitary political community', and 'sovereign state' (as the product of federalism) are the evidence of centralisation.

The differences between both methodological approaches are important to understand a fundamental debate among scholars of federalism: *is federalism characterised by centralisation or decentralisation?* This debate feeds intense discussions among political scientists in general, and scholars of federalism in particular, and casts huge

relevance for the relationship between federalism and European integration (see section 4).

An additional remark shows how cumbersome is the task of raising a definition of federalism. On the one hand, a methodological divide is an obstacle to an undisputed definition. On the other hand, inside each theoretical approach there is no consensus on how federalism is envisaged. Such is the case of ‘federalism as process’: the four alternative interpretations considered encompass different perceptions of the *finalité* of the federal system. The same goes to the institutional approach, for the mere understanding of federalism unveils disagreement between three leading scholars. The perception of diversity between and among each methodological perspective, as well the symbolic connotations embedded, is depicted on fig. 1.

	Aims	Symbolism
<i>Procedural</i>	<ul style="list-style-type: none"> • <i>Division</i> of power between different layers of government 	Decentralisation
	<ul style="list-style-type: none"> • <i>Distribution</i> of power; <i>shared</i> competences • Lower units’ <i>autonomy</i> • States find joint solutions for common problems 	Decentralisation (but fuzzy) Decentralisation Decentralisation (but fuzzy)
<i>Institutional</i>	<ul style="list-style-type: none"> • Several states merge into a (new) federal unit 	Centralisation
	<ul style="list-style-type: none"> • Unitary political communities merge into a federal whole • Outcome of the institutional arrangement: a sovereign state 	Centralisation Centralisation

Fig. 1: Contrasting features of procedural and institutional approaches of federalism

The conclusion is that *federalism is a heterogeneous concept*. Federalism shelters different realities depending on the methodological approach one takes at the outset. There is not, by implication, a consensual definition of federalism because ‘federalism’ as a singular concept is superseded by ‘federalisms’ in its plural meaning (Burgess, 1993). Federalism can accommodate different outcomes – either a tendency to centralise power, or an opposite bias towards decentralisation, with contrasting implications notably when European integration comes into the discussion. Moreover federalism means different things once different countries are examined. It is difficult to achieve consensus about a concept that enshrines so many different meanings and perceptions. This remark points out that political scientists are sharply divided on the methodological tools necessary to arrange a definition, and that discrepancy might be an obstacle to an indisputable definition of federalism.

Anyway this section revealed different elements feeding alternative conceptions of federalism. For the purpose of putting federalism in the European integration context, something more accurate should be added to the concept of federalism. Thus *federalism encompasses a system of multi-layer governance that constitutionally entrusts lower tiers of government with autonomous powers. Federalism grants non-central units of government a say in problem-solving both at the local and state (national) as well as at the central (supranational, in the EU context) arenas*. My definition is in line with Follesdal’s definition of federation as a ‘(...) political order where competences are constitutionally split between sub-units and central authorities’ (Follesdal, 2005: 573).

2. THE EUROPEAN UNION AND FEDERALISM

2.1. European integration uniqueness and federal theory: hard to reconcile?

To begin with, European integration sheds elements of distinctiveness (Hooghe and Marks, 2008) that might not be consistent with the conventional, state-centric analysis of federalism. It is also important to be aware of federal systems' dynamism. One of the most salient characteristic of federalism is the constitutional distribution of competences between government tiers (Auer, 2005). An existing distribution of competences within a federation is not static. Another important feature is the intrinsically temporary nature of any given allocation of competences (McKay, 1999). The implication is that studies of federal systems must be cautious when they use a comparative method, because federalism is about creative politics and flexibility (Sbragia, 1992). As a matter of fact,

(f)ederalism is by definition an unfinished business because many issues can neither be foreseen nor immediately solved; at the time of the initial bargain, some issues may not have yet crystallized and other issues may already be proven too controversial (too hot) to try to solve immediately (Duchacek, 1970: 193).

The dynamic nature of federalism feeds further complexity when the linkage between federalism and the EU is at stake: *not only the EU is an evolving polity, but also federalism itself is open to continuous change*. Consequently, one faces a volatile issue. Prudence is the keyword when the connection between the EU and federalism is examined. Social scientists find ground for flourishing examination to the extent that federalism is an example of creative solutions and flexibility, and European integration is also gorged with so many cases of creative politics and flexibility. Such conceptual similarity puts the EU within the analytical instructions of federalism (Dosenrode, 2007).

Other scholars deny comparative federalism an analytical tool in the EU and claim that the EU should not be compared with other federations (Wistrich, 1994; Koslowski, 1999). Indeed the EU *'(...) might well be thought of something qualitatively different from existing federal systems'* (Moravcsik, 2001: 186), in the sense that the outcome is *'(...) its own particular branch of federalism'* (Schmidt, 2001: 338). These arguments provide an account of the flawed framework whereby the EU is compared with the United States (US) federalism (Burgess, 2000; Howse and Nicolaidis, 2001), as it is commonplace among those who justify EU federalism taking stock of similarities between the EU and the US federalisms (McKay, 1999). Elazar puts it bluntly, warning that

(o)ne of the mistakes of the ideological federalist lobby in the interwar and post-war Europe was that it sought to transplant the American understanding where it could not be at least at the time (Elazar, 2001: 32).

A different method selects some federal countries and estimates whether the EU fits with certain characteristics of such models of federalism. This method throws a *negative inference*. In other words, the history of federalism provides useful lessons for the EU as a federal polity, especially when mistakes emerge from past federal experiences. The method shows *how the EU does not emulate other models of federalism* built on specific political, sociological and cultural backgrounds that do not hold on to the European integration context (Sbragia, 1992).

Even on a federalist account the EU sheds light of its uniqueness. By implication, *maybe EU federalism is itself embedded in specificity*. It can be argued that, *'(...) the most important lessons today for modern federalizing efforts are from the newest such efforts (viz., the European Community) rather than the oldest (the United States of*

America)’ (Nathan, 1992: 96). The question is whether existing elements of federalism in the EU reinforce the uniqueness of European integration.

It is also important to address the perception that federalism entails an outcome of centralisation. Despite federalism is not necessarily a symptom of centralisation (Inman, 2007), this connotation is emphasised when European integration is considered. Even in the realm of comparative studies there is evidence of decentralised federalism – such as the Swiss case (Begg, Cremer, Danthine *et al.*, 1993; Papadopoulos, 2005). For this reason, again, a multi-dimensional testing is needed when looking at European integration through the lens of federal theory. The reason is that a ‘federal Europe’ is not tantamount to a unitary centralised state (Menon and Weatherill, 2002).

To fully capture the richness of the intellectual debate about the possible qualification of the EU as a federal system, the implications of flexible integration for the supranational polity’s federal nature must be addressed. Some believe that flexible integration strengthened federalism in the EU. Flexible integration is interpreted as laying down the foundations of an asymmetrical confederation in the EU (Elazar, 2001; Kincaid 2001). Flexible integration is equated to federalism because a federation allows different degrees of centralisation and decentralisation according to states’ preferences and to each policy area specifics (Kincaid, 2001). Others argue that flexible integration goes beyond established patterns of federalism, stressing that no such instrument is found elsewhere (Donahue and Pollack, 2001). Conversely, other scholars find powerful evidence that flexible integration is fatal to the federalist ambitions of the EU because it entails a procedure decision (veto power) that is a refinement of the Luxembourg Compromise (Burgess, 2000).

More than relying on the procedural level of flexible integration, what is crucial is to recognise the impetus flexible integration provided to the EU. Despite the recognition that member states are authorised to resort to veto when proposals on flexible integration affect their own vital interests, the key issue is the *potential* offered by flexible integration (Scharpf, 2006). Bestowing differentiation, flexible integration encompasses the fundamental value of unity within diversity that shapes federations and depicts even more markedly the nature of European integration. Since the EU is *sui generis*, it is reasonable that such unity is consistent with different gates open for different participants accordingly to their willingness and particular interests. As such, the EU is about unity in the respect of diversity. If the alternative was to refer back to unification no room would be left to accommodate differentiation among member states. This is clearly not the case of European integration.

2.2. The features of federalism and European integration: I) The legal criterion

In the following sections three alternative criteria will be assessed to test whether the EU matches federal features. Political science literature supplies a threefold method to assemble the plural features embodying federalism: *a legal criterion*, *a teleological criterion*, and *an institutional criterion*. The first includes only one feature – a written constitution that distributes competences between government tiers (Sawer, 1969; Black, 1975; Hicks, 1978; Dye, 1990; Watts, 1991). The second criterion covers more elements: unity within diversity (Wheare, 1963; Héraud, 1968; Duchacek, 1970; Nathan 1992; Smith 1995; Watts, 1999), dual citizenship, common identity and states’ autonomy (Wheare, 1963; Sawer, 1969; Duchacek, 1970; Black, 1975; Watts, 1999), economic homogeneity (Watts, 1991), and the denial of secession (Duchacek, 1970; Denton, 1993; Watts, 1999). The institutional criterion encompasses a multi-layered

system of governance and bicameralism (Riker, 1964; Sawyer, 1969; Duchacek, 1970; Watts, 1991; Nathan, 1992; Denton, 1993).

Starting with the *legal criterion*, the application to European integration raises an important question: *does the EU have a written constitution* that includes a clear distribution of competences between the supranational and national levels? The literature does not provide a consensual answer. Some scholars find evidence that the Treaty on the European Union (TEU), together with very important rulings from the Court of Justice, represent the constitutional mantle of European integration. Weiler (2000) identifies three sets of constitutional rules that make the EU a federal polity: i) rules regulating the relationship between the EU and member states; ii) rules of primary law enacting the distribution of power between the EU and member states (also Börzel and Risse, 2000; McKay, 2001); and iii) the hierarchical superiority of EU law vis-à-vis national law, as well as EU law direct enforcement at the national level. Additional constitutional elements might be considered (Piris, 2000): iv) a clear-cut recognition of the rule of law as the legal landmark in the EU; and v) an effort to bind the EU to the protection of human rights.

Nevertheless, the EU constitutional ambition faces an obstacle: the Treaty has no height of constitution, and formally it is not a constitution but an international treaty (Sbragia, 1992; Wistricht, 1994; Bermann and Nicolaidis, 2001). The denial of EU constitutional basis is explained by open negotiations as the key aspect of ongoing European integration. Informal procedures are more important than formal rules. If formal rules are circumvented through informal procedures the promotion of the constitutional dimension of such rules seems unreasonable (Peterson and Bomberg, 2000). For this reason, the belief is that no formal constitutionalism is needed in the EU (Schmitter, 2000).

Supporters of the constitutional dimension of European integration overcome this obstacle. They recognise the constitution is a legal document that is not called constitution anyway: this is the thesis of *a constitution without constitutionalism* (Weiler, 1997; Poiares Maduro, 2003). The EU has a constitution although a solid constitutional basis is absent for the imbalance between rules developed within the EU (well developed) and political principles laying down their foundation (absent) (Fossum, 2000).

Going outside the conventional approach that attaches constitutionalism to statehood, the EU embodies a constitutional dimension – whether it is a constitutional charter (Piris, 2000) or a constitution with full meaning (Grimm, 1997; Laffan, 1998). The picture of distinctiveness deploys the EU constitution as an ‘(...) *hoary Gothic cathedral, slapped together somewhat haphazardly by different architects, at different times, using different materials*’ (Caporaso and Stone Sweet, 2001: 228). Thus, it is not absurd to catalogue the EU as a *constitutional hybrid* (Burgess, 2000: 30).

The refusal to label the TEU a Constitution might be explained by the fear that the constitutionalisation of European integration destroys EU’s intergovernmental basis and embraces a far-reaching supranational nature that takes power away from member states. Nevertheless, the constitutional mantle of European integration is unveiled behind the curtain of smoke. Therefore the EU meets the first criterion of federalism.

2.3. The features of federalism and European integration: II) The teleological criterion

The first *teleological aspect of federalism* in European integration is *unity within diversity* (Frey, 2009). This is a basic principle European integration, bearing in mind that '(...) *the European Union stands for the harmonized integration of some of the oldest countries in the world with very diverse cultures and extremely complicated economic systems. The European Union is about unity within diversity*' (El-Agraa, 2001: vi). Some institutional characteristics of the EU corroborate it: the distribution of power between the Commission, the Council and the European Parliament allows diverse interests to be represented in the legislative process. Assuming that the Commission and the European Parliament impart supranational interests and the Council mirrors intergovernmental interests, a complex decision-making system comes to the surface. This is cogent to unity within diversity, because it respects different interests represented within the EU. To this extent, the EU decision-making system has a federalist imprint (Burgess, 2000). The federalist agenda of European integration was furthermore strengthened after Maastricht, when the co-decision procedure promoted a stronger participation of the European Parliament in the legislative process. Some highlight the federalist similitude of this treaty innovation (McKay, 1996; Pinder, 1998).

The emphasis is not so much on allowing supranational interests a say in the process, but on *the participation of intergovernmental interests*. Federalism is a compromise that enables the participation of different tiers of government, avoiding centrifugal forces' domination over peripheral units. To this extent the EU is a good example of federalism since member states are given a say in supranational legislation. This is an important federal feature for each member state ensures its territorial integrity and is entitled a strong participation in supranational institutions (McKay, 2001).

The instructive evidence of unity within diversity comes, furthermore, from the possibility that each member state voices his specific interests in the Council of Ministers. Despite the voting procedure is largely dominated by qualified majority voting, national governments still have at hand an institution to fight for their peculiarities. The historical record of Council decisions is telling of an ongoing balance between member states. Ministers try to reach consensus that triggers decisions. A difficult outcome means that rival interests are considered when the EU Council gets its final decision (Hayes-Renshaw and Wallace, 1997). National ministers avoid fierce battles, and thus a mechanism of side payments rewards a country that gets outvoted today. Consensus building within the Council is the expression of a decision-making system where (national) diversity acts as the catalyst (Börzel and Risse, 2000).

The second teleological feature of federalism is *dual citizenship*. European citizenship is already included in the TEU, but it is a rather weak expression of citizenship – at least when viewed from the conventional state-centric perspective (Shaw, 2007). Despite this, some authors envisage European citizenship as the illustration of dual citizenship (Bellamy, 2006) that federal systems usually comprise, thus putting the EU on the federal track (Burgess 2000; McKay, 2001). More important than crediting a state-centric meaning to EU citizenship is to recognise its plural dimension in line with the trans-border problem-solving dimension citizens face nowadays (Dobson, 2006). Not only problems have a transnational dimension, but also solutions require transnational (in the EU context, supranational) action. Both aspects convey an alternative dimension of citizenship disentangled from conventional statehood, thus shedding light to the concept of *post-national citizenship* (Bellamy and Castiglione, 2000; Shaw, 2000).

The second teleological element comes hand in hand with the third one, especially when European integration is concerned. Dual citizenship is connected with *common identity and (member) states' autonomy*. I will postpone states' autonomy and focus firstly on the troublesome connection between dual citizenship and common identity. Unlike federal countries, EU citizens don't display a strong loyalty to the supranational level – here understood as the equivalent of the central government (as Eurobarometer surveys reveal). Thus, citizenry at the supranational level might be questionable. The problem lies in the absent *demos* (Weiler, 2000): instead of finding out *the* European citizenry one should add (not merely aggregate) national citizenries. There is powerful evidence that people drive their loyalties to the national rather than the supranational sphere (Neunreither, 2000; Schmidt, 2001). The implication is weak 'European identity' (McKay, 2001).

Since common European identity is not a crucial ingredient of European integration, does the comparison between the EU and the federal feature under consideration become affected? Not necessarily, especially when the central feature of European integration – uniqueness – is emphasised. The EU is different from nation-states and international organisations (Wallace, 1983). There is no reason to deny the federal connotation of European integration for the absence of common identity. Furthermore the federal theory is open to flexibility, which is helpful for European integration. In examining a federal polity, McKay argues that citizens' loyalties are the independent variable: if citizens keep attached to national (or even regional) loyalties, the system is called peripheralised federalism; centralised federalism is the outcome when citizens direct loyalties to the central level (McKay, 1999). The EU is not the best example of a polity that replaces member states' belonging. The EU is formed by states with deeply rooted nationhood loyalties. Hence the EU should be envisaged as a case of *loose common identity* for national identities supersede supranational identity.

The third teleological feature of federal systems is states' autonomy. When unity and diversity was discussed I emphasised that member states' interests are respected within the EU decision-making process. The clue is that member states' autonomy is an essential aspect of European integration. By this token, the EU fits into the federal feature under scrutiny. Moreover, *subsidiarity* reinforces member states' autonomy. Subsidiarity is understood as a tool designed to grant lower tiers of governance the presumption of action in the EU problem-solving system (Laursen, 1992; McKay, 2001). *If subsidiarity is seen through this lens, decentralisation prevails*. Subsidiarity enshrines a constitutional precept of supranational enumerated powers, protecting member states and sub-national governments against supranational institutions' intrusions (Peterson and O'Toole Jr., 2001). Subsidiarity also contributes to the EU as a federal system.

The fourth teleological element – *economic homogeneity* – does not deserve too much elaboration. It would be easy to resort to statistical data to show EU's macroeconomic homogeneity. Nonetheless this is a contentious issue if doubts concerning the consistency of existing income disparities come into the discussion. The fact that a substantial number of member states stepped into Economic and Monetary Union (EMU) is the evidence that economic homogeneity was achieved. The transition process, with nominal convergence criteria as prerequisite for countries' application to EMU, reinforces the idea that some economic homogeneity predated the launching of monetary union in the EU.

The fifth teleological element of federal systems – *the denial of secession* – is absent among the literature that focuses on the EU as a federal system. This is not surprising

considering that EU constitutionalism was for long silent on this subject. The gap does not rule out any of the two possibilities. Discussions within the European Convention opened up the possibility of voluntary secession. The first draft of the Constitution presented by the European Convention recognised the right of secession to member states (European Convention 2002, article 46). The final version of the Constitutional Treaty maintained this right (article 59). After the Lisbon Treaty make up, secession was kept in article 50. No right of secession is granted to the constituent states of federal states. Since secession is accepted by the Lisbon Treaty, a dissimilarity between conventional federalism and the EU is noticed. Nevertheless this divergence is not powerful enough to spoil the comparison between European integration and federalism, given the manifold aspects of EU uniqueness. What matters is that member states are the key actors of European integration deepening. For all that counts, secession is an illustration of the prioritised goal of member states' autonomy – another feature of federal systems.

2.4. The features of federalism and European integration: III) The institutional criterion

The third characteristic of federal systems refers to institutional elements. For both elements – *a multi-layered system of governance*, and *bicameralism* – the literature provides reliable findings on the first one (Marks, Hooghe and Blank, 1996; Benson and Jordan, 2008). The fact that European integration entails two levels of government (or three levels if sub-national units of governments are considered, where available) pays tribute to a federal organisation, moreover because each government layer is autonomous. The federal imprint is strengthened by a constitutional settlement that delimitates government tiers' jurisdiction and resources (Börzel and Risse, 2000; Peterson and O'Toole Jr., 2001).

As to the second institutional feature of federal systems (bicameralism), such element is absent of the EU institutional architecture. There is only the European Parliament. The EU is, to this extent, different from federal systems in what concerns the institutional characterisation of bicameral parliamentarism. Scholars point to bicameralism as a desirable option for the future of European integration. The reasoning beneath this proposal ranges from the need to enhance EU's democratic legitimacy through increased parliamentary participation divided into two chambers representing different interests (supranational and intergovernmental) (Piris, 2000), to the reinforcement of the parliamentary component of EU's institutional settlement (McKay, 2001).

2.5. An appraisal of the European Union through the lens of federal features: what is missing and does the EU adhere to federalism?

Do absent federal elements affect the qualification of the EU as a federal polity? The review of the literature focusing on federalism and European integration brings out three critical assessments. Firstly, *the absent constitutional background of European integration* is a powerful argument against the federalist nature of the EU. Some argue the Treaties cannot be understood as the Constitution of the EU (Sbragia, 1992; Wistrich, 1994) while others look at the fuzzy allocation of powers between the supranational and the national levels (protesting against the 'dynamic confusion of powers') as another expression of how 'a-constitutional' the EU is (Schmidt, 2001). A third argument against the federal nature of European integration pegs to the treaty amendment procedure that gives supranational institutions a secondary role (Börzel and Risse, 2000). Another constitutional leakage comes from the lack of 'a' European *demos* (Weiler, 2000).

In a constitutional-related dimension some scholars find striking evidence that the EU is distant from federalism because of the messy pillared structure. In addition, the comparison of the three pillars feeds the conclusion that only the first matches with a pre-federal setting (Welsh, 1996; Pinder 1998). Significantly, Common Security and Foreign Policy (CSFP) lies within an intergovernmental dynamic, which jeopardises the federalist nature of the EU. External affairs and military security are decided on an intergovernmental basis, which in turn surfaces a crucial difference concerning the categorisation of the EU polity: *federal union* and *federal state*. The former excludes external relations and defence from federal competences while the latter assigns both areas to the federal government (Pinder, 1998). Similarly, the lack of legal personality is the main cause for EU's absent role in the external arena, which also affects its federal nature (Nicoll, 1993). This conclusion is open to contention, because the existence of CSFP – albeit its intergovernmental structure – opens the gate for another important ingredient of federal systems: member states are shielded against external aggression through supranational action (McKay, 2001).

Overall, all arguments enable a federal connotation to the EU. What is at stake is not the recognition of the EU as a state-like entity (a federal state) but *only a federal system deprived of several statehood features*. The argument does not dismiss the federal nature of European integration.

A second negative assessment arises from *institutional aspects*. The first criticism comes from the European Parliament's ambiguous role. This institution stands between a consultative and a representative assembly (Hix, Noury and Roland, 2007) and is endowed with few legislative powers. The reason for concern is EU's diminished parliamentary basis, at least when federal countries' solid parliamentary basis is remembered. In addition the Commission is far from being a federal executive because its powers are shared with the Council. The problem with the Commission as a thwarted supranational executive is the absent or at least weak political leadership (Sbragia, 1992). Another institutional inconsistency is the possibility that member states veto Council decisions.

Pegging to state-centric concepts, federalism is rejected because the EU is not a 'super-state in the making' (Moravcsik, 2001). The emphasis is on supranational institutions' missing powers and not on the functions assigned to them. In addition, the EU has a weak institutional authority reflected on several dimensions: tiny EU budget; absent legislation implementation power; sources of unilateralism (subsidiarity, flexible integration, areas of mixed competence); and unanimity or super qualified majority voting as an obstacle to efficient problem-solving (Moravcsik, 2001). For Börzel and Risse (2000) the absence of significant central fiscal powers is an obstacle to federalism in the EU.

Summing up, does the EU encompass enough federal features, or is this similarity insufficient to put the EU on a federal track? Scholars of federal theory reveal intellectual flexibility and recognise that countries being examined for purposes of federal qualification may not need to respect all the characteristics of federalism (Watts, 1999). This is a methodological milestone for my analysis. Nevertheless, a quantitative assessment (i.e., measuring the features scrutinised to reach a conclusion on the basis of the *number of federal elements* that fit into European integration) can be helpful for the discussion.

Type of federal feature	1	2	3	4
<i>Legal aspects</i>				
Written constitution with vertical allocation of powers	-	x	-	-
<i>Teleological aspects</i>				
Unity within diversity	x	-	-	-
Dual citizenship	-	-	x	-
Common identity	-	-	-	x
Member states' autonomy	-	x	-	-
Economic homogeneity	-	x	-	-
Right to secession	-	-	x	-
<i>Institutional aspects</i>				
Multi-layered system of governance	x	-	-	-
Bicameralism	-	x	-	-
Total	2	4	2	1

Fig. 2: How does the EU match into federal systems' features?

Legend: **column 1**, federal aspects to which the EU adheres; **column 2**, moderate association between European integration and a federal aspect; **column 3**, ambiguity; **column 4**, the EU does not fit conventional patterns of federalism

Some interesting conclusions arise from figure 2. Firstly, from the nine federal elements herein examined the EU matches (either unequivocally or to a moderate degree) six of them (66.6%). The reader should be aware that I took a conservative approach, since both elements included in column 3 (ambiguous qualification) match with federal features according to some of the literature surveyed. If these two elements were relocated in column 2 the record would be eight out of nine elements of federalism in the EU (88.8%). Therefore, *this quantitative examination puts the EU very close to the conventional standards of federalism.*

More important than this quantitative assessment is the difficulty to envisage the EU through political science parameters that analyse federalism. The uniqueness of European integration introduces a fuzzy picture into this exercise. Therefore this comparative method is of limited utility to understand whether the EU is a federal polity. Furthermore some features do not fall unambiguously either on federal features or in their rejection. Maybe the explanation lies on EU peculiarity, which becomes shinny through the comparison with conventional federalism. It should be remembered, following Watts, that it is possible to identify a federal system even when the units under observation do not fulfil all the criteria that traditionally lie at the heart of federal systems.

3. TYPOLOGIES OF EUROPEAN UNION FEDERALISM

The assumption so far is that the EU matches federalism. But *what kind of federalism exists in the EU?* The survey of the literature provides a wide perception of the type of federalism, or federal polity (depending on the approach followed), that exists in the EU. For purposes of systematisation I address two different criteria: while some scholars look at the *federal qualification of European integration*, others seek the *federal outcome of European integration*. While the former puts the EU into federalist theory frames, the latter directly addresses the 'nature of the beast'.

3.1. The qualification of European Union federalism

The literature on European integration federalism puts forward three alternative categories of federalism: *new confederalism*, *cooperative federalism*, and *regulatory federalism*. Supporters of *new confederalism* start from the *sui generis* nature of European integration to claim that the EU is more than a simple union of states, although it does not meet the requirements of a union of individuals as conventional federations do (Burgess, 2000). This status puts European integration in a difficult position, the so-called “‘confederal-federal’ conundrum” (Offe and Preuss, 2006). The implication is the EU as *a polity that works in practice but fails to work in theory*. For this reason, the EU is ‘an intellectual puzzle’ (Burgess, 2000: 265). Accordingly, borrowing Burgess’s line of reasoning, I would add an alternative qualification: *is the EU a ‘new federalist’ polity?*

The second alternative addresses European integration within *cooperative federalism*. Far from creating a clear separation of powers between the EU and member states, developments in European integration fostered a closer relationship between both levels. Supranational and national levels are enmeshed in cooperation because they realised this is the best answer to solve problems (Laursen, 1992). For supporters of cooperative federalism the emphasis is on shared responsibilities between supranational and national units of governance (Vandamme, 1998).

A related approach is *regulatory federalism*. As in cooperative federalism, the emphasis is on partnership involving supranational and national decision-makers fuelled by a process of transnational socialisation. Socialisation educates national officials to solve problems not exclusively at home but on transnational (supranational in the case of EU) fore. As with cooperative federalism, the notion of segmented responsibilities and competences is rejected. Instead supranational and national officials work together to solve problems member states face (Majone, 2001). The difference between cooperative federalism and regulatory federalism concerns decision-making aspects. While cooperative federalism focuses on top officials, regulatory federalism pays attention to a bottom-up perspective: regulatory agencies and networks are the main actors, as they provide the impetus for top officials’ final word in the decision-making process (Majone, 2001). Regulatory federalism is similar to the theory of ‘marble-cake federalism’, since the distribution of competences between supranational and national tiers reflects the basic principle of flexibility, avoiding a rigid segmentation between both government tiers (Donahue and Pollack, 2001).

3.2. The outcome of European Union federalism: what is the EU as a federal polity?

Coming to the *nature of the beast*, some interesting findings arise from the literature. The contributions present several theoretical anchors and use different typologies, but it is nevertheless possible to group them in three categories: *asymmetrical confederation*, *a federation without a federal state*, and *an emerging federal state*. Such categorisation bears the imprint of an incremental scale: moving along asymmetrical confederation through federation without a federal state and towards an emerging federal state shows how the degree of federalism (and of statehood) increases.

The definition of the EU as an *asymmetrical confederation* owes to Elazar (2001) and Kincaid (2001). They are sceptical about the evolution of European integration when assessed through the federal theory. Flexible integration and the principle of subsidiarity feed scepticism. Elazar addresses criticisms to flexible integration for paving the way to differentiated integration, which is not consistent with conventional federations’

homogeneity. Elazar furthermore claims that subsidiarity encompasses a hierarchical segmentation of government units that goes against the federal principle of non-hierarchy. For this reason he concludes that subsidiarity is the antithesis of federalism (Elazar, 2001: 42). The EU is, therefore, an *amorphous confederation* where member states' participation, and their rights and duties, are markedly asymmetrical.

Notwithstanding the differences between the EU and conventional federal theory, it is important to understand that European countries are deeply rooted on hierarchical political organisation with variable types of linkages between tiers of government. No such hierarchical organisation, and no single centre of power, exists in the United States (Kincaid, 2001). In this context Chryssochoou's proposal adds fresh blood: the EU is a case of '*inverse federalism*', entailing a dissemination of power among member states when they act as executive agents of the supranational entity (Chryssochoou, 1997). This emphasises territorial politics and points to the importance of member states and sub-national governments in the supranational decision-making process. It is, at the same time, an illustration of the decentralisation path of European integration.

Others view the EU as *a federation without a federal state*. This category stresses how European integration needs to undergo a genuine constitutional (re)foundation. A constitutional endorsement can throw some confusion because it might be interpreted as the birth of a state-like polity (Howse and Nicolaidis, 2001). Contrary to the federal theory conventional perception, the development of federalism within the EU promotes a federation without a state. The difference is not just rhetoric, for

(a)lthough intentional efforts to build a European federation have indeed failed to produce a federal state, it does not mean that political practices that lacked a federal intent have not produced a federal outcome, regardless of what it may be called. That is, even European institutions that are not explicitly named as such (...) may still be quite federal in all but name (Koslowski, 1999: 567-8).

The departure point from Howse and Nicolaidis's analysis is that a constitutional re-foundation is not a necessary pre-condition to political change in European integration. For Koslowski *the EU is already a federation even though it is not a federal state*. Change was achieved without constitutional engineering (Koslowski, 1999). The reason is that '*(j)ust as anarchy does not mean anomie, and norms may constitute and regulate practices within an anarchical society (...), federal norms may govern political relations in the absence of a federal state*' (Koslowski, 1999: 564, my emphasis).

A similar approach stresses indisputable federal features of European integration which, however, are not enough to recognise a federation. Indeed, if '*(...) the European Union today looks like a federal system, it works like a federal system, so why not call it an emerging federation?*' (Börzel and Risse, 2000) It is possible to distinguish several constituent elements of a federation in contemporary European integration. Nonetheless important obstacles avoid the total connotation of the EU with a federation: the absence of genuine tax power (Menéndez, 2001), and member states as the masters of the EU constitution. Consequently, the EU is only an *emerging federation* and not a complete federation – or, to borrow from Börzel and Risse (2000: 1), a '*quasi-federation*' (also McKay, 2001).

Finally there is an ambitious sector of the literature that envisages the EU as a *federal polity*. The EU is an *emerging federal state*. For some the EU currently stands in the vacuum between a confederation of states and a federal state (Koslowski, 1999). Thus the EU is more than a mere confederation and aims to be a federal state, but some aspects still hamper this ambition. Weak external capacity (especially in military issues)

and supranational institutions' fragile competences in terms of taxation are the most noticeable obstacles. Also for these reasons McKay labels *peripheralised federalism* to this limbo stage of European federalism (McKay, 1996; 1999) – indeed highly peripheralised as he added years later (McKay, 2002) – because member states still play a very influential role while supranational government is rather weak.

McKay is more ambitious, despite some ambiguity emerges from his writings. He first stated the EU is a '*federal state*' when the Treaty of Maastricht was seen as the equivalent of the 1787 Philadelphia Declaration (McKay, 1996). This position was softened when McKay concluded that the EU is only a '*quasi-federal state*' because taxation and fiscal policy lie outside supranational institutions' powers (McKay, 1999).

After a careful reading of these multifaceted qualifications of EU federalism, as well as the association of European integration to established models of federalism, it is difficult to achieve an undisputed categorisation. *The easiest solution is to exclude some of the labels for their inappropriateness to the European integration context.* Such is the case of new confederalism for the limited explanatory potential of ongoing European integration. Evidence suggests that initial steps of confederalism have already been superseded by elements of federalism. Cooperative and regulatory federalism are only partial descriptions because they neglect an important dimension of EU federalism examined in the next section – decentralisation.

As to the categories checked out in the outcome categorisation, both ends of the scale fail to represent European integration. On the one hand, the EU is more than an asymmetrical confederation. The EU can be labelled asymmetric, but it is doubtful that asymmetry is the causal effect of confederation. Again the distinctiveness that flourishes in European integration attenuates this qualification, as asymmetry is deemed necessary to forge a federal entity in the EU. Otherwise diversity among EU member states, a genetic ingredient of European integration, would be in jeopardy. Similarly, to picture the EU as a federal state is an exaggeration for the rejection of a state-centric approach of European integration. The conclusion that a state-like entity is the outcome of EU federalisation process clashes against the uniqueness of European integration.

The suitable category is the intermediate one – *a federation without a federal state*. It is debatable whether the EU encompasses a full or partial (or quasi) federation, because social scientists face subjectivist choices (the same happened for the results of fig. 2). This category rejects that the EU is paving the way for a state-like polity, underlining a different outcome which again puts the nature of European integration (uniqueness) at stake – *a federation of states, not a federal state*.

4. CONCLUSION: IS THE EUROPEAN UNION A CASE OF (DE)CENTRALISATION?

If the EU is a federal polity, where does it stand for purposes of centralisation? *Is it a case of centralisation, or instead do decentralisation elements prevail?* The debate is deeply influenced by the structural characteristic of European integration – *uniqueness* – as well as by a fundamental principle of multi-level polities – *indeterminacy*. According to indeterminacy, centripetal and centrifugal forces arise and vanish throughout the years. They feed an ongoing balance between centralisation and decentralisation. Indeterminacy also applies to European integration, where fluidity between centralisation and decentralisation is at work (Donahue and Pollack, 2001). At the outset, it is difficult to achieve an undisputed conclusion on whether the EU swings towards centralisation or decentralisation.

The second remark goes to an apparent paradox of European integration: *supranational institutions' strong powers do not necessarily equate to centralisation* (Kincaid, 2001). It is therefore increasingly difficult to measure the EU in terms of centralisation/decentralisation because that paradox goes against the perception that whenever supranational institutions' powers are enhanced centralisation is strengthened (Blankart, 2007). The following list is the evidence that an increase of EU's powers does not feed centralisation: subsidiarity, EU competences mainly shared with member states, and the awareness that national sovereignty erosion is not a symptom of supranational competences' reinforcement (Poiars Maduro, 2003). And, crucially, supranational institutions recognise that decentralisation was the best method to proceed with European integration. Indeed they showed

(...) willingness to resist the further centralization of authority and the allocation of new tasks for which [they are] ill equipped (...). Thus, by the end of the 1990s, not only were Member States and regional governments resisting the further centralization of power, but the EU's supranational organizations – the putative engines of integration – seemed to have accepted and internalized the political presumption in favour of decentralization (Pollack 2000: 527).

The perception is that European integration came into a pathway of decentralisation after the Maastricht Treaty (Donahue and Pollack, 2001), reversing 'creeping centralisation' observed until the early 90s (Pollack, 2000). The rationale for decentralisation is based on the following aspects:

- i) The rejection to grant more competences to supranational institutions, especially when crucial national interests were at stake (Donahue and Pollack, 2001).
- ii) Two of the Maastricht Treaty institutional innovations (henceforth improved by the Amsterdam Treaty) also played an important role: subsidiarity and flexible integration. Subsidiarity is understood as a tool that curbs supranational institutions' activity. Therefore it has a decentralisation imprint (Lazer and Mayer-Schoenberger, 2001).
- iii) Sub-national pressures for deeper decentralisation were mounting within regionalised member states (Bellamy and Castiglione, 2000; Eriksen and Fossum, 2000). This debate was translated to the EU level and acted as a powerful catalyst for decentralisation. Regional governments in key member states (with Germany leading the process) claimed for increased participation in EU decision-making (Jeffery 2000).
- iv) In areas of supranational institutions' competences, they only design policies. Implementation was left to national authorities (Majone, 2001). To a certain extent, this finding seems consistent with 'administrative federalism' (Sawer, 1969).
- v) Powerful economic forces worked against centralisation in the EU. The context was dominated by the costs of Germany's reunification and by monetary integration inspired by the monetarist school. Fiscal policy constraints at national level (due to EMU nominal convergence criteria), the prospective enlargement, and Agenda 2000 all prevented a boost of EU fiscal powers (Pollack, 2000). *EMU also paved the way for decentralisation in European integration*, given that

(t)he peculiar institutional structure laid down (...) is the result of the greater weight of the member states in contrast with that of the centre in existing federations. The

principle of central bank independence (...) provides a route to a single monetary policy without a single government (Johnson, 1994: 73).

This assessment is consistent with interviews held at supranational institutions, national governments and national central banks. The champions in yielding a decentralisation outcome were representatives of supranational institutions, and not member states' governments or national central banks' officials. *Remarkably, those who (at least in theory) were expected to be the most enthusiastic proponents of centralisation gave emphasis to decentralisation as the outcome of European integration.*

There is an interesting analogy between European integration deepening (as propelled by the Maastricht Treaty) and decentralisation. This coincidence is instructive of how unique European integration is: *the big step forward on the way to federalism was taken at the same time that decentralisation was bolstered.* To some scholars, this comes in contradiction with conventional state-centric federalism (Weiler, 2000). Others find striking evidence that the EU and federalism live under the same roof. Such conclusion sheds light on the non-state nature of the EU (Schmidt, 2001).

There is, nevertheless, a general perception that federalism is linked to centralisation. Such common wisdom provides the rationale against a federal EU. It is, therefore, important to isolate *decentralised federalism* as the appropriate framework for the combination of European integration uniqueness and federalism. Federalism can also mean decentralisation. The evidence comes from federal countries where constituent states got considerable executive powers (Friedrich, 1968). An alternative is to call it '*peripheralised federalism*', with more power handed over to lower levels of government and subsidiary powers remaining in federal government's hands (Riker, 1964).

The first task is to elaborate on *the conditions of decentralised federalism*. Two alternative (but not self-excluding) tools are used. On the one hand, *decentralisation can be ensured through law* to preserve the balance between different tiers of government. Legal provisions (mainly enshrined in the Constitution) ensure sub-national governments' status in the federal decision-making process (Bermann, 2001). Another gatekeeper for decentralisation is *subsidiarity*, similar to the one included in the TEU: it secures decentralised action within a multi-tiered system of governance. A comparison between subsidiarity (in the context of European integration) and devolution (by reference to the United States federalism) might be useful. Nevertheless this judgment is flawed because subsidiarity emphasises the merits of decentralisation (de Búrca, 1999) while devolution points at centralisation for efficiency purposes (Coglianese and Nicolaidis, 2001).

One method comes to the surface to measure decentralisation within a federation: *Riker's model* depicting a continuum between functions allocated to the federal and states' levels. Riker's model evaluates the degree of decentralisation in a federal system through the classification of certain functions according to the following marks (Riker, 1964):

- Mark 1 – Exclusively or almost assigned to the national (federal) level
- Mark 2 – Predominately assigned to the national level, with lower levels playing a minor role
- Mark 3 – Function equally divided among the federal and state levels

- Mark 4 – Predominately assigned to state and local governments (residual powers left over to the federal government)
- Mark 5 – Exclusively (or almost) assigned to state and local levels.

The following functions/attributes are scrutinised: external affairs, public safety, property rights, civic rights, morality, patriotism, money and credit, transport and communications, production and distribution, economic development, resources, education, indigence, recreation, health, and knowledge. After collecting data for all these functions, the higher the ranking the more decentralised the federation is. At the end, the aggregation of values provides a rough measure of the degree of (de)centralisation.

This model provides a rough picture of how centralised or decentralised the EU currently is. Another model was proposed by Pollack (2000) with an historical measurement of the levels of authority by policy area for the EC/EU in 1950, 1957, 1968, 1970, 1992, and 2000. My model differs from Pollack's on two grounds: one the one hand, it ignores the historical dimension; on the other hand, it relies on a far-reaching range of criteria (emulating Riker's model), instead of a narrower set of criteria as in Pollack's model. Other categories could also be added (trade, competition, development aid, and fisheries), but they fall outside the range of functions and attributes envisaged by Riker.

Function	Mark
External affairs	4
Public safety	4
Property rights	3
Civic rights	5
Morality	5
Patriotism	5
Money and credit	1
Transport and communications	3
Production and distribution	2
Economic development	3
Resources	3
Education	4
Indigence	5
Recreation	5
Health	4
Knowledge	3
Total	59
Average	3.68

Fig. 3: The EU according Riker's method

I am aware that the marks for some of these functions raise disagreement. Indeed, for some of these functions there is no consensus on how to place them alongside Riker's

continuum. My findings are only a proposal, and I recognise that these conclusions are not undisputable. The model does not present definitive conclusions about the extent to which the EU is closest to centralisation or decentralisation. The same goes to Riker's model itself. Firstly, the model is dated (1964). Furthermore it is somewhat flawed because it relies on a state-centric approach of functions and values. Therefore it might fail the consistency test with European integration, because the EU falls outside the state-centric paradigm. Consequently anachronism emerges as a sword over this model. Anyway this exercise can add some light to the qualification of EU's federalism in the centralisation/decentralisation continuum.

The table covers my own proposal using the perceived distribution of powers between the EU and member states. The model states that as higher the ranking the more decentralised the EU is (and vice versa). The result of 3.68 is closer to mark 4, showing that member states are the predominant sphere of action with residual power left over to the supranational level. *Thus the results provided by the model suggest that EU federalism is largely decentralised.* The findings from the interviews reveal a slightly different evaluation. While most respondents (39%) acknowledged that centralisation prevails after the inception of EMU, decentralisation stands out for a percentage of practitioners (35%) close to that majority. There is an interesting aspect to bear in mind: *the interviews do not fully confirm the conventional wisdom that centralisation is the implication from European integration deepening.*

In sum, the EU shows many federal characteristics. It seems consistent with a *federation without a federal state*, and displays an internal organisation where decentralisation is the keyword. All in all, evidence strongly suggests that *the EU is a decentralised federation.*

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