

COMPARATIVE PERSPECTIVES: FEDERAL AND INTERNATIONAL MODELS AS AN INSPIRATION FOR EU MEMBER STATE EQUALITY



BENJAMIN FLANDER

Abstract

This chapter explores how selected federal states, confederations, and international organisations with supranational elements compare to the EU in terms of structure and functioning and whether they can serve as models for strengthening equality amongst EU Member States. The author examines (con)federalism and supranationalism as concepts of governance and provides an analysis of the structural and functional characteristics of selected (con)federal systems and international organisations with supranational elements, focusing specifically on the implementation of the principle of equality amongst their constituent parts. In doing so, the goal is to determine whether federal, confederal, and supranational governance arrangements can offer valuable insights and inspiration for the EU. The definition of key concepts is followed by a brief synthetic introduction of each selected (con)federation and international organisation, as well as an analysis of how the principle of equality amongst their units/Member States is normatively defined and practically applied. The discussion emphasises the principle's importance, its implications, and the challenges it poses in promoting cooperation amongst units/Member States within each selected state/organisation.

Keywords: equality, European Union, federalism, confederalism, international organisations

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1. Introduction

This chapter explores how selected federal states, confederations, and international organisations with supranational elements compare to the EU in terms of structure and functioning and whether they can serve as models for strengthening equality amongst EU Member States. The author undertakes an examination of (con)federalism and supranationalism as concepts of governance and analyses the structural and functional characteristics of selected (con)federal systems and international organisations with supranational elements, focusing particularly on the implementation of the principle of equality amongst their constituent parts. In doing so, the author seeks to determine whether federal, confederal, and supranational governance arrangements can offer valuable insights and inspiration for the EU. The defining of the key concepts precedes a brief synthetic introduction of each selected (con)federation and international organisation, as well as an analysis of how the principle of equality amongst units/Member States is normatively defined and practically applied. The discussion emphasises the principle's importance, its implications, and the challenges it poses in promoting cooperation amongst units/Member States within each selected state/organisation.

Specifically, the chapter addresses the following key questions: How do federal systems function in comparison to the EU? Can the selected federal states (e.g. the U.S., Germany, Switzerland, Belgium, Canada, and Yugoslavia) inspire the EU to strengthen equality and cooperation amongst its Member States? How do other integration initiatives, such as confederations and international organisations with supranational elements (e.g. the African Union, the Union of South American Nations, and the South Asian Association for Regional Cooperation), compare to the EU? Can these organisations offer models for enhancing the principle of equality amongst EU Member States?

2. Federalism and Federal Systems

Federalism, as both a political philosophy and a system of governance, is based on the division of power between a central authority and constituent units, typically regions or states. This structure stands in contrast to unitary systems, where political power is centralised at the national level, and confederal systems, where regional governments retain most authority, delegating only limited powers to the central government. The origins of federalism can be traced back to antiquity or even earlier, to the Old Testament. The Hebrew term *brit*, similar to the Latin *foedus* (from which the word 'federal' is derived), frequently appears in the Old Testament

in connection with the concept of a covenant. It refers to a covenant between people and God, amongst individuals forming a political community, and between separate communities establishing broader political entities.¹

The modern concept of federalism was pioneered by Johannes Althusius, who developed a theory centred on contractual arrangements amongst political communities. His theory emphasised the preservation of sovereignty whilst addressing shared interests and needs at various levels of integration. Another key figure in the development of modern federalism was Montesquieu, who advocated for the integration of smaller states into a confederal community to defend against external threats and prevent the abuse of power or domination by individual members of the union.²

Theoretical debates on (con)federalism also encompass historical proposals for European peace and integration, as suggested by thinkers such as Dubois, Dante, Podiebrad, Sully, Penn, Saint-Pierre, Kant, and others. Proudhon is notable for his theory of federalism, which highlights the importance of balancing unity and diversity.³ Generally, the pioneers of federalism theory emphasised dispersing state power and integrating autonomous parts into a cohesive whole. They did not strictly differentiate between federalism and confederalism or other specific (hybrid) formations in the integration of states or political communities. Instead, they recognised the potential of a (con)federal interstate arrangement to ensure peace.⁴

The earliest examples of (con)federations can be traced back to alliances amongst ancient Greek city-states. One notable instance of a 'hegemonic federal arrangement' is the Peloponnesian League, led by Athens in the 6th century BC. Another is the Corinthian League, established by Philip of Macedon in the 3rd century BC.⁵ Philip's successor, Antigonos, reportedly secured an agreement with opposing factions, leading to an oath by all Greeks to collectively defend freedom and autonomy.⁶ The 3rd century BC appears to be a pivotal period for the development of (con)federations, as various unified empires around the Mediterranean and in southern and central Europe allowed for locally autonomous cities within their territories. These cities could form (con)federations under the overarching authority of the empire.⁷

1 See Elazar, 1994, p. 15. See also Accetto, 2007, p. 29.

2 Accetto, 2007, p. 31.

3 See Accetto, 2007, p. 32.

4 See Accetto, 2007, pp. 32–33.

5 Žagar, 1990, pp. 48–50.

6 Accetto, 2007, p. 30.

7 Accetto, 2007, p. 32. The historical predecessors of modern (con)federations grappled with the halting task of balancing conflicting tendencies within their associations. On the one hand, there was a push for unity, centralisation, hegemony, and the efficiency of a leading member. On the other hand, there was a desire for autonomy and independence amongst the other members, as well as the need to uphold the principle of consensus in making key decisions for the entire union. These contradictions and tensions continue to exist in modern (con)federal systems. See Žagar, 1990, p. 50; and Accetto, 2007, p. 30.

A modern form of (con)federalism emerged in the late 18th century with the creation of the Articles of Confederation in 1777 and later the United States Constitution in 1787. The American Founding Fathers designed federalism as a system of governance to balance the competing interests of a strong central government and the autonomy of individual states. The Federalist Papers, written by Alexander Hamilton, James Madison, and John Jay, were instrumental in articulating the principles of federalism, advocating for a system that would prevent tyranny by dividing governmental powers. The U.S. Constitution became a model for other countries, including Canada (1867), Switzerland (1848), and Germany (1871), which transitioned from previous confederal alliances to federal systems to accommodate diverse populations and regional identities.

The 20th century witnessed a significant expansion of federalism and the establishment of federations, despite being marked by the rise of nationalism and the proliferation of nation-states. Today, nearly 30 countries worldwide – including the U.S., Canada, Australia, India, Brazil, Germany, Austria, and Switzerland – can be regarded as having a constitutional or operational form of federal governance, depending on how a federal system is defined. Additionally, more than 50 countries have adopted elements of federalism. As of 2022, federal countries accounted for 44.4% of the world's landmass, 48.5% of global GDP, and 41.5% of the world's population.⁸ Federalism is particularly significant in large or diverse countries where geographical, ethnic, linguistic, or cultural differences require a balance between regional autonomy and national unity.

2.1. Defining Federalism and Federal Systems

Federalism is both a political theory and a principle of governance with broad implications. According to Croisat, the term federalism encompasses 'ideas, values, and representations' about the world that embody the philosophy of 'diversity in unity'. The terms federation and federal system are derived from federalism and represent its concrete application in governance. They refer to various institutional arrangements for uniting autonomous units under a central (e.g. federal) authority whilst maintaining a degree of autonomy.⁹

Federal governance encompasses a spectrum of institutional forms, ranging from archetypally federal systems to loose confederal arrangements, giving rise to several ambiguities. Whilst certain countries unquestionably qualify as federations, others may incorporate some federal elements but cannot be classified as federations *strictu sensu*. Additionally, some systems may function as federal in practice without being officially recognised as such, whilst others may be officially federal but lack substantive federal characteristics. Finally, some systems exhibit diminished federal qualities due to excessive centralisation or the absence of democracy.

8 Kincaid and Leckrone, 2023, pp. 1–3.

9 Ibid.

These variations highlight the need for a defensible conception of the principles and practices of federalism and, based on that, the formulation of a clear and workable definition.¹⁰

In his strict definition, Wheare, for example, characterised a federal government as one that primarily embodies a division of powers between general and regional authorities, each of which is coordinated with and independent of the others within its own sphere. He considered the U.S., Switzerland, Canada, and Australia to be the best examples of such a system.¹¹

Elazar, another distinguished figure in federal theory, described a federal system as ‘self-rule plus shared rule’, where self-rule refers to the ability of constituent units to exercise some degree of self-government, and shared rule pertains to the existence of an overarching central government that serves the collective interests of the federation.¹² He outlined five essential elements of a federal system: a written constitution, non-centralisation, mechanisms to maintain non-centralisation, a genuine division of powers, and a ‘federal principle’, which reflects the popular will to form a federal system.¹³

Additionally, scholars such as Watts have emphasised dual sovereignty as another crucial feature of federal governance.¹⁴ Most federalism scholars ultimately aim to distinguish federal systems from unitary governance and from systems that may appear federal in form but lack substantive federal characteristics. For many, democracy is a vital element of federalism because respect for separate spheres of power seems to necessitate it.¹⁵

In general terms, in a federal system of governance, supreme power is divided between a central authority and constituent units. This arrangement, known as a federation, involves a permanent but limited union of states or other political entities. It is characterised by a constitutional distribution of powers that enables the pursuit of common goals whilst preserving the autonomy of the member units. Contemporary federal states comprise two or more political-territorial units, such as ‘*Länder*’ in Germany, ‘States’ in the U.S., or ‘Cantons’ in Switzerland. These states are governed by a federal constitution that delineates the distribution of powers between the central federal government and the constituent federal units. In most federations, the federal government holds the highest level of sovereignty, representing the federation as a single sovereign entity in international affairs.

The survival of federal systems is particularly relevant in today’s world, as they offer the potential to accommodate deep diversities and reduce conflict. The functioning of federations encompasses various institutions and processes, including the practical operation of the division of powers, the representation of constituent units

10 Fenna, 2022, p. 23.

11 *Ibid.*, p. 25.

12 *Ibid.*, pp. 25–26.

13 See Skillen, 2017, p. 4.

14 *Ibid.*

15 Fenna, 2022, p. 27.

in central institutions, intergovernmental relations, vertical and horizontal fiscal arrangements, constitutional amendments, and the management of conflict through judicial and other dispute resolution mechanisms.¹⁶

Federal units should operate independently within the limits set by the federal constitution and are represented at the federal level, often in a special chamber that exists alongside the general house of representatives. Generally, federations do not grant the right to secede, except where such a right is explicitly provided for in the federal constitution or the constitutions of the federal units. However, in practice, exercising the right to secede through peaceful and legal means is typically challenging and often impossible.¹⁷

Contemporary theory of federalism and federal systems has focused on the so-called ‘paradox of federalism’, whereby autonomy is seen as potentially either encouraging or mitigating separatism. This paradox arises from the perception that federations are often destined for relentless centralisation and may either hinder or facilitate policymaking.¹⁸

Defining contemporary federalism and federal systems, as well as understanding their complexities, is one of this chapter’s central objectives. The findings will help address key questions of the chapter, such as how federal states function in comparison to the EU and whether they can serve as an inspiration for enhancing equality amongst EU Member States.

2.2. Principles and Types of Federalism and Federal Systems

2.2.1. The Principle of Equality Amongst Constituent Units and Other Main Principles of Federal Systems

Graves noted that the essence of federalism is generally captured by the principle of ‘association for specific purposes while maintaining independence for others’.¹⁹ More specifically, several fundamental principles are commonly associated with federalism. In this regard, various classifications exist within federalism theory. Drawing on Kinski, Žagar identified four core principles: autonomy, cooperation and legal dispute resolution, division of competencies with subsidiarity, and participation.²⁰ Drawing from Graves’ classification,²¹ this chapter focuses on the principle of division of competencies, the principle of autonomy, and the principle of cooperation, adding the principle of equality amongst constituent units as the fourth core principle of federal systems.

16 Fenna, 2022, p. 27.

17 Cerar, 2007.

18 See Fenna, 2022, pp. 28–29.

19 Accetto, 2007, p. 38.

20 See Žagar, 1990, pp. 144–146.

21 Accetto, 2007, p. 38.

In accordance with the principle of division of competencies, all areas of authority should be precisely delineated between the federal union and its Member States, particularly regarding legislative functions. In practice, the only competencies typically transferred to the union are those that are either in the collective interest or by nature extend beyond the borders of individual members. The principle of autonomy, closely related to the principle of division of competencies, ensures that members of the federation retain a significant degree of autonomy within the bounds of their designated powers. The third principle, namely the principle of cooperation, includes two key elements: cooperation between the federation and its members across various fields and, equally important, the opportunity for Member States and their citizens to participate in shaping federal policies and making federal decisions.²² Finally, the principle of equality aims to ensure that no single unit within the federation is disproportionately privileged or disadvantaged in its relationship with the central government or other constituent units.

These principles reflect the tension between the constituent parts' desire to cooperate in pursuing collective interests and their desire to maintain as much autonomy and independence as possible. On the one hand, the said principles emphasise a unified constitutional framework, involving a division of powers between the federal units and the federation, the adoption of binding, supreme decisions at the federal level, sufficient financial and administrative resources for the union, and overall unity. On the other hand, these principles emphasise the autonomy of the federal units in decision-making, sincere cooperation, and the principle of both symmetrical and asymmetrical representation within the federal structure.²³ Føllesdal argued that these principles reflect the fundamental normative contradictions within a federal system, particularly between autonomy and equality. In his view, federalism theory, grounded in liberalism, demands a fair distribution of goods and burdens to prevent domination and ensure equitable procedures and outcomes of cooperation. Simultaneously, it allows for a degree of inequality amongst federal units, which is a necessary outcome of autonomy. This autonomy protects against dominance by other members and enables institutions and policies to be shaped according to the specific needs of individual units.²⁴

Federalism, as a system of governance, seeks to balance unity with diversity by combining 'self-rule and shared rule'.²⁵ As a critical component of this balance, the principle of equality amongst the constituent units of a federal system underpins the stability and functionality of federal governance by fostering cooperation and

22 Ibid.; Drawing on Verney, it is stated that, in addition to a democratic political system and a constitutionally structured division of powers, the federal state includes three additional principles: the separation of legislative and executive branches, the division of the legislative body into two more or less equal chambers, and a special role for the parliament in protecting the interests of the federation's Member States. See Verney, 2002, pp. 21–24.

23 See Accetto, 2007, p. 39.

24 Ibid.

25 See Da Silva, 2023. See also Elazar, 1987.

upholding legitimacy. Whilst federal constitutions often explicitly enshrine the principle of equality amongst constituent units, the principle is upheld through various mechanisms, institutional frameworks, and practices, which vary depending on the specific federal system. For example, many federal systems ensure equality by giving constituent units equal representation in one house of the federal legislature – often the upper house. This structure balances representation by population (typically in the lower house) with equal representation by states in the upper house. Equality is also reflected in the division of powers between the federal and state levels, with constituent units exercising autonomy over matters assigned to them. In most federal systems, the constitution clearly delineates which powers are reserved for the federal government and which are exclusive to the constituent units. This framework ensures that all units operate as equals within their areas of competence. Furthermore, federal constitutions and laws often include clauses to prevent discrimination amongst constituent units, ensuring that no state or region is favoured over another. In most federal systems, federal constitutional courts or supreme courts act as arbiters to ensure that the principle of equality is upheld. Key mechanisms that uphold the principle of equality amongst federal units include financial equalisation and equal participation in constitutional amendments. Federal systems often incorporate fiscal arrangements to address economic disparities amongst constituent units and promote equal opportunities for all regions. Equalisation payments or grants ensure that wealthier regions contribute to supporting less affluent regions without compromising the autonomy of any unit. Finally, constituent units are often granted equal participation or veto powers in the process of amending the federal constitution. This ensures that no single unit or group of units can unilaterally impose changes that would disadvantage others. Overall, the principle of equality amongst constituent units is both a cornerstone and a challenge in federal systems: whilst it fosters stability and cooperation, it must adapt to the realities of interest diversity, economic disparity, and demographic variation.

2.2.2. Types

Federalism and federal systems, as concrete manifestations of federal governance, vary in their distribution of powers and degree of centralisation. Scholars have identified several types of federalism. Croisat, for example, distinguished between centralised, decentralised, and balanced federalism.²⁶ Verney also distinguished between three types of federal systems: parliamentary federation (examples being Germany and Canada), confederation (exemplified by the American Confederation

26 Accetto, 2007, p. 40.

of the 1770s), and federal state (examples including the U.S. and Switzerland).²⁷ Føllesdal discussed, *inter alia*, asymmetric and symmetric federations.²⁸

Further classifications distinguish between dual, fiscal, and cooperative federalism and federal systems. Dual federalism, often described as ‘layer-cake federalism’, assumes a clear distinction between the functions of the national and state governments (i.e. a vertical separation of powers). This form of federalism emphasises the institutional autonomy of different levels of power, each operating independently within its own sphere of influence.²⁹ The USA during the 19th century is a prime example of dual federalism. Fiscal federalism focuses on the allocation of financial resources and responsibilities. It involves the transfer of funds from the central government to the states, often through grants or revenue-sharing programmes, to address disparities in wealth and ensure equitable service delivery across regions. Finally, cooperative federalism, also known as ‘marble-cake federalism’, is based on the functional distribution of competencies between different levels of power. It blurs the distinction between national and subnational responsibilities, encouraging collaboration between different levels of government.³⁰ Whilst cooperative federalism is typical of Germany, it also became prominent in the USA during the New Deal era of the 1930s, when state and federal governments worked together on programmes such as social security and infrastructure development.

The distinction between different types of federalism and federations, which has received significant attention in federalism theory, includes the concepts of ‘coming together’ and ‘holding together’ federations. According to Riker’s theory, federal systems – led by the model established by the U.S. Constitution – were formed on the basis of a ‘coming together’ federal bargain.³¹ In this model, independent units join to form a nation whilst maintaining distinct identities. There is minimal power-sharing or retention of separate nationalities. The responsibilities of the federal units are constitutionally detailed and generally rigid. Each state retains individual powers with no direct interference from the federal level. In parliamentary composition, the ‘territorial principle’ typically guides representation in the upper house, whilst the ‘population principle’ guides representation in the lower house.³² Examples of *coming-together* federations include the U.S., Switzerland, and Australia.

Conversely, holding-together federalism is designed to prevent the disintegration of a unitary state. In this type of federal arrangement, the constitution seeks to ensure a sufficiently strong democratic majority in the lower house of parliament, enabling the passage of legislation that upholds the union’s cohesion. In exceptional cases, the constitution permits the democratic majority in the lower house to modify

27 Accetto, 2007, p. 38.

28 Accetto, 2007, p. 40. Accetto stated that Føllesdal also refers to separate (compact) federalism, where members have no role in making federal decisions.

29 See Accetto, 2007, pp. 39–40.

30 Ibid.

31 Ibid.

32 Ibid.

the boundaries between federal units.³³ An example of holding-together federalism is Belgium, which transitioned from a unitary state to a federal structure for the Flemish and Walloon communities with the 1993 constitution.³⁴

Traditionally, a federal state is conceived as a symmetric federation, that is, a form of state organisation composed of two or more uniform component units (such as states, republics, provinces, entities, regions, cantons, or communities) that maintain equal relationships with one another and with the federal government. Each subnational unit or region is treated equally by the federation, enjoying the same degree of autonomy and influence within the federal system.³⁵ As a core characteristic of traditional federal systems, symmetry is valued for its integrative and centralising potential.³⁶

Consequently, traditional federal systems are not necessarily designed to protect diversity but rather to support processes of nation-building, which are viewed as unifying and centralising forces.³⁷ Like holding-together federalism, symmetric federalism aims to preserve the cohesion of federal systems through equal and uniform status amongst component units, promoting national unity. Examples of symmetric federalism include the ‘model federations’ of the USA and Germany.

In contrast to symmetric systems, in an asymmetric federation, certain subnational units possess more autonomy than others. Asymmetry was long viewed as a potential disintegrative factor and a deviation from the principle of equality amongst a federation’s constituent parts; thus, this form of federalism has only recently gained recognition. The concept was introduced by Tarlton to describe variations in the relationships between certain component units and the central government in federal systems.³⁸

Asymmetry often arises in countries with significant ethnic or linguistic diversity. For instance, Canada grants its province of Quebec greater control over cultural and language policies, reflecting its Francophone identity. Additionally, asymmetric federalism can serve as a ‘solution’ in traditionally symmetric federal systems that were not initially designed to accommodate diversity but where internal conflicts and separatist trends threaten stability. To alleviate tensions, federal, quasi-federal, regionalised, and even unitary systems – including Belgium, Canada, China, Indonesia, Iraq, Italy, Russia, Spain, and the United Kingdom – have adopted asymmetric

33 Accetto, 2007, pp. 39–40.

34 Accetto cited the Austro-Hungarian monarchy and post-war Yugoslavia as historical examples of the potential emergence of a holding-together federation. Before the collapse of the Austro-Hungarian monarchy, there were discussions regarding the possibility of establishing a federation within the monarchy. In the context of a holding-together federal formation, the post-war Yugoslav federation could have been transformed – had it not disintegrated – into a looser form of asymmetric (con) federation. According to some, such a transformation might have effectively prevented the state’s disintegration. See Accetto, 2007.

35 See Halberstam, 2012; Kincaid, 2005; Sahadžić, 2023, p. 165.

36 Sahadžić, 2023.

37 Ibid.

38 See Sahadžić, 2023, pp. 165–166.

arrangements to preserve cohesion.³⁹ In these cases, there is a merging of two federalism models: asymmetric and holding-together federalism.

In an asymmetric federation, asymmetries exist both amongst component units and between these units and the federal authorities. Whilst *de facto* asymmetries arise from differences in population size, territorial area, economic wealth, and the ethnic, religious, linguistic, cultural, and political characteristics of subnational units, *de jure* asymmetries are established by the constitution and other legal acts. These *de jure* asymmetries create differences in the status of various subnational units in areas such as representation, participation and veto power in federal institutions, distribution of powers, and fiscal autonomy.⁴⁰ According to Sahadžić, the primary driving force behind asymmetries is the desire for identity preservation, as different groups (national, ethnic, racial, linguistic, or religious) seek to protect their identities by advocating for legal recognition of their distinctiveness. However, to create asymmetric constitutional arrangements, identity concerns are typically reinforced by additional factors such as economic wealth, separatist movements, or historical considerations.⁴¹

In his comprehensive analysis of asymmetric federations, Žagar noted that, in addition to federal units, territorial-administrative units with varying statuses, degrees of autonomy, and roles within the federation can easily emerge.⁴² He emphasised that these units are often a reflection of the internal structure and administrative divisions of individual federal units and do not typically exist at the federation level; this constitutes asymmetry if the corresponding organisational and administrative regulations are not applied uniformly across all federal units. In contrast to such arrangements, Žagar referred to examples where, in addition to the federal units, other territorial-administrative units of differing statuses exist at the federation level. In these cases, the essential elements of asymmetry include not only the usual differences in the sizes of federal units and other specific distinctions but also the varying statuses and positions of individual federal and territorial-administrative units within the federation.⁴³

Some theorists of federalism, including Verney, Føllesdal, and Žagar, consider confederation to be one of the forms of federal systems, viewing it as the opposite of

39 Sahadžić, 2023, pp. 165–166.

40 Sahadžić, 2023, p. 166. Sahadžić gave, *inter alia*, the following examples: three of nine judges on Canada's Supreme Court are from Quebec, and the Basque Country has different fiscal agreements than Spain's other autonomous communities. On asymmetries in federal states, see also Žagar, 1990, pp. 334–335.

41 Sahadžić, 2023, p. 166. An example is, according to Sahadžić, the three language communities in Belgium (Flemish, French, and German).

42 Žagar, 1990, pp. 336–337.

43 *Ibid.* Žagar identified examples of asymmetric federations in the former Soviet Union and the post-war Yugoslav federation. He found the Yugoslav arrangement under the 1974 Constitution particularly interesting, as it recognised the autonomous provinces of Kosovo and Vojvodina as constitutive elements of the federation. This status was reflected, amongst other things, in the representation of their officials in the bodies of the federation.

a federation. According to them, confederal systems are characterized by a weaker central authority, which lacks its own sovereignty and possesses only the powers explicitly assigned to it by the Member States. In principle, decisions made by the central authority are binding on the Member States, however, in many areas Member States retain the option to veto its decisions. Members of a confederation also have the right to withdraw freely.⁴⁴

In conclusion, the examination of various forms of federalism and federal systems highlights the broad scope of federalism as a concept. At its core, federalism represents diverse approaches to organising the governance of political entities, aiming to balance the integration of common interests with the preservation of Member States' autonomy. At a more specific level, the term federalism refers to a nearly limitless range of arrangements of federal significance, or federal systems, which can be further classified into distinct types and subtypes. Ultimately, every formally structured federation is a *sui generis* example.⁴⁵

2.3. Federal States and the Principle of Equality Amongst Their Constituent Units

Drawing on the assumptions of comparative federalism, which seeks to go beyond the insights gained from studying a single federation by examining the practices and experiences of multiple cases,⁴⁶ this section explores how several federal states – both existing (USA, Germany, Switzerland, Belgium, and Canada) and defunct (Socialist Federal Republic of Yugoslavia) – function in terms of key institutional aspects of federal systems. In particular, the study emphasises the constitutional foundations, practical mechanisms, and challenges associated with upholding the principle of equality amongst constituent parts and fostering cooperation between them.

2.3.1. The United States

2.3.1.1. An Outline of the U.S. Federal System

The USA is a federation comprising 50 states, each with its own government and constitution, operating within the overarching framework of the U.S. Constitution. As the first modern federation, the USA has served as a model for subsequent federal systems and is widely regarded as the archetype of federalism.⁴⁷

The federal arrangement established by the U.S. Constitution reflects the colonies' conflicting aspirations to preserve their independence whilst addressing the pressing need for a unified and stable nation, achievable only through a common

44 Confederation as a form of interstate arrangement will be discussed in more detail in Sec. 3.

45 See Žagar, 1990, p. 65; and Accetto, 2007, p. 43.

46 See Fenna, 2022, pp. 28–29.

47 Grad et al., 2004, pp. 131–134.

national framework. This compromise allowed states to retain authority over most areas, except for those matters that required federal oversight to ensure collective interests vital to all U.S. citizens and the federation as a whole, as articulated in the Constitution's preamble.⁴⁸ However, whilst the Tenth Amendment reserves powers not delegated to the federal government for the states,⁴⁹ thereby aiming to balance federal and state sovereignty, this balance has gradually shifted over time, favouring the federal government.

The Federal Constitution establishes the principle of the supremacy of the federal legal order over the legal acts of the federal units; thus, the legal acts of the states, including their constitutions, must be consistent with the Federal Constitution and federal laws, which apply throughout the entire territory.⁵⁰

The institutional framework of the American federal system is based on the distribution of power amongst the legislative, executive, and judicial branches at both the federal and state levels. The competencies of federal bodies are defined by rules that categorise them as exclusive powers (express powers), implied powers derived from expressed powers, and inherent powers that can be exercised by both the federation and the states. Over time, the collective exercise of authority by the federation and the states has become increasingly important, leading to a transformation in U.S. federalism, evolving from exclusive federalism to cooperative federalism.⁵¹

In the structure of the Federal Government, the U.S. Congress is the carrier of the legislative branch. It is established under Art. 1 of the U.S. Constitution, which outlines its structure, qualifications for office, terms, and specific powers. The Framers' intent to create a system of checks and balances within the legislative branch, as well as between the federal government and the states, resulted in the establishment of a bicameral parliament composed of the House of Representatives and the Senate.⁵² The House of Representatives, the lower chamber of Congress, is composed of 435 members chosen by the states' citizens. Each member of the House of Representatives is elected to a two-year term.⁵³ The U.S. Senate is the upper chamber of Congress. Each of the 50 states is represented by two senators who serve staggered six-year terms.⁵⁴ In total, the Senate comprises 100 members. Senators must be at least 30 years old, a U.S. citizen for at least nine years, and a resident of the state they represent.⁵⁵

48 Grad et al., 2004, p. 138. These goals are: ensuring justice, individual freedom, general well-being, stability, and collective defence. See U.S. Const., Preamble.

49 U.S. Const., Amend. 10.

50 See Grad et al., 2004, p. 138.

51 Grad et al., 2004, p. 139.

52 The decision to create a bicameral legislature was also intended to balance the interests of states with large and small populations. The result is a House of Representatives, with seats apportioned by population, and a Senate, where each state has equal representation with two senators.

53 U.S. Const., Art. 1, Sec. 2, para. 1.

54 U.S. Const., Art. 1, Sec. 3, para. 1.

55 U.S. Const., Art. 1, Sec. 3, para. 3.

In Art. 1, Sec. 8, the Constitution explicitly lists several powers of Congress, often referred to as the ‘enumerated powers’. Some of the most significant enumerated powers include making laws, declaring war, raising and providing public money and overseeing its proper expenditure, impeaching and trying federal officers, approving presidential appointments, approving treaties negotiated by the executive branch, and conducting oversight and investigations.⁵⁶

The President, as the head of the executive branch, is established in Art. 2 of the U.S. Constitution, which outlines the qualifications, powers, and responsibilities of the office. This article, though shorter than Art. 1, establishes the President as the chief executive, granting a combination of specified and implied powers. The President is elected for a four-year term through an indirect electoral process, namely the Electoral College. This system was designed to balance popular influence with state representation. The President can be impeached and removed from office for ‘high crimes and misdemeanours’.⁵⁷ This power of removal rests with Congress, reflecting a critical check on presidential authority.

The Constitution specifies, in Art. 2, Sec. 3, several key powers of the President. The so-called ‘Take Care Clause’ mandates that the President ‘shall take Care that the Laws be faithfully executed’, establishing the President’s role as the chief enforcer of federal laws. This clause forms the foundation of the executive’s administrative duties and has been interpreted as granting implied powers necessary for law enforcement. Furthermore, the President has the power to oversee federal agencies, grant pardons for federal offences, and conduct foreign policy by appointing ambassadors and negotiating treaties. In addition to ambassadors, the President appoints federal officials, including judges and executive department heads, with Senate confirmation required for major appointments. Other key powers of the President specified by the Constitution include military leadership, diplomacy, and law enforcement.⁵⁸

The President plays a crucial role in federal–state relations through the use of executive orders, administrative regulations, and federal grants. Additionally, the President must periodically inform Congress about the state of the union and recommend measures for consideration. This requirement serves both as a ceremonial duty and as an opportunity for the President to set a legislative agenda.

Under the supreme leadership of the President, laws are executed by the federal state administration, which is extensive, complexly organised, and difficult to review. The said administration comprises various administrative bodies (executive departments), offices, agencies, commissions, and boards, which are established either by law or by presidential decree. However, only those administrative bodies established by law can enact regional regulations.⁵⁹

56 U.S. Const., Art. 1, Sec. 8.

57 U.S. Const., Art. 2, Sec. 4.

58 U.S. Const., Art. 2, Sec. 2.

59 See Grad et al., 2004, pp. 157–158.

The most notable amongst these are the 14 executive departments, whose heads form the Cabinet. A special place is reserved for independent agencies and commissions, which have an independent status. Although they do not belong to the state administration in the strictest sense, their heads are appointed by the President of the United States with the agreement of the Senate and are subject to hearings in Congress.⁶⁰

The activities of administrative bodies are supervised by all three branches of government, most directly by the President, who also appoints high-ranking officials. Initially, the employment of most civil servants was governed by the so-called spoil system, under which the political party of the President replaced a significant portion of officials with its supporters. This system was gradually replaced by the so-called 'merit system', which requires the hiring of officials based on their professional qualifications, thereby strengthening the durability and political neutrality of official positions.⁶¹

The judicial branch is primarily defined by Art. 3 of the U.S. Constitution, which establishes the Federal Supreme Court and grants Congress the authority to create lower federal courts as needed. The Federal Supreme Court is the highest U.S. court. Its decisions serve as final interpretations of constitutional issues and create precedents that lower courts are bound to follow. It has both original and appellate jurisdiction in cases appealed from lower federal courts and state supreme courts, particularly when constitutional questions are involved. The federal court system beneath the Supreme Court comprises two levels: District Courts (trial courts with original jurisdiction) and Courts of Appeals (intermediate appellate courts that review District Court decisions). Federal judges hold their offices during 'good behaviour', effectively meaning they have life tenure unless impeached and removed for misconduct.⁶² This tenure, combined with protection against salary reduction whilst in office, ensures judicial independence, allowing judges to make decisions free from political influence.

Although not explicitly stated in the Constitution, judicial review is one of the most significant powers of the judiciary. It allows the federal courts to interpret the Constitution, federal statutes, regulations, and executive actions to ensure their consistent application and alignment with the Constitution and to invalidate laws, executive orders, or state actions that contradict it.⁶³ Judicial review positions the judiciary as a guardian of constitutional rights and a check on the legislative and executive branches, preventing the government from enacting or enforcing unconstitutional measures. Federal courts also resolve disputes involving federal laws, constitutional questions, and conflicts between states or between a state and the federal

60 Ibid.

61 Ibid.

62 U.S. Const., Art. 3, Sec. 1.

63 This power, though not explicitly stated in the Constitution, was firmly established in the landmark case *Marbury v. Madison* (1803).

government. This function provides a legal pathway for individuals, organisations, and states to address grievances that involve federal interests or rights protected by the Constitution. In resolving disputes between the federal and state governments, federal courts play a critical role in shaping the balance between federal and state power.⁶⁴

The U.S. Constitution establishes a robust system of checks and balances to prevent the concentration of power in any single branch of government.⁶⁵ Members of Congress are accountable to the electorate, with House members facing re-election every two years and senators every six years. Elections serve as a powerful check on congressional power, with public opinion shaping legislative agendas and the composition of Congress. The bicameral structure of Congress itself serves as a check, since both the House and Senate must agree on the text of any bill before it becomes law. This internal division encourages deliberation and compromise, often slowing the legislative process but preventing hasty or extreme legislative actions. Additionally, Congress is restrained by its relationship with the executive and judicial branches. However, Congress also exercises significant oversight of the executive branch, with the power to investigate executive actions, conduct hearings, and request testimony from federal officials. It holds the authority to impeach the President for 'high crimes and misdemeanours'.⁶⁶

The interaction between federal and state governments occurs in various contexts, including policy implementation, fiscal coordination, and legal disputes. Despite the federal constitutional framework, the federal government has increasingly encroached upon areas that traditionally fall under state jurisdiction, driven by the expanding mandates of the modern state. This encroachment is often necessary for the interests of the entire federation, especially in activities that exceed the financial capabilities of individual states. This development gradually led to 'co-operative federalism' as a new model of federalism, marking a departure from the original form established by the Constitution. In cooperative federalism, federal, state, and local governments collaborate to implement policies, even though, according to the Constitution, the distinction of authority is based on the exclusive powers of the federal government and the states.⁶⁷

2.3.1.2. The Principle of Equality of States

Although the U.S. Constitution does not explicitly reference the principle of equality amongst States as a general principle, it contains several provisions that

64 Grad et al., 2004, pp. 158–162.

65 Grad et al., 2004, p. 163.

66 The House of Representatives initiates impeachment proceedings, whilst the Senate conducts the trial. This process serves as a direct check on abuses of presidential power, ensuring accountability to the public and the Constitution.

67 Grad et al., 2004, p. 169. Programmes such as Medicaid, where federal funding is combined with state administration, exemplify this collaborative approach.

address this principle in various ways. Art. 1, Sec. 3 mandates equal representation in the Senate. Additionally, Art. 5, which outlines the process for amending the Constitution, explicitly states that ‘no State, without its Consent, shall be deprived of its equal Suffrage in the Senate’. The Constitution also mandates equal treatment of States in other areas, including sovereign immunity under the Eleventh Amendment, as well as through the Tax Uniformity Clause and the Port Preference Clause. Several constitutional provisions support the idea of equal sovereignty by establishing baseline requirements for States to remain part of the Union, such as the Privileges or Immunities Clause, the Full Faith and Credit Clause, and the Guarantee Clause; this ensures a republican form of government. These provisions suggest that the Founders envisioned States as holding an equal position within the federal system for specific purposes.⁶⁸

The issue of providing equality amongst States has also been invoked in several U.S. Supreme Court decisions interpreting these constitutional provisions. Notably, the Court has declared that ‘the United States was and is a union of states, equal in power, dignity, and authority’.⁶⁹ Through its rulings, the Court has developed several interpretative principles and doctrines, with the principle of equal sovereignty and the equal footing doctrine standing out as particularly significant.

Overall, and as reflected in Supreme Court jurisprudence, the principle of state equality manifests across multiple dimensions of the U.S. federal system, including legislative representation and decision-making processes, the admission of new states, the electoral process, and intergovernmental relations.

The decision to create a bicameral legislature was intended to balance the interests of states with large and small populations. The result is a House of Representatives, with seats apportioned by population, and a Senate, where each state has equal representation. According to Art. 1, Sec. 3, the U.S. Senate grants each state two senators, regardless of size or population. This provision is a direct manifestation of the formal equality of states, ensuring that smaller states have an equal voice in the legislative process and a meaningful role in federal policymaking.⁷⁰ By allocating power in the Senate equally amongst the states irrespective of the differences between them, the Framers counterbalanced the allocation of power in the House of Representatives based on proportional (‘relative’) equality, depending on a state’s

68 See Molitor, 2014, p. 1857.

69 *Shelby County v. Holder*, 570 U.S. 529, 544 (2013), and *Coyle v. Smith*, 221 U.S. 559, 567 (1911).

70 This provision has its roots in the Constitutional Convention of 1787, where the Framers of the Constitution sought to balance the interests of large and small states. At the time, small states such as Delaware feared that their influence would be diminished if representation in the new federal government were solely based on population, as favoured by larger states such as Virginia. To resolve this conflict, the Framers adopted a compromise that became one of the defining features of American federalism: the Connecticut Compromise (or Great Compromise). This agreement established a bicameral legislature with two chambers: the House of Representatives, where representation is proportional to population, and the Senate, where each state is granted equal representation, with two senators per state, regardless of population, size, wealth, or power. See United States Senate, 2024.

share of the national population. By arranging for the House and Senate to exercise legislative power jointly, the Framers required U.S. law to have both national and federal approval – a majority vote in the House of Representatives demonstrates national approval, whilst a majority vote in the Senate expresses federal approval.⁷¹

In Art. 4, Sec. 3, the Constitution provides that new States may be admitted into the Union. In its case law involving the admission of new States, the Supreme Court in the nineteenth century developed the equal footing doctrine, which generally requires that Congress admit new States on equal terms with the original States and with the same rights and sovereignty as existing States. The Supreme Court held, in *Coyle v. Smith*, that this doctrine forbids Congress from imposing ‘restrictions upon a new state which deprive it of equality with other members of the Union’. However, since the Court observed, in *South Carolina v. Katzenbach*, that ‘[T]he doctrine... applies only to the terms upon which States are admitted to the Union’, the applicability of the equal footing doctrine outside the State admission context was questionable.

In *Northwest Austin*,⁷² the Supreme Court invoked the fundamental principle of equal sovereignty amongst the States as a limitation on congressional power. Although not making clear whether the principle is based on the Tenth Amendment or some other constitutional provision, the Court observed that ‘not only do States retain sovereignty under the Constitution, there is also a fundamental principle of equal sovereignty among the States’ and that ‘the equal sovereignty principle limits Congress’s ability to enact legislation that subjects different States to unequal burdens without a sufficient justification’.⁷³ It follows from this interpretation that the principle of equal sovereignty extends beyond the formal equality of States, implying the idea of ‘substantive’ (e.g. relative or proportional) equality. When there are ‘sufficient reasons’, sovereign States may and should be treated differently. According to the Supreme Court, even laws that are drafted in facially non-discriminatory terms will almost always have an unequal (greater or smaller) impact on different States.⁷⁴

The equal sovereignty principle was also applied by the Supreme Court in two cases ruled upon in 2009 and 2013. Both cases concerned the constitutionality of the Voting Rights Act of 1965 (VRA).⁷⁵ To remedy racial discrimination in voting, Sec. 4 of the VRA contained a ‘coverage formula’ identifying jurisdictions with a history of racial discrimination against voters, whilst Sec. 5 required those jurisdictions to obtain ‘preclearance’ from the Department of Justice or a federal court before changing their voting procedures.⁷⁶

71 See Constitution Annotated, 2024.

72 *Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009), and *Shelby County*, 570 U.S., 544.

73 *Ibid.*

74 See Colby, 2016, p. 1147. Colby argued that, although nearly all laws treat states differently, a refined understanding of equal sovereignty demonstrates that the vast majority of congressional discrimination amongst the states does not run afoul of the Constitution.

75 See Legal Information Institute, 2024.

76 *Ibid.*

Although, compared to other States, jurisdictions covered by Sec. 4 were subject to more stringent requirements when seeking to change their voting laws, the Court ruled in *Katzenbach* that this arrangement was in line with the Constitution. Almost half a century later, in *Northwest Austin*, the coverage formula and preclearance requirements were upheld, although the Court observed that the coverage formula, by differentiating between the States, departs from ‘the fundamental principle of equal sovereignty’ and raises ‘serious constitutional questions’.⁷⁷

Ruled upon four years after *Northwest Austin*, *Shelby County* resolved the constitutional question left open, relying primarily on principles of federalism and the equality of the sovereign States to strike down (by a majority of 5 to 4) the VRA’s coverage formula and preclearance requirements as unconstitutional. The Court argued that, in the nearly 50 years since the VRA was first upheld in *Katzenbach*, ‘things have changed dramatically’, pointing to increases in African American voter registration rates and turnout in covered jurisdictions. According to the Court, in contrast to the ‘exceptional conditions’ present in *Katzenbach*, current conditions did not justify applying the preclearance formula to only certain States and counties.⁷⁸

Shelby County has drawn significant criticism both for its substantive effect on minority representation in States that were formerly covered by the formula and for its reliance on the principle of equal sovereignty. Commentators have also argued that the Court invoked equal sovereignty as a guise for the (conservative) political motivations behind its decision – motivations which severely limited the efficacy of voting rights legislation.⁷⁹

As the U.S. Supreme Court has not decided on any new case concerning the principle of equal sovereignty since *Shelby County*, it remains unclear whether and how it should apply outside the voting rights context. Attempting to discover the origins and evolution of the principle in American law, Molitor asserted that threads of the idea of equal sovereignty can be seen at several points in American history and in varied areas of legal doctrine. According to Molitor,

[This] idea has alternately been known as the ‘doctrine of the equality of States’, the ‘equal footing doctrine’, and, most recently, ‘equal sovereignty’. Tidy analogies prove difficult due to the contested and evolving concept of federalism inherent in considerations of State sovereignty.⁸⁰

77 *Northwest Austin*, 557 U.S., 202–204.

78 See Legal Information Institute, 2024.

79 Molitor, 2014, p. 1839. See also Colby, 2016, p. 1093. Colby described *Shelby County* as ‘the superficially compelling case against the equal sovereignty principle’.

80 Molitor, 2014, p. 1839.

2.3.2. Germany

2.3.2.1. A Summary of the German Federal System

The federal system of the Federal Republic of Germany is rooted in the tradition of (con)federalism from the 19th and early 20th centuries, specifically during the era of the German Empire and the Weimar Republic. Although the Weimar Republic was divided into States, its system resembled a decentralised unitary state more than a fully developed federation. Following the rise of the National Socialist regime in 1933, the autonomy of the *Länder* was abolished. After World War II, Germany was divided into eastern and western regions by the Allies, who sought to prevent the country from becoming a power that could threaten peace again. In the western part, a federal system was established with newly created federal units that differed from the former German *Länder*, except for Bavaria and the Hanseatic cities. Conversely, the eastern part of the country saw the abolition of its federal structure, leading to the establishment of the German Democratic Republic as a unitary state. After the fall of the Berlin Wall, German reunification occurred relatively swiftly. The Unification Treaty established a new preamble to the Basic Law (*Grundgesetz*), which now lists 16 *Länder* instead of the previous 11.⁸¹

Federalism in Germany is enshrined in the 1949 *Grundgesetz*, which established the Federal Republic of Germany. This framework was designed to prevent the concentration of power that characterised earlier autocratic regimes by dividing authority between the federal government (*Bund*) and the 16 constituent States (*Länder*). It ensures cooperation, subsidiarity, and regional autonomy. Germany's federal system is recognised as one of the most sophisticated and historically evolved examples of federalism in the world.

The *Grundgesetz* affirms Germany's federal structure in Art. 20, declaring that the country is 'a democratic and social federal state'. The federal power is composed of several key entities: the Federal President (*Bundespräsident*), who serves as a largely ceremonial head of state; the Federal Assembly (*Bundestag*), the primary legislative body directly elected by the citizens; the Federal Council (*Bundesrat*), which represents the *Länder* at the federal level and ensures their participation in federal law-making; and the Federal Government (*Bundesregierung*), led by the Federal Chancellor (*Kanzler*), the Head of Government responsible for national policies and executive decisions. Additionally, the Federal Ministries execute policies and manage areas of federal competence.

Germany has a bicameral legislative system. Members of the *Bundestag* are elected through general, direct, free, equal, and secret elections, serving as representatives of the entire population. According to the provision which stipulates that details regarding the electoral system shall be regulated by federal law,⁸² a combined

⁸¹ Grad et al., 2004, p. 107.

⁸² *Grundgesetz*, Art. 38, para. 3.

electoral system (also referred to as a personalised proportional electoral system) was introduced, integrating the advantages of both majority and proportional systems. In this system, half of the deputies are elected directly in constituencies using a relative majority system, whilst the other half are elected based on State party lists according to a pure proportional system. The entire country is divided into as many constituencies as there are deputies in the *Bundestag*. For the election of the other half of the deputies (using the pure proportional system), the country functions as a single electoral unit, and the seats are distributed amongst the party lists using the Hare–Niemeyer coefficient.⁸³

Representing the interests of the *Länder* at the federal level, the *Bundesrat* does not consist of directly elected deputies but rather of members from the governments of all 16 *Länder*. The composition of the *Bundesrat* does not adhere to the principle of parity, which is typical for the second chamber in federal systems. Instead, it strikes a compromise between the principle of parity and the principle of pure proportional representation by taking population size into account. After the unification of the two German States, the number of members in the Federal Council increased from 45 to the current 68 members, with an equal number of alternates.⁸⁴ Each *Land* has at least three votes; those with more than 2 million inhabitants have four votes, those with more than 6 million inhabitants have five votes, and those with more than 7 million inhabitants have six votes. Each *Land* may appoint as many members as it has votes.⁸⁵

The *Bundesrat* has several powers, including the legislative initiative in the legislative process. The Constitution specifies which laws (*Zustimmungsgesetze*) require the *Bundesrat*'s consent – approximately half of all laws fall into this category, giving the *Bundesrat* an absolute veto over them. The *Bundesrat* can also exercise a decisive veto (*Einspruchrecht*) on other laws, in addition to providing consent for certain regulations issued by the federal government or federal ministers. Moreover, it participates in federal supervision of State administration and can request the recall of police units to prevent threats to the constitutional order in individual *Länder*. Furthermore, the *Bundesrat* is involved in the swearing-in of the Federal President and elects half of the judges of the Federal Constitutional Court (*Bundesverfassungsgericht*). It can also establish a special body for EU affairs, known as the 'European Chamber' (*Europakammer*), whose decisions hold the same validity as those of the *Bundesrat*.⁸⁶

Arts. 70–91 of the *Grundgesetz* outline the competencies of the federal government and the *Länder*, as well as the roles and mechanisms for federal and state interaction, ensuring a clear division of responsibilities. The federal government has exclusive jurisdiction over matters such as foreign policy, defence, currency, and

83 Grad et al., 2004, pp. 114–115.

84 Ibid.

85 *Grundgesetz*, Art. 51.

86 Grad et al., 2007, p. 116.

immigration (Arts. 70–73). The *Länder* hold powers in areas not explicitly assigned to the federal government, including police and cultural affairs. Both levels of government share responsibilities in areas such as environmental policy, education, and health. In cases of conflict, federal law supersedes state law (Art. 31).

The German judiciary is organised into a federal and a state level, with the federal judiciary addressing issues of national importance and the state judiciary focusing on regional matters. Whilst at the federal level the judiciary comprises several key courts, each with specific competencies, the Federal Constitutional Court (*Bundesverfassungsgericht*) is the highest authority on constitutional matters in Germany. It has the power to review laws and regulations for compliance with the *Grundgesetz*, adjudicate disputes between federal and state authorities, and protect fundamental rights. The Court's decisions are binding, and it plays a critical role in maintaining the constitutional order in general and federalism in particular.⁸⁷

The *Grundgesetz* stipulates that relations with foreign states are to be conducted by the Federation. However, before concluding any treaty that affects the specific circumstances of a *Land*, that *Land* must be consulted in a timely manner. The *Länder* may enter into treaties with foreign states, provided they have the consent of the Federal Government.⁸⁸

Whilst federal law takes precedence over *Land* law,⁸⁹ the principle of subsidiarity embedded in German federalism ensures that decisions are made at the most local level possible. This principle preserves *Länder* autonomy and control over local and regional matters whilst allowing for federal intervention in broader issues.

Germany employs a robust model of public finances and fiscal federalism to address regional disparities. The financial equalisation system (*Finanzausgleich*) redistributes resources between wealthier and poorer states, promoting economic equity. The *Länder* also collect taxes, such as their share of income and corporate taxes, in addition to federal levies.⁹⁰

German federalism is described by German scholars as 'dual federalism' in the sense that the federal level is responsible for passing most legislation and the *Länder* for implementing this legislation on their own responsibility, usually with only legal supervision by the Federation. It is also sometimes referred to as 'functional federalism', meaning that the legislative function is largely a national responsibility and the administrative function largely a matter for the *Länder*. However, unlike competitive federalism models, German federalism is also referred to as 'cooperative federalism' and 'participatory federalism', the former characterised by close collaboration between the federal government and the *Länder* to address shared responsibilities

87 *Grundgesetz*, Arts. 92–104.

88 *Ibid.*, Art. 32, para. 3.

89 *Ibid.*, Art. 31.

90 *Ibid.*, Arts. 104a–115.

and achieve national policy goals, and the latter by the *Länder's* participation in federal legislation⁹¹

2.3.2.2. The Principle of Equality Amongst *Länder*

The principle of equality amongst the *Länder* is a cornerstone of German federalism, ensuring that all constituent states enjoy equal rights and status within the federal framework. Codified in the *Grundgesetz*, this principle seeks to balance regional autonomy with national cohesion, prevent dominance by larger states, and address disparities in economic and political influence. Despite significant variations in size, population, and economic capacity amongst the 16 *Länder*, German federalism strives to guarantee equal standing for each state within the constitutional and political order. By emphasising the equality of all *Länder*, the federal system in Germany reflects a commitment to both unity and diversity.

The *Grundgesetz* enshrines the principle of equality amongst *Länder* through Art. 20 by establishing Germany as a democratic and federal state, requiring equal treatment of its constituent units. Based on this basic provision, it introduces several mechanisms for supporting equality amongst *Länder*.

One such mechanism is equal representation in federal decision-making bodies. A platform for *Länder* to influence federal legislation is provided by the composition and weighted voting in the *Bundesrat*. Although vote distribution varies (e.g. the *Länder* have different vote counts based on population), all *Länder*, irrespective of size or economic strength, have an institutional role in shaping national policies and participate in decisions affecting their jurisdiction.⁹²

The principle of (proportional) equality of federal units is also considered in the composition of the Federal Convention, the body responsible for the election of the Federal President. The Federal Convention comprises the Members of the *Bundestag* and an equal number of members elected by the parliamentary assemblies of the *Länder* on the basis of proportional representation.⁹³

Another mechanism implementing the principle of equality amongst the *Länder* is Fiscal Equalisation (*Finanzausgleich*) and Equalisation of Burdens. To address economic disparities, Germany employs robust financial equalisation tools including Revenue Sharing and Redistribution Grants. Taxes, including income and corporate taxes, are distributed amongst federal and state levels, with mechanisms ensuring a fair allocation to all *Länder*. *Länder* with below-average revenue capacity receive financial transfers to ensure their ability to provide public services at comparable levels. Additionally, laws implementing the equalisation of burdens may, with the

91 See Gunlicks, 2003, pp. 385–387.

92 *Grundgesetz*, Art. 51.

93 *Ibid.*, Art. 54, para. 3.

consent of the *Bundesrat*, provide that, with respect to equalisation payments, they shall be executed partly by the Federation and partly by the *Länder*⁹⁴

By utilising *Finanzausgleich* and Equalisation of Burdens, wealthier *Länder* contribute to a central pool that supports less affluent states, promoting economic equity and equal access to resources.

In practice, the German federal system faces numerous challenges when it comes to implementing equality amongst federal units. Population-based representation in the *Bundesrat* is occasionally perceived by smaller *Länder* as a limitation on their influence, as the weighted voting system gives more populous states a greater voice.⁹⁵ Similarly, despite financial equalisation, economic gaps and infrastructural disparities persist between *Länder*, particularly between the western and eastern regions. Larger, wealthier states such as Bavaria and Baden-Württemberg occasionally express concerns about the financial burden of redistribution.⁹⁶ Indeed, balancing autonomy and uniformity has proved to be a major challenge, since the principle of equality sometimes conflicts with the need for regional autonomy. *Länder* with stronger economies and infrastructure, advanced digitalisation, or unique cultural identities may resist federal policies aimed at uniformity, creating tensions within the system. Federal initiatives aim to bridge these gaps, but implementation varies across states. As such, given that the principle of equality often requires extensive negotiation between *Länder* and the federal government, disputes over fiscal policies, infrastructure projects, and EU funding allocations underscore the complexity of maintaining balance.⁹⁷ In that regard, the Federal Constitutional Court has played a crucial role in interpreting and upholding the principle of equality. Landmark cases have clarified the limits of financial redistribution and the balance of powers between federal and state governments.

The principle of equality amongst *Länder* is fundamental to the stability and fairness of the German federal system. Through constitutional provisions, institutional representation, and fiscal mechanisms, Germany ensures that all *Länder*, regardless of size or economic capacity, have an equal voice in governance. However, addressing challenges such as economic disparities, demographic shifts, and the

94 Ibid., Art. 106, para. 3; Art. 107, para. 2; and Art. 120a. ‘The Federation and the *Länder* shall share equally the revenues from income taxes and corporation taxes [...] The Federation and the *Länder* shall have an equal claim against current revenues to cover their necessary expenditures [...] A federal law requiring the consent of the *Bundesrat* shall ensure a reasonable equalisation of the disparate financial capacities of the *Länder*, with due regard for the financial capacities and needs of municipalities (associations of municipalities)’.

95 Benz, 2013, pp. 70–90.

96 Reforms in 2017 adjusted the *Finanzausgleich* system to simplify redistribution and reduce the burden on wealthier states. These reforms emphasise direct federal funding to weaker *Länder*, by-passing inter-state transfers. See also Gunlicks, 2003, pp. 168–169.

97 See Scharpf, 1988, pp. 265–271. The EU integration presents both opportunities and challenges for equality amongst *Länder*. Whilst EU cohesion funds support underdeveloped regions, compliance with EU directives sometimes limits *Länder* autonomy, raising questions about their equal status.

demands of EU integration makes the ongoing adaptation of this principle a critical task for Germany's federal institutions.

2.3.3. *Switzerland*

2.3.3.1. An Outline of the Swiss Federal System

Swiss federalism is unique in many ways. Its roots go back to the 13th century, when three proto-cantons – Uri, Schwyz, and Unterwalden – formed a confederation. In the 16th century, the union grew to 13 cantons, which were part of the German Confederation for a certain period. Part of Swiss history is also connected with France, as at the end of the 18th century Napoleon occupied Switzerland and proclaimed the Helvetic Republic (*Helvetische Republik*). The constitution of this state formation introduced a radical change in the Swiss state system, replacing the (con) federal one with a unitary system based on the French model. With the fall of Napoleon, Switzerland got rid of the French protectorate and re-established a federal union between the cantons, which lasted until 1848, when a historical turning point occurred in Switzerland. Instead of the previous confederal union of sovereign cantons, the concept of a federation was established, and the first Swiss Federal Constitution (*Bundesverfassung*) was adopted. In 1874, the second Swiss Federal Constitution was enacted, which was amended through a process of total revision that took several years to complete. The new text of the Federal Constitution was adopted in a referendum in 1999.⁹⁸

The official name of Switzerland is expressed differently in the Federal Constitution in each of the three official languages (German, French, and Italian). The official abbreviation of Switzerland, 'CH', is derived from the preserved old name '*Confederatio Helvetica*', maintaining continuity from the period when Switzerland was a union of cantons (i.e. a confederation). The designation 'confederation' no longer corresponds to the actual situation today, as Switzerland is not a confederation (union of states) but a federation (federal state), which also stems from the German name of the country '*Eidgenossenschaft*' – the latter commonly replaced by the term *Bund* (federation). The German name '*Schweizerische Eidgenossenschaft*' can thus be meaningfully translated as the Swiss Federation.⁹⁹

The new text of the 1999 Federal Constitution,¹⁰⁰ which entered into force in January 2000, was based on the 1874 Federal Constitution, which had been amended more than 130 times by 1994, and approximately the same number of proposed amendments were approved by citizens in constitutional referendums.

The principle of the federal state is one of the four fundamental principles highlighted by the Federal Constitution (in addition to the principle of the rule of law,

98 Grad et al., 2004, pp. 213–214.

99 Grad et al., 2004, p. 215.

100 Federal Constitution of 18 April 1999 of the Swiss Confederation.

the principle of the democratic state and direct democracy, and the principle of the welfare state). The principle of the federal state is expressed in the regulation of mutual relations between the Federation and the cantons through the following principles and instruments: (a) the principle of the autonomy (sovereignty) of the cantons, unless limited by the Federal Constitution; (b) the principle of the presumption of jurisdiction in favour of the cantons (Art. 3); (c) the guarantee of the autonomy of the cantons by the Federation (Art. 47); (d) the cooperation of the cantons in the exercise of the Federation's competencies (Arts. 45 and 46); (e) the principle of the primacy of federal law over cantonal law (Art. 49); and (f) the bicameral structure of the federal parliament, where the second chamber (*Nationalrat*) represents the cantons (Art. 149).

Art. 1 of the Federal Constitution defines Switzerland as a confederation composed of the united peoples of 26 sovereign cantons and half-cantons. The federal structure of the state is detailed in Part Three (Arts. 42–135), which constitutes nearly half of the Constitution. These provisions establish Switzerland's three-tiered system of government, comprising the Federation, the cantons, and the municipalities. They delineate the competencies of the Federation and the cantons and define the mutual relations between them. The Federation and the cantons are mandated to cooperate and support one another in carrying out their responsibilities. The Federation is responsible for tasks explicitly assigned to it by the Federal Constitution, as well as those requiring uniform regulation across the country. The Constitution also stipulates that the cantons must participate in federal decision-making, particularly in the legislative process. Cantonal autonomy is further protected, and the independence of municipalities is guaranteed in accordance with cantonal law. In cases of conflict between federal and cantonal law, Art. 49 of the Constitution establishes that federal law takes precedence.

Part Five (Arts. 143–191) of the Federal Constitution defines the organs of the Federation: the Federal Assembly (*Bundesversammlung*); the Federal Government, termed the Federal Council (*Bundesrat*); the Federal President (*Bundespräsident*); and the Federal Court (*Bundesgericht*).

The Federal Assembly (parliament) is the highest authority at the federal level in Switzerland. As a federation, Switzerland has a bicameral legislature comprising the National Council (*Nationalrat*) and the Council of States (*Ständerat*). This bicameral structure aligns with the traditional model of federations: the lower house represents the population at large, whilst the upper house represents the cantons as federal units. Both houses hold equal power, reflecting a symmetrical bicameral model.¹⁰¹

Since 1918, elections to the Federal Assembly have followed a proportional electoral system. Unlike other systems that may create separate electoral districts, each canton and half-canton in Switzerland serves as its own electoral district, resulting in 26 electoral districts across the country. The number of deputies that each canton sends to the National Council depends on population, with the Federal Constitution

101 Grad et al., 2004, pp. 226–227.

guaranteeing each canton at least one parliamentary mandate. Under Switzerland's proportional electoral system, mandates are distributed solely at the cantonal level, without national-level equalisation of votes, which contrasts with the German model. The Hagenbach-Bischoff method is used for the distribution of parliamentary mandates. However, the proportional system is not fully implemented across the country; in five cantons with small populations that are entitled to only one parliamentary mandate, a system of relative majority is instead applied.¹⁰²

The cantons are represented in the Council of States, with each canton electing its deputies and independently determining the method of election, as permitted by the principle of parity outlined in the Constitution. Each canton elects two deputies, whilst the three cantons divided into half-cantons each elect one deputy. As both chambers of the Federal Assembly hold equal power, decisions must be adopted in identical terms by both the National Council and the Council of States. The two chambers convene as a single Federal Assembly only for specific matters expressly defined in the Constitution. Deputies, along with members of the Federal Council, enjoy parliamentary immunity. This protection ensures they cannot be held legally accountable for opinions expressed during sessions of the assemblies or their committees.¹⁰³

Given that the two houses of the Federal Assembly hold equal powers, a majority of the total Swiss population can effectively influence, and even veto, national decisions. Any federal act that results in or amounts to a constitutional amendment must be ratified through a mandatory popular referendum. To pass, this process requires both a majority of the voting electorate and the approval of a majority of the cantons and half-cantons – accounting for a total of 23 cantonal votes. Through direct participation in federal politics, the cantons may assume functions typically reserved for the national parliament or its individual members. Cantonal governments possess the right of initiative, enabling them to initiate the legislative process at the highest constitutional level. They also hold the right of referendum, granting them the ability to submit a generally binding act of parliament to a popular vote. Whilst the right of initiative can be exercised by any individual canton, the right of referendum requires the cooperation of at least eight cantons. This participatory role elevates the Swiss cantons beyond the status of mere regional authorities. Instead, they serve as influential partners in shaping national decision-making, ensuring their voices are integral to the federal system.¹⁰⁴

The Federal Council is the highest governing and executive body of the Swiss Federation. It comprises seven members, who are, in principle, responsible for the seven departments. The members of the Federal Council are elected by the Federal Assembly after each full renewal of the National Council. Care shall be taken to

102 Ibid.

103 Grad et al., 2004, pp. 227–228.

104 Grad et al., 2004, pp. 223–226.

ensure that the various geographical and language regions are adequately represented in the Federal Council.¹⁰⁵

The Federal President and their deputy are elected by the Federal Assembly from amongst the members of the Federal Council for a one-year term of office. The President chairs the Federal Council.¹⁰⁶ Unlike in other countries, Switzerland does not have a separately elected head of state. Instead, this role is fulfilled by one of the members of the Federal Council – a unique feature of the Swiss political system.

The judiciary in Switzerland is organised at federal and cantonal levels, but the Federation has priority in determining the foundations for the establishment of courts (determining the position of the Federal Court and the basic procedural principles for the exercise of rights). According to the Constitution, the Federal Court is also entrusted with the function of constitutional justice.¹⁰⁷ Federal law determines the jurisdiction of the Federal Court in civil, criminal, and administrative matters. The judges of the Federal Court are elected by the Federal Assembly. In nominations and elections, representation of all three official languages must be ensured.

A canton or half-canton is a member of the Federation and, as such, a self-governing entity fully equipped with a regional government, administrative apparatus, parliament, and judiciary. Art. 3 of the Constitution sets out the guiding principle for defining the balance between cantonal sovereignty and central powers: the cantons are sovereign insofar as this sovereignty is not limited by the Federal Constitution, and they exercise all powers not conferred upon the Confederation. Following this principle, the federal powers include defence, foreign affairs, foreign economic affairs and customs, domestic economic affairs in certain fields such as labour relations, assistance to regional development, assistance to endangered trades or sectors, civil and criminal legislation, the major infrastructure of communications, social security, and general control over nuclear energy. The competencies remaining with the cantons are less weighty, consisting mainly of education, health, culture, the administration of justice, police, utilities, and environment. There are also competencies, such as town planning, local traffic, recreation, and the like, that fall under communal authority, and these are as jealously guarded against cantonal encroachments as the cantons defend their rights *vis-à-vis* the Confederation. However, as Schweitzer pointed out, it is firmly established in the Swiss system that – no matter how extensive the powers conferred upon the Confederation – execution of these powers

105 Federal Constitution, Art. 175.

106 Federal Constitution, Art. 176.

107 Federal Constitution, Art. 189.

is generally left to the cantons.¹⁰⁸ Similarly, *Füglister* and *Wasserfallen* noted that the Swiss constitutional setup puts the cantons in an overall strong position: apart from the subsidiarity principle, the federal government's power is even restricted in some policy areas that fall within the federal sphere of influence, as the cantons implement many federal policies.¹⁰⁹

2.3.3.2. The Principle of Equality Amongst Cantons

Switzerland's federal system is defined by its decentralisation, cultural diversity, and commitment to equality amongst its 26 cantons. This equality is essential for maintaining unity in a nation with significant linguistic, cultural, and economic diversity. Whilst the Federal Constitution aims to promote the greatest possible equality of opportunity amongst citizens and enshrines the principle of equality before the law,¹¹⁰ it does not explicitly reference the principle of equality amongst cantons. Nevertheless, the imperative of equality amongst the cantons is implied in a series of provisions of the Federal Constitution. Key provisions include Art. 1, declaring Switzerland a confederation of 26 sovereign cantons; Art. 2, ensuring the greatest possible equality of opportunity amongst its citizens; Art. 3, ensuring the autonomy of cantons by reserving all powers to the cantons except those explicitly delegated to the federal government; Art. 45, guaranteeing the cantons' right to participate in federal decision-making, regardless of size or population; and Art. 47, guaranteeing respect for the autonomy of the cantons. Based on these key provisions, the principle of equality amongst cantons is implemented through representation of cantons in the Federal Assembly, referenda and direct democracy, as well as through financial equalisation mechanisms.

Each canton, regardless of population or size, sends two representatives to the Council of States (*Ständerat*), with half-cantons represented by one member. In contrast, representation in the National Council (*Nationalrat*) is based on population size, providing a counterbalance to the equal representation (e.g. formal equality) in the Council of States. Together, the chambers uphold the principle of equality whilst reflecting the demographic realities of the nation.¹¹¹

Under the previous constitution, only one member from each canton could be elected to the Federal Council. However, this provision was removed in the 1999

108 Schweitzer, 1991, p. 164. For instance, the cantons are sovereign tax masters as far as direct taxation is concerned. The federal government only has the tax powers allotted to it from time to time, in periodic amendments to the constitution, besides the competence for indirect taxation and customs revenues. With the latter having been drastically reduced in recent years owing to GATT, European free trade, and preferences for developing countries, the federal government finds itself in a considerable financial squeeze, and there is little readiness on the part of the population to allot new tax sources to the federation as their primarily cantonal outlook prevents, at times, the electorate and the politicians from fully comprehending the needs of a central government.

109 Füglister and Wasserfallen, 2014, p. 418.

110 Federal Constitution, Art. 8.

111 Federal Constitution, Arts. 149–150.

Constitution, which instead emphasises ensuring that Switzerland's various geographical and linguistic regions are adequately represented in the Federal Council.¹¹²

Another safeguard for cantonal equality is the double-majority requirement for constitutional amendments. Pursuant to the Federal Constitution, in addition to the majority of the national electorate (*Volksmehr*), the majority of the cantons (*Ständemehr*) must also approve a proposal for a constitutional amendment.¹¹³ This system ensures that smaller cantons cannot be overridden by the preferences of larger ones.

Lastly, the Swiss Federal Constitution incorporates cantonal organisational autonomy and the duty of the federal authorities to contribute towards ensuring that all cantons have sufficient financial resources required to fulfil their tasks.¹¹⁴ Additionally, the Federal Constitution establishes a fiscal equalisation system to address economic disparities amongst cantons, ensuring all cantons can fulfil their responsibilities and provide comparable public services. This system includes the redistribution of federal and cantonal revenues to support less-affluent cantons (resource equalisation) and targeted transfers to help cantons address specific challenges, such as geographic disadvantages (cost compensation).¹¹⁵

The implementation of the principle of equality amongst cantons faces many challenges in practice. The principle of canton equality must be balanced with the cantons' autonomy. Whilst all cantons are legally equal, differences in size, population, and resources can lead to disparities in their practical influence and capacities.¹¹⁶ The same applies to economic disparities: despite fiscal equalisation, economic differences between cantons persist. Wealthier cantons sometimes express concerns over the financial burdens of redistribution. Furthermore, the equality principle ensures that cantons representing minority linguistic or cultural groups (e.g. Ticino, Grisons) have a voice equal to those of majority-language regions, but maintaining effective representation can be complex. Finally, Switzerland's relationship with the EU challenges the traditional dynamics of canton equality. As cantons must collaborate more closely on transnational issues, these can test their autonomy and equality.¹¹⁷

In conclusion, the principle of equality amongst cantons is a cornerstone of Swiss federalism, ensuring that all cantons, regardless of their size or economic power, retain equal standing in governance. Through robust constitutional safeguards, institutional mechanisms, and fiscal policies, Switzerland has maintained this equality whilst accommodating the diversity of its multilingual, multicultural society.

112 Federal Constitution, Art. 175.

113 Federal Constitution, Art. 195.

114 Federal Constitution, Art. 75.

115 Federal Constitution, Art. 135.

116 See Vatter, 2018.

117 Schweitzer, 1991, pp. 161–169. See also Linder and Mueller, 2021, pp. 265–270.

2.3.4. *Belgium*

2.3.4.1. The Belgian Federal System – An Outline

Belgium, the host country of the EU, is characterised by a unique and intricate system of federal governance. Its path to federalism was driven by its deep-seated linguistic and regional divides. Established as a unitary state in 1830, Belgium's governance structure initially centralised power in Brussels. However, tensions between the Dutch-speaking Flemish population in the north and the French-speaking Walloons in the south led to a series of constitutional reforms. Initiated with the 1970 and 1980 state reforms, the federalisation process culminated in the 1993 revision of the Belgian Constitution, which officially transformed Belgium into a federal state.¹¹⁸ As opposed to being the product of a coming-together of independent entities, its rationale was and remains one of holding together a united Belgium. There were, in all, six state reforms, the last carried out in 2014.¹¹⁹

The 1993 constitutional reform solidified Belgium's unique federal system, characterised by a dual division of authority: between the federal government and three regions, and between the federal government and three linguistic communities. This bifurcation creates a complex but balanced distribution of power.¹²⁰ On the one hand, the Dutch-speaking Flemish Region (Flanders), the French-speaking Walloon Region (Wallonia), and the bilingual Brussels-Capital Region exercise authority over territorially defined matters, such as urban planning, transport, and economic policy. On the other hand, using language rather than territory as a criterion, Belgium is divided into three linguistic communities: the Flemish Community (bringing together Dutch-speakers who live in Flanders and in Brussels), the French Community (assembling French-speakers who live in Wallonia and in Brussels), and a tiny German-speaking Community in the east of the country. These communities have jurisdiction over person-related matters, such as education, culture, and health.¹²¹

118 Constitution, Art. 1. According to Art. 1, 'Belgium is a federal State composed of Communities and Regions'.

119 Wouters and Andriene-Moylan, 2020–2021, pp. 755–756.

120 The initial version of Belgian-style dual federalism (created with the 1970 and 1980 state reforms) as based on the principle of exclusive powers and a complete juxtaposition of the federal government, the regions, and the communities. These foundations were aimed at protecting subnational autonomy by excluding further intergovernmental cooperation and federal oversight and avoiding further interaction between the political representatives of the different language communities. Stefan Sottiaux argued that the paradigm of dual federalism has faced growing pressure due to the emergence of complex intergovernmental policy challenges, including terrorism, pandemics, climate change, and migration. Consequently, Belgium, like other originally dual multi-tiered systems, has recognised that a strictly exclusive distribution of powers is impractical. To address this, constitutional and special courts have developed several constraining doctrines – such as the principle of proportionality, federal loyalty, and the obligations of cooperative federalism – to manage the increasing interdependence of federal and state policies. In summary, Belgian federal practice has introduced significant nuances to the principles of dual federalism. See Reybrouck, 2022.

121 Swenden, 2003, p. 6.

The dual structure means that some citizens fall under the jurisdiction of both a region and a community, adding to the system's complexity. Additionally, the Brussels-Capital Region, being bilingual, interacts with both the Flemish and French Communities. Each region and each community has its own parliament and government and is entrusted with constitutionally assigned powers. In practice, there is a significant overlap between the concept of a Region and a Community. For example, the Flemish Region and Flemish Community merged their institutions, creating a single parliament and government. Contrastingly, separate Regional and Community parliaments and governments continue to exist in the French Community and Walloon Region, although the French Community parliament is entirely composed of MPs who have been directly elected to the Brussels and Walloon regional parliaments, respectively.¹²²

According to Sweden, the incomplete congruence between Regional and Community borders (i.e. Brussels is a Region but not a Community, and the German speakers have been recognised as a Community but not as a Region) has led to the frequently made assumption that Belgium is a major example of asymmetric federalism. However, unlike in Spain or the United Kingdom, the competencies assigned to each of the Regions or each of the Communities are almost identical. For example, although the German-speaking Community is almost 100 times smaller than the Flemish Community, both Communities share similar powers in educational or cultural policies.¹²³

The competencies and responsibilities of the Federation and the Regions and Communities are specified by the Constitution,¹²⁴ and, to a much larger extent, by federal laws. Whilst defence, justice, internal security, taxation policy, and social security (including, for instance, unemployment insurance, pensions, and the bulk of health care) are federal competencies, the competencies assigned to the regional and community level are very detailed and extensive in scope.

In addition to the powers within the Communities' sphere of competence, which are determined by the Constitution (cultural issues, some parts of education, and the use of language), the Communities also have competencies assigned to them by federal laws adopted with a 'special majority' (arts, youth policy, tourism, preventive health care, and some parts of welfare policy). The main regional competence listed by these laws is regional economic development, which includes employment policy, industrial restructuring, environment, nature conservation and rural development, housing, land-use planning and urban renewal, water resources and sewage, energy policy (except for national infrastructure and nuclear energy), road building, waterways, regional airports and public local transport, local and provincial government, agriculture, and external trade. Where no constitutional article listing the powers of the federal government has been approved, the residual power, that is the

122 Swenden, 2003, p. 6.

123 Swenden, 2003, p. 7. See also Swenden, 2002; Agranoff, 1999; Bogdanor, 1999.

124 Constitution, Chapter 2 and Chapter 3, Sec. 2, Sub-Secs. 1, 2, and 3.

powers or competencies which have not been assigned to either level of government, remain in federal hands.¹²⁵

There are several features which distinguish Belgian federalism from federalism in most other federal states. For example, Belgian federal and regional law stand on equal footing, both being subordinate only to the Constitution, except for the power of the Regions to raise income taxes. However, the autonomy of the Regions and Communities does not match their legislative and administrative responsibilities: the Regions have some autonomous tax capacity, but these taxes generate only around 10 to 15% of what they spend.¹²⁶

A second feature that distinguishes the Belgian federal arrangement from most other federal systems lies in the fact that, in Belgium, federal laws are implemented by federal departments or agencies, and Regional or Community laws are implemented by regional departments or agencies. Thus, the extensive legislative autonomy of the Regions and Communities is paralleled by autonomous Regional and Community administrations.¹²⁷

Additionally, in contrast to other federal EU Member States, Belgium is marked by the absence of federation-wide political parties: national policymaking operates under consociational rules, which prescribe the co-operation of political parties representing a majority of the electorate within the Dutch- and French-speaking communities. Political parties representing different linguistic groups must collaborate to form governments at both the federal and regional levels.¹²⁸

Belgium's federal government is composed of the Parliament, the Council of Ministers, and the Monarch. The Belgian Federal Parliament is bicameral, comprising two chambers. The House of Representatives (*Chambre des Représentants/Kamer van Volksvertegenwoordigers*), with 150 members, is directly elected through proportional representation in 11 electoral districts, corresponding to Belgium's Dutch-speaking and French-speaking provinces and the Brussels-Capital Region. Seats are distributed based on the population size of each district. The House holds primary legislative authority and exercises oversight over the government.¹²⁹ The Senate (*Sénat/Senaat*), comprising 60 senators, is not directly elected. Fifty senators are appointed by the parliaments of the regions and linguistic communities,¹³⁰ whilst 10 co-opted senators are selected by their peers based on election results. The Senate serves as a chamber of reflection and coordination between the federated entities. Its primary role is to

125 Swenden, 2003, p. 8.

126 Swenden, 2003, p. 9.

127 Ibid.

128 Ibid.

129 Constitution, Chapter 1, Sec. 1, Arts. 61–66.

130 29 Flemish Parliament appointees, 10 French-speaking Community Parliament appointees, eight Walloon Regional Parliament appointees, two from the French-speaking group of the Brussels-Capital Region Parliament, and one from the German-speaking Community Parliament.

address laws concerning the constitutional structure and the relationships between the federal government and the regions and communities.¹³¹

The federal government comprises the Council of Ministers, headed by the Prime Minister (PM). It consists of up to 15 ministers (including the PM) who are appointed by the King based on the coalition agreement formed after parliamentary elections. They are responsible for various federal ministries, such as finance, justice, and defence. The Council must include an equal number of Dutch-speaking (Flemish) and French-speaking (Vallon) members (excluding the PM). This parity reflects Belgium's linguistic and cultural diversity. Ministers cannot be members of the Federal Parliament. Members of the executive branch also include State Secretaries, who assist ministers in specific areas but do not have voting rights in the Council.¹³²

The King of Belgium is the ceremonial head of state and part of the executive branch. The King formally appoints the Prime Minister and ministers and signs laws, which require countersignature by a minister to take effect. The King's role is largely symbolic, with powers exercised on the advice of the government.¹³³

Belgium's federalism is underpinned by a commitment to consensus and cooperation. Whilst power-sharing mechanisms – such as proportional representation and the requirement for linguistic parity in the federal government (e.g. in the Council of Ministers) – ensure inclusivity, special bodies, such as Consultation Committees, facilitate dialogue between federal, regional, and community authorities to resolve disputes and coordinate policies. However, certain constitutional changes or major decisions require a two-thirds majority in parliament and a majority within each linguistic group. These and other mechanisms can also lead to gridlock, particularly when competing interests arise between regions and communities. Despite its challenges, the Belgian federal model has enabled peaceful coexistence amongst diverse linguistic groups by providing each with significant autonomy.

2.3.4.2. Belgian Federal System and the Principle of Equality Amongst Regions and Communities

As a unique model of governance, Belgium's federal system evolved in response to linguistic, cultural, and political complexities, transforming Belgium into a highly decentralised state that seeks to balance regional autonomy with national unity. Although the Constitution does not explicitly reference the principle of equality amongst Regions and Communities, the imperative to ensure equality amongst them is manifested in several ways throughout Belgium's constitutional framework, including through: (a) legislative autonomy, (b) institutional parity, (c) consensus-based decision-making, and (d) fiscal equalisation.

131 Constitution, Chapter 1, Sec. 1, Arts. 67–73.

132 Constitution, Chapter 3, Sec. 2, Arts. 96–104.

133 Constitution, Arts. 85–95.

Whilst each region and community has its own parliament and government, enabling them to legislate independently in their areas of competence, federal decision-making often requires broad agreement, fostering cooperation amongst Regions and Communities. The use of special majority laws, which require approval from both linguistic groups, underscores this commitment.

According to the Constitution, in the composition of the House of Representatives, Regions and Communities do not play a determinant role, with one exception: the law determines special rules with a view to protecting the legitimate interests of French- and Dutch-speaking people in the former province of Brabant.¹³⁴

Regarding the composition of the Senate, amongst its 60 senators, 29 are Flemish Parliament appointees (plus six senators appointed by them), 10 are French-speaking Community Parliament appointees, eight are Walloon Regional Parliament appointees, two are senators from the French-speaking group of the Brussels-Capital Region Parliament, and one is a senator from the German-speaking Community Parliament.¹³⁵

As for the composition of the Council of Ministers, representation from both major linguistic groups is ensured. For example, the Council of Ministers must have an equal number of Dutch- and French-speaking members.¹³⁶

Another mechanism for upholding equality amongst federal units is fiscal transfers, aimed at reducing economic disparities between regions. This instrument supports economically weaker regions, ensuring equitable access to resources and public services.

Generally, Belgium's federalism is underpinned by a commitment to consensus and cooperation. Power-sharing mechanisms, such as proportional representation in the Senate and the requirement for linguistic parity in the federal government (e.g. the Council of Ministers), ensure inclusivity and equality amongst regions and communities. However, these mechanisms can also delay decision-making and lead to gridlock, particularly when competing interests arise between regions and communities.¹³⁷ Moreover, the divergent political landscapes and cultural identities sometimes hinder consensus, with nationalist movements advocating for greater autonomy or even secession. As a bilingual and multicultural city, Brussels poses additional governance challenges, requiring special arrangements to balance regional and linguistic interests. Another challenge the Belgian federal system faces is the significant economic differences that exist between Flanders, Wallonia, and Brussels.

134 Constitution, Chapter 1, Sec. 1, Art. 63, para. 4.

135 Constitution, Art. 67.

136 Constitution, Art. 99.

137 For example, after a transition period which ended in 1999, federal block grants were redistributed amongst the Regions and Communities in proportion to their population figures. If the destination principle (or principle of 'juste retour') were observed, the Flemish Region would stand to benefit more, whilst the Brussels Capital Region, and Wallonia in particular, would lose some of their resources. All in all, the size of interregional transfers which can be attributed to the method of allocating federal block grants is relatively limited. See Swenden, 2003, p. 9.

Flanders boasts a robust economy with high levels of industrialisation and exports, whilst Wallonia faces challenges related to deindustrialisation and unemployment. These disparities frequently lead to debates over fiscal transfers and resource allocation in view of equality amongst regions and communities.

All in all, the Belgian federal system is a testament to the country's commitment to balancing diversity with unity. As a model of federalism, Belgium demonstrates both the potential and complexity of managing diversity in a deeply divided society.

2.3.5. *Canada*

2.3.5.1. A Summary of the Canadian Federal System

Established in 1867 in the British North America Act, which was renamed the Constitution Act, federalism in Canada is a reflection of its unique geography and history. It is the third oldest federation in the world today, after the U.S. and Switzerland, and second only to Russia in territorial size. Originally a union of four provinces, Canada is nowadays composed of 10 provinces and three territories. Over a century and a half, its federal structure has shaped and protected fundamental aspects of contemporary Canadian society, such as bilingualism, bijuralism, multiculturalism, and a respect for human rights.¹³⁸

The Constitution Act of 1867 created the Dominion of Canada by uniting the provinces, provided the framework for the admission of other parts of British North America, and established the division of legislative powers between the Federal Parliament and the provincial legislatures. The Constitution established a federation that was highly centralised. The federal government was granted more exclusive powers than were held in the already-existing federations of the U.S. and Switzerland. In contrast to the Swiss and the U.S. systems, residual powers were also given to the federal government through its general power over 'peace, order and good government'.¹³⁹ Nowadays, the federal system in Canada reconciles a desire for overall unity with a desire for regional autonomy. Political power is shared by the federal government on the one hand and the provincial governments on the other.

In 1982, the Charter of Rights and Freedoms was adopted as part of the Constitution Act. In Canada, constitutional law contains 25 constitutional texts that make up Canada's Constitution. Additionally, a large part of Canada's Constitution comprises unwritten principles and rules (e.g. constitutional conventions), which are considered rules of political behaviour that are regarded by political actors as binding but are not enforced directly by the courts. For example, the assumption that a Cabinet Minister will hold a seat in the House of Commons, and the practice that the

¹³⁸ See Richard, 2005, p. 5. Whilst, similar to Switzerland, Canadians often use the term 'confederation' to refer to the union established in 1867, the term actually describes the process of uniting the provinces into a federation, rather than the creation of a confederal structure.

¹³⁹ Swenden, 2003, pp. 11–12.

defeat of a major piece of government legislation is also a defeat of the government, are constitutional conventions and are not specified in the written Constitution or in any other document.¹⁴⁰

In Canada, the federal legislative branch is based on the principle of parliamentary democracy and is responsible for making laws, debating national issues, and overseeing government administration. The federal legislature is bicameral, composed of the directly elected House of Commons and the Senate, whose members are appointed rather than elected. The Canadian bicameralism is asymmetric, as the Senate is dominated by the House of Commons.

The House consists of 338 MPs, each representing one electoral district (or riding) across Canada (their number may change based on population shifts).¹⁴¹ These MPs are elected using a first-past-the-post system during federal elections, which are typically held every four years. Provinces and territories are divided into electoral districts. The number of seats in the House of Commons is periodically adjusted to reflect population changes, ensuring effective representation for all provinces and territories. MPs are typically members of political parties, although independents can also be elected. The party with the most seats usually forms the government. If it holds more than half the seats, it forms a majority government; otherwise, it governs as a minority.¹⁴²

The Senate comprises 105 Senators and represents regions to ensure balance in national decision-making. Senators are appointed by the Governor General on the advice of the Prime Minister. Rather than each province having an equal number of Senators (like in the U.S. Senate), the Canadian Constitution specifies the number of Senators allocated to each province.¹⁴³

Executive functions in Canada are divided between the Governor General, who serves as the ceremonial Head of State and formal executive, and the Prime Minister and their cabinet, who function as the political executive. A distinct body within the executive branch is the Privy Council, which provides advice to the government. As is typical in parliamentary systems, real executive power resides with the Prime Minister and their cabinet. It is a well-established convention that the Governor General acts only on the advice of the government. By tradition, the Prime Minister and other Ministers are members of either the House of Commons or the Senate. The party holding a majority of seats in the legislature also controls the executive branch. The cabinet is collectively accountable to the legislature for its actions and remains in office only as long as it retains the confidence and majority support of the legislature.¹⁴⁴

140 Swenden, 2003, pp. 12–13.

141 As of May 2024, the number of members of the House of Commons was increased to 343.

142 Constitution Act 1867, Point 4, Art. 37.

143 Constitution Act 1867, Arts. 21–36. The Senate usually comprises 105 members.

144 Ibid.

The government of the Canadian provinces mirrors that of the national government. The executive is split between a Premier and a Lieutenant-Governor, with one important exception: the provinces have all abolished their Senates and are no longer bicameral.¹⁴⁵

The Supreme Court of Canada is the highest court in the country, addressing cases of national importance, constitutional issues, and appeals from provincial, territorial, and federal courts. It comprises nine justices, who are appointed by the Governor General on the advice of the Prime Minister. The Federal Court of Canada handles cases involving federal statutes, such as immigration, intellectual property, and maritime law, whilst the Federal Court of Appeal reviews decisions from the Federal Court and specific federal tribunals. The Tax Court of Canada deals with disputes between taxpayers and the federal government regarding tax assessments. Each province and territory has its own court system, generally structured into three levels: Courts of First Instance, Superior Courts, and Courts of Appeal. Additionally, there are Specialised and Administrative Tribunals that resolve disputes in specific areas, such as labour, human rights, and regulatory compliance. These tribunals are not part of the formal court hierarchy, but their decisions may be subject to judicial review. Canada's court system operates under the principles of federalism, with both federal and provincial/territorial governments playing roles in its administration.¹⁴⁶

Canada's federalism is intrinsically linked to the concepts of bilingualism and bijuralism. Canada has two legal systems – civil law and common law – which were officially enshrined in the Constitution Act of 1867 under Subsec. 92(13). This provision grants provinces exclusive jurisdiction over property and civil rights. Based on this framework, Quebec has established the Civil Code of Quebec as the foundation of its private law, whilst the rest of Canada adheres to the common law system. The duality of Canada's legal system is also reflected in the composition of the Supreme Court of Canada: under the Supreme Court Act, three of its nine judges must be selected from Quebec.¹⁴⁷

Bijuralism is closely tied to bilingualism, as legislators effectively draft laws for four distinct audiences: Francophones under civil law, Francophones under common law, Anglophones under civil law, and Anglophones under common law.¹⁴⁸

As noted by the Honourable Claire L'Heureux-Dubé and Richard, Canada's official legal culture today transcends being exclusively French or English, civil law or common law. Instead, it encompasses all these elements simultaneously, embracing the inherent ambiguity and complexity of such a pluralistic system.¹⁴⁹

Federalism has been a defining feature of Canada's political system since the country's inception in 1867. This governance model, which involves the division of

145 Constitution Act 1867, Arts. 21–36.

146 Constitution Act 1867, Point 7.

147 Richard, 2005, pp. 22–23.

148 Ibid.

149 Ibid.

powers between federal and provincial/territorial governments, reflects Canada's diverse geography, cultural composition, and historical development. Designed to balance the need for a strong central government with the autonomy of provinces, federalism remains central to Canada's governance and identity, enabling the accommodation of diversity whilst fostering unity.

2.3.5.2. The Principle of Equality Amongst Constituent Parts in the Canadian Federal Model

Canada's federal system is characterised by a division of powers and responsibilities between the federal and provincial governments, supplemented by the unique status of the territories. Whilst the principle of equality amongst Provinces and Territories is not explicitly referenced in the Constitution Act of 1867, the concept is central to the principles of federalism, democracy, and the rule of law. An example of this can be seen in the Canadian Charter of Rights and Freedoms, which guarantees individual rights that indirectly support the principle of equality amongst Provinces and Territories by fostering national standards.

The original confederation included four provinces with proportional representation in the House of Commons and equal representation in the Senate. Over time, the entry of additional provinces and the creation of Territories reshaped the federal landscape, raising questions about how equality should be defined and maintained.

According to the Constitution Act of 1867, the House of Commons uses population-based representation, meaning that individual Provinces and Territories are represented according to the principle of proportional equality,¹⁵⁰ which can create tensions between populous and less-populous provinces and territories. Nevertheless, the composition of the House reflects Canada's population and includes MPs from diverse regions and linguistic communities.

The Senate is structured to provide equitable regional representation, ensuring smaller Provinces and Territories have a voice in federal decision-making. Seats are distributed as follows: 24 from the Maritime provinces, 24 from Quebec, 24 from Ontario, 24 from the Western provinces, six from Newfoundland and Labrador, and one from each Territory.¹⁵¹ The Senate's structure serves as a counterbalance to the population-based representation of the House of Commons, ensuring that Provinces (except for Newfoundland and Labrador) are represented according to the principle

150 Constitution Act 1867, Point 4, Art. 37. In accordance with the Constitution Act of 1867, the House of Commons originally consisted of 308 members, distributed amongst the Provinces and Territories as follows: 106 for Ontario, 75 for Quebec, 11 for Nova Scotia, 10 for New Brunswick, 14 for Manitoba, 36 for British Columbia, four for Prince Edward Island, 28 for Alberta, 14 for Saskatchewan, seven for Newfoundland, one for the Yukon Territory, two for the Northwest Territories, and one for Nunavut. Since the adoption of the Constitution Act, these numbers have been periodically adjusted to reflect changes in population distribution and to ensure equitable representation across the country's Provinces and Territories.

151 Constitution Act 1867, Point 4, Art. 22.

of parity and that less-populous areas are not overshadowed in federal decision-making. Although the current system of appointment of Senators aims to reflect the diversity of Canadian society, including linguistic and cultural backgrounds, proposals have been raised for reforming the Senate to enhance provincial representation and better reflect regional interests and equality.

The Constitution Act of 1867, and subsequent amendments, establish the distribution of powers, ensuring equal authority for provinces in decision-making in areas under their jurisdiction, whilst territories are governed by federal legislation, giving them a different status.

As in most other federations, in Canada one of the major challenges when implementing the principle of equality is economic disparities. Provinces and territories have varying levels of economic development, natural resources, and fiscal capacity, complicating the implementation of equal policies.

Another challenge is the country's cultural and linguistic diversity. The country is officially bilingual, meaning legislative and other legal proceedings occur in both English and French. However, balancing the distinct identities of provinces such as Quebec and Indigenous nations with a commitment to equality requires nuanced policy approaches.

In interpreting federal–provincial relations, a crucial role is played by the courts. For instance, the Supreme Court's decisions in cases such as *Reference re Secession of Quebec* (1998) emphasise respect for the principles of federalism and equality.¹⁵²

The principle of equality amongst Provinces and Territories is both a cornerstone and a challenge of Canadian federalism. Balancing equality with recognition of diversity requires ongoing dialogue, cooperation, institutional innovation, and a commitment to justice.

2.3.6. Defunct Federal Systems: The Principle of Equality Amongst Republics and Nations in the Socialist Federal Republic of Yugoslavia

On the formal side, the constitutional arrangement of post-war socialist (also called 'second') Yugoslavia placed great emphasis on the principle of equality amongst nations and federal units. The 1974 Constitution, as the last of the three constitutions of the second Yugoslavia, repeatedly emphasised the unity of Yugoslavia's nations and that these nations 'united on a freely expressed will into a federal republic of free and equal nations and nationalities'.¹⁵³

The Basic Principles of the 1974 Constitution further asserted that the Socialist Federal Republic of Yugoslavia (SFRY), in the interest of each individual nation and nationality, as well as collectively, strives to establish 'a system of socioeconomic relations and a unified political foundation that ensures the common interests of the working class and all working people, along with the equality of nations and

¹⁵² Supreme Court of Canada, *Reference re Secession of Quebec*, (1998) 2 SCR 217.

¹⁵³ Constitution of the SFRY 1974, Basic Principles, Sec. I.

nationalities'. Additionally, the Basic Principles underscored the equal participation of the republics and autonomous regions within the federation's governing bodies, promoting communication, solidarity, and reciprocity amongst the republics and regions.¹⁵⁴

Employing typical socialist terminology, the Basic Principles of the 1974 Constitution also stressed the importance of upholding the principle of equality amongst nations and republics in the context of the socialist economy. The principles stipulated that, with the goal of establishing a material foundation for the equality of Yugoslavia's nations and nationalities, and for levelling the material conditions of social life and work for all working people, special attention must be given to the economically less developed republics and autonomous regions. Additionally, the Constitution highlighted the importance of ensuring equality amongst nations and nationalities, as well as in republics and autonomous regions, in areas such as workers' self-management, education, and international cooperation.¹⁵⁵

The normative part of the 1974 Constitution established that the SFRY is a federal state founded, amongst other principles, on the equality of nations and nationalities. Art. 178 of the 1974 Constitution stipulated that any propagation or implementation of national inequality was unconstitutional and criminal. The Constitution contains several other explicit references to the principle of equality amongst nations and republics regarding participation and responsibility of the republics and autonomous regions for determining and implementing the federation's policies:¹⁵⁶ prohibition of laws, regulations, or actions that place organisations of united labour or working people from other republics and autonomous regions – and consequently those republics and autonomous regions – in an unequal position;¹⁵⁷ the unified Yugoslav market;¹⁵⁸ and the contributions of the republics and autonomous regions, which form part of the federation's income.¹⁵⁹

The composition of the bicameral Federal Assembly and other federal bodies was outlined in the Fourth Part of the 1974 Constitution. The Federal Assembly comprised the Federal Council and the Council of the Republics and Regions. The Federal Council was made up of delegates from self-governing communities and socio-political organisations within the republics and autonomous regions, and the Council of Republics and Regions comprised delegations from the assemblies of the republics and the assemblies of the autonomous regions. Whilst the Federal Council included 30 delegates from each republic and 20 delegates from each autonomous region, the Council of Republics and Regions comprised 12 delegates from each republic's assembly and eight delegates from each autonomous region's assembly. Members of the working bodies of the Council of Republics and Regions were elected from amongst

154 Constitution of the SFRY 1974, Basic Principles, Sec. I.

155 Constitution of the SFRY 1974, Secs. 2–8.

156 Constitution of the SFRY 1974, Third Part, Chapter 1, Art. 244.

157 Constitution of the SFRY 1974, Art. 254.

158 Constitution of the SFRY 1974, Art. 256.

159 Constitution of the SFRY 1974, Art. 279.

the delegates, following the principle of equal representation of the republics and appropriate representation of the autonomous regions.¹⁶⁰

In order for laws to be passed and other powers of the Council of Republics and Regions to be exercised, the consent of the assemblies of all republics and autonomous regions was required, whereby the assembly of a federal unit could authorise its delegation in the Council of Republics and Regions to grant such consent.¹⁶¹ If the assemblies of the republics and autonomous regions failed to reach consensus on a draft law, the Federal Assembly could, under special conditions, on the proposal of the Federal Executive Council, enact a law on temporary measures without the consent of the assemblies of the republics and autonomous regions.¹⁶²

According to the 1974 Constitution, the Yugoslav Federation had a collective Presidency, consisting of one member from each republic and autonomous region, elected by the assembly of that republic or autonomous region.¹⁶³ The Presidency made decisions based on 'the coordinated positions of its members'.¹⁶⁴

The Federal Executive Council, the executive body, was also elected according to the principle of equal representation of the republics and with 'adequate representation' of the autonomous regions. The same applied to the appointment of federal secretaries and other officials who headed federal administrative bodies and organisations and were members of the Federal Executive Council. The Federal Executive Council made decisions by majority vote of the members present at the meeting. However, it issued regulations for the implementation of laws and other general acts adopted by the Council of Republics and Regions with the consent of the competent republican and regional bodies, provided that these laws and acts required the harmonisation of the positions of the federal units.¹⁶⁵

The 1974 Constitution also addressed the situation where the Federal Executive Council failed to reach a consensus with the competent republican and regional authorities on a proposed regulation for the enforcement of a law. In such cases, the Federal Executive Council could adopt a special regulation on temporary measures, provided the Presidency of the SFRY agreed that such a regulation was necessary. The Federal Executive Council adopted the regulation on temporary measures by a majority vote of all its members.¹⁶⁶

The federal judicial system comprised the Constitutional Court and the Federal Court of the SFRY. The Constitutional Court consisted of a President and 13 judges

160 Constitution of the SFRY 1974, Fourth Part, Chapter 1, Arts. 291–292 and 297.

161 Constitution of the SFRY 1974, Arts. 297–298.

162 Constitution of the SFRY 1974, Art. 301.

163 Constitution of the SFRY 1974, Art. 321.

164 Constitution of the SFRY 1974, Art. 330. Whilst Art. 333 of the 1974 Constitution made the election of the President of the Republic optional rather than obligatory, in recognition of his historical role in the National Liberation War and the socialist revolution, Josip Broz Tito was elected as President of the Republic without a term limit already in 1953.

165 Constitution of the SFRY 1974, Art. 355.

166 Constitution of the SFRY 1974, Art. 356.

elected by the Federal Assembly. Two members from each republic and one member from each autonomous region were elected to the Constitutional Court. Decisions and resolutions were adopted by a majority vote of all members of the Constitutional Court. The principle of equal representation of all republics and adequate representation of autonomous regions was also taken into account in the composition of the Federal Court.¹⁶⁷

Before assuming their duties, the highest officials of the federal authorities took an oath to uphold the sovereignty and independence of the country, to defend socialist values, and to ensure the equality of nations and nationalities.¹⁶⁸

In summary, in the constitutional law of the post-war Yugoslav federation, especially according to the 1974 Constitution, the principle of equality of nations and republics played an important role. The principle of equality of nations and/or republics was repeatedly highlighted in various contexts, both in the Basic Principles and in the normative part of the Constitution.¹⁶⁹ Any actions that would promote inequality between the nations of Yugoslavia were considered not only unconstitutional but also criminal. In its later stage, the Yugoslav Federation exhibited several elements of a confederal arrangement, since both chambers of the Federal Assembly were composed according to the principle of parity. The nations and republics (i.e. federal units) were equally represented not only in the lower chamber of the legislative body, which is common in federal systems, but also in the upper chamber. The Presidency of the SFRY and other key federal bodies (i.e. the executive and judicial branches) were also composed based on parity, and any changes to the federal constitution required the consent of all federal units. As a representative body of federal units, the Council of Republics and Regions made decisions in principle by consensus amongst the Assemblies of the Republics or their representatives. However, if this could not be achieved, decision-making was transferred to the Federal Executive Council. The Federal Executive Council itself issued regulations for the implementation of laws and other general acts adopted by the Council of Republics and Regions with the consent of the competent republican bodies.

In contrast to a considerably dynamic and differentiated enforcement of the principle of equality amongst federal units in most existing federations, in the Yugoslav federal system the principle of equality amongst the republics was enforced significantly more rigidly, due to the formal equality of the members of the federation, which was based on the principle of parity (e.g. numerically equal representation of the republics, regardless of the size and number of inhabitants, in the federal bodies on the one hand, and decision-making by consensus in matters related to the position and rights of the federation's members on the other hand). In the late 1980s, this

167 Constitution of the SFRY 1974, Art. 370.

168 Constitution of the SFRY 1974, Chapter 8, Art. 397.

169 The 1974 Constitution contains more than 60 direct references to the principle of equality amongst either nations or republics, or both.

rigid system and the confederal elements in the Yugoslav federal system¹⁷⁰ fuelled the centralist tendencies of the federal authorities and Serbia, the largest republic, on the one hand, and, on the other hand, efforts towards decentralisation, greater autonomy, and, eventually, separation from Yugoslavia and independence of the northern, more developed republics. In the last three years before the disintegration of the SFRY, the confederal nature of the country, along with the ambitions of one federal unit to secure a dominant position over the others, escalated to the point of irreconcilable differences between some nations and republics, as well as between the federation and certain republics. Resultantly, neither the federal nor the confederal system could be maintained, leading to the country's eventual collapse.

2.4. Confederations and the Principle of Equality Amongst Their Member States

2.4.1. Concept, Origins and Characteristics of Confederatism and Confederations

Confederalism and confederation are terms frequently used in legal and political discourse to describe systems of governance that prioritise regional autonomy within a loosely integrated framework. Confederalism, defined by the voluntary association of sovereign states or regions, is distinguished by its strong emphasis on regional autonomy and limited central authority. Confederations, conversely, represent the practical implementation of confederal principles. Drawing from Wheare, Ola defined a confederation as 'an association or union of sovereign states, such a union being so arranged that the central government, in the exercise of its functions, is dependent on the regional governments'.¹⁷¹ Both confederalism and confederation emphasise the importance of autonomy, cooperation, and voluntary association amongst Member States. Although there are few modern examples of confederal arrangements, these concepts remain highly relevant in contexts that require flexible, multilateral approaches to governance.

As shown in the previous sections, a federal system divides powers between the central and regional governments, so that each operates independently and is coordinated within its respective sphere of authority. A federation ensures a more balanced sharing of sovereignty, with both levels of government enjoying constitutionally protected powers. Other distinguishing features of a federal system include the presence of dual authority, whereby both the regional and central governments

170 The fundamental relationship between the republics, as federal units, and the federation was structured in such a way that, at least in principle, the republics were the primary holders of state power. The federation held state power only in areas where the federal constitution explicitly transferred powers to it. Furthermore, and as mentioned earlier, the 1974 Constitution of the SFRY emphasised that the Yugoslav Federation was founded on the voluntary and consensual union of the nations of Yugoslavia, based on the right of each nation to self-determination and secession.

171 Ola, 1968, p. 271.

exercise powers independently within their jurisdictions, and judicial review, which Dicey famously described as the ‘inner essence of federalism’. Judicial review ensures that conflicts between the central and regional governments are resolved through an impartial legal framework, reinforcing the constitutional balance inherent in federal systems. Unlike federal systems, confederalism places sovereignty firmly with the Member States. In a confederation, central authority is typically weak and derives its powers from voluntary agreements or treaties amongst the states. Additionally, decision-making at the central level in a confederation usually follows the principle of unanimity rather than majority rule. Resultantly, no decision by the central government is binding on any regional government unless the latter explicitly agrees to it.¹⁷²

Jean-Jacques Rousseau and Immanuel Kant, amongst others, have significantly contributed to the intellectual foundations of confederalism. Rousseau’s concept of a confederation emphasised collective security whilst maintaining the autonomy of individual states.¹⁷³ Kant envisioned a league of nations to manage conflicts, promote peace, and prevent war amongst states, foreshadowing the modern application of confederal principles in international organisations such as the EU.¹⁷⁴

Several historical examples illustrate the implementation of confederal principles, one notable case being the Swiss Confederation (1291–1848). Switzerland operated as a confederal system for approximately five centuries, during which much of its history was shaped by the struggle against a common external adversary – the Habsburgs. As discussed in Sec. 2.3.3 of this chapter, the country transitioned from a loose confederation, established by three German-speaking cantons in 1291, to a federal state.¹⁷⁵

Other historical instances of confederation include the Articles of Confederation (1781–1789) and the German Confederation (1815–1866). The establishment of the American confederation was driven by motivations similar to those of Switzerland, particularly a shared fear of an external threat – in this case, Great Britain. When British imperial policies became intolerably oppressive, the 13 American colonies organised their resistance. The Articles of Confederation, adopted by the Continental Congress on November 15, 1777, served as the U.S.’s first constitution. This document remained in effect from March 1, 1781, until 1789, when the current U.S. Constitution was enacted.

The origins of the German Confederation differ somewhat from those of the American and Swiss confederations. A loosely organised dominion of Germanic tribes existed during the thousand-year span of the Holy Roman Empire. This ‘First Reich’ (800–1806), a semi-confederal system, emerged as a result of Charlemagne’s consolidation of imperial authority. The German Confederation was formally established

172 McWhiney, 1962, pp. 5–6.

173 Rousseau, 1917.

174 See Kleingeld, 2004, pp. 304–325.

175 Ola, 1968, p. 273.

after the Napoleonic Wars, aiming to balance the autonomy of German states with a framework for collective governance. Following Napoleon's conquest of Europe, he reorganised over 300 German states into the Confederation of the Rhine. In 1815, the Congress of Vienna established the German Confederation, comprising 39 states, as part of the post-Napoleonic reordering of Europe.¹⁷⁶

Modern examples of confederal arrangements are uncommon, as the model often faces inefficiencies and challenges in decision-making. Moreover, a confederal model of government is often difficult to distinguish from an international or supranational organisation. The decision-making process in a confederal system is notably similar to that of international organisations such as the United Nations, where decisions are not binding on members unless they consent. However, an international organisation represents a looser association than a confederation. Whilst it may act as a corporate entity for certain activities, each member nation retains its own system of external relations and distinct legal personality under international law.¹⁷⁷ A confederation can be seen as occupying a middle ground between an international organisation and a federation.

Similar challenges apply when distinguishing between a confederation and a supranational organisation. For instance, the EU, as a supranational organisation, exhibits certain confederal elements, particularly through its decentralised structure and consensus-driven decision-making processes. Whilst not a confederation in the strict sense, the EU shares features such as the preservation of Member-State sovereignty. However, it differs from a confederation in that it is a body composed of distinct 'corporate personalities' under international law. The EU, as a supranational organisation, also exhibits certain characteristics of a federal system. These include the establishment of its own legal order, known as the *acquis communautaire*, and the fact that specific decisions made by its institutions are directly binding on Member States. Furthermore, the principle of the supremacy of primary EU legal sources over the domestic laws of Member States has been firmly established (further discussion of the EU will be provided in Sec. 4 of this chapter).

Whilst elements of confederalism can be observed in various international and supranational organisations as well as regional unions, the Commonwealth of Independent States (CIS), established following the dissolution of the Soviet Union, may be considered one of the few remaining examples of a loosely confederal model aimed at economic and political cooperation.

176 Plischke, 1962, p. 3.

177 Ola, 1968, p. 272.

2.4.2. *The Commonwealth of Independent States*

2.4.2.1. Origins and History

Following the collapse of the Soviet Union in late 1991 and the failure of the proposed New Union Treaty of the Union of Soviet Socialist Republics (USSR), a separate economic, political, and military union, known as the Commonwealth of Independent States (CIS), was established. It was initially formed by the new leaders of Belarus, Russia, and Ukraine as a framework for cooperation after the dissolution of the Soviet Union. Georgia later joined, whilst the Baltic States opted not to participate. Ultimately led by the Russian Federation, recognised as the legal successor to the Soviet Union, the CIS is often regarded as a largely symbolic union (e.g. a confederation) with limited practical impact. However, as Linich argued in his study, there is more to the CIS than meets the eye: its creation, original objectives, and subsequent evolution highlight its significance as a key element of Russia's foreign policy.¹⁷⁸

By the early 1980s, the Soviet Union was facing mounting challenges, including economic stagnation (centralised planning had resulted in declining productivity), a technological lag (particularly in consumer goods and information technology), geopolitical pressures stemming from the Cold War (the costly arms race with the U.S. placed immense strain on the Soviet economy), and growing social discontent (citizens became increasingly frustrated with shortages of goods and limited freedoms). Upon assuming power in 1985, Mikhail Gorbachev launched sweeping reforms collectively known as *Perestroika*, meaning 'restructuring' in Russian. Coupled with *glasnost* (openness), *Perestroika* represented an ambitious effort to tackle systemic economic stagnation, bureaucratic inefficiency, and the Soviet Union's waning global influence. It marked a radical departure from the rigid policies of Gorbachev's predecessors.

Perestroika aimed to address systemic issues through a series of economic, political, and social reforms.¹⁷⁹ Whilst ambitious in scope, its implementation encountered significant obstacles, leading to far-reaching consequences. Instead of delivering the anticipated economic revival, the reforms worsened economic conditions, intensifying shortages and unemployment. Moreover, as the Communist Party's

¹⁷⁸ Linich, 2023, p. 2.

¹⁷⁹ The first version of the *Perestroika*, which placed a priority on boosting the economy quickly (involving, inter alia, greater pressure placed on the labour industry to make the USSR as productive as possible), lasted only one year. Gorbachev then took the policy in a direction he thought would be much more effective. The second phase saw more radical changes, such as the introduction of competitive elections and the encouragement of the emergence of opposition parties and groups. Believing that the only way to modernise the USSR economy was to embrace a more left-wing approach to government, his *Glasnost* policy, which granted never-before-seen freedoms and rights in the USSR – such as freedom of expression, more access to information, and a relaxation of censorship – was an attempt to create a more interactive society. See Linich, 2023, p. 14.

control weakened, previously suppressed political movements gained traction. Ultimately, the combined effects of economic instability, political fragmentation, and nationalist uprisings culminated in the gradual dissolution of the Soviet Union.

Opposition groups, rising nationalism, and economic challenges threatening the survival of the USSR compelled Gorbachev to propose a reformed union – one based on voluntary membership, allowing each republic the freedom to choose its participation. In November 1990, a special committee drafted a new constitution for the USSR, known as the New Union Treaty. The treaty proposed sweeping changes aimed at fundamentally transforming the structure and nature of the Soviet Union since its inception.¹⁸⁰

Gorbachev decided to submit the New Union Treaty to a referendum, but only nine republics agreed to participate. Six republics – Armenia, Georgia, Moldova, and the Baltic states – not only refused to join the proposed new union, but outright rejected the treaty and pushed for independence from the USSR. In March 1991, the referendum was held in the nine republics that agreed to the treaty, signalling their willingness to proceed with a restructured USSR. The treaty was approved by voters and was set to be formalised, under the new name Nine Plus One Agreement, in August 1991.¹⁸¹

However, the signing did not occur due to a coup attempt provoked by resistance to Gorbachev's efforts to reshape the USSR. Although the coup failed, significant political shifts followed. Boris Yeltsin, who had won Russia's first presidential election in June 1991, emerged as a vocal critic of the Soviet government and called for greater democratic reforms. His election marked a pivotal moment, as Gorbachev no longer had a compliant ally in the role of Russia's president.¹⁸²

These developments led to the ultimate failure of the New Union Treaty and the collapse of the USSR in December 1991. This marked the end of a major geopolitical entity and gave rise to a collection of independent nations. To manage the transition and maintain some level of cooperation, 11 nations initially formed the CIS, which serves as a platform for dialogue and collaboration on issues ranging from trade and security to cultural exchange.

The CIS was formally established on December 8, 1991, with the signing of the Belovezh Accords by Belarus, Russia, and Ukraine. This agreement declared the dissolution of the Soviet Union and created the CIS as its successor organisation for participating states. Shortly afterward, eight other former Soviet republics joined,

180 The draft of the New Union Treaty contained, *inter alia*, a principle that each party to the treaty has: the right to sovereignty; a full power to run their own matters without interference or the blocks of a centralised USSR government; independently determine their national-state; the right to manage their own foreign affairs; and the right of every citizen to travel and leave the territories of the union (which was not a freedom in the USSR previously). The draft Treaty also included the right to a voluntary membership, which was also a right included in the original 1922 Soviet Union Constitution but was never exercised by any USSR republic. Linich, 2023, p. 21.

181 Nuclear Threat Initiative, 2024.

182 *Ibid*.

bringing the total membership to 11. Turkmenistan later became an associate member, whilst the three Baltic states – Estonia, Latvia, and Lithuania – chose not to join.

Upon its establishment, the CIS members adopted the Alma-Ata Declaration, which affirmed their commitment to cooperation across various areas of external and internal policy. The declaration also guaranteed the implementation of international commitments previously undertaken by the Soviet Union.¹⁸³

2.4.2.2. Structure, Functioning, and the Principle of Equality Amongst Member States

The CIS operates through a decentralised structure, with decisions primarily made by consensus. The key bodies of this regional union, often described as a confederation, include: (a) Council of Heads of State, the highest decision-making body, responsible for setting strategic priorities; (b) Council of Heads of Government, which focuses on economic cooperation and the implementation of agreements; (c) Councils of Foreign Ministers, Defence Ministers, and Border Troops Commanders; (d) Inter-Parliamentary Assembly; (e) Executive Committee, a body based in Minsk, Belarus, which coordinates the activities of the CIS and facilitates the implementation of decisions; (f) Interstate Economic Committee of the Economic Union; and (g) Sectoral Councils, which address specific areas of cooperation, such as economic collaboration, defence, transportation, and education.¹⁸⁴ Additionally, the CIS includes institutions such as the Economic Court and the Commission on Human Rights. Meetings of CIS bodies are held periodically on a rotating basis in the capitals of Member States.

The functions of the CIS include coordinating Member States' policies regarding their economies, foreign relations, defence, immigration, environmental protection, and law enforcement. In particular, the CIS aims to foster cooperation amongst its Member States in areas such as economic integration, facilitating trade, and enhancing economic collaboration through agreements such as the CIS Free Trade Area (CISFTA), established in 2011.

In the realm of security collaboration, the CIS addresses regional security concerns, including counterterrorism and border management, often in conjunction with the Collective Security Treaty Organization (CSTO) – a separate but closely related entity. The CIS also promotes cultural ties and works to protect the rights of ethnic groups across Member States. Regarding conflict resolution, it provides a platform for mediating disputes amongst Member States, although its effectiveness has been limited.

¹⁸³ Nuclear Threat Initiative, 2024.

¹⁸⁴ Ibid.

The CIS operates in accordance with its Charter, adopted by the Council of Heads of States on January 22, 1993.¹⁸⁵ This foundational document outlines the Commonwealth's goals, principles, and the rights and responsibilities of its member countries. The Charter emphasises that the CIS is based on the principle of sovereign equality amongst all members, affirming their independence and equal status under international law. The spheres of joint activity amongst the Member States are founded on those states' equality of rights.¹⁸⁶

Additionally, the Charter highlights the CIS's role in fostering the development and strengthening of friendship, inter-ethnic harmony, trust, mutual understanding, and collaboration amongst Member States. The Commonwealth does not possess supranational powers; interactions amongst countries within the CIS are conducted through its coordinating bodies. However, obligations arising during participation in the CIS Charter are binding on the relevant states until full compliance is achieved. Violations of the Charter by Member States, or a systematic failure by a state to fulfil its obligations under agreements concluded within the framework of the Commonwealth, or decisions made by its bodies, will be examined by the Council of Heads of States. Measures permitted under international law may be imposed on such states.¹⁸⁷

According to the Charter, the Council of Heads of States is the highest body of the CIS, in which all Member States are represented at the top level. It discusses and takes decisions on the principal issues relating to the activity of the Member States in the field of their mutual interests. Whilst the Council holds its regular meetings twice a year, extraordinary meetings may be convened at the initiative of any of the Member States.¹⁸⁸

The second most important body of the CIS is the Council of Heads of Governments, in which all Member States are represented by their prime ministers. It coordinates cooperation amongst the executive power organs of Member States in economic, social, and other spheres of mutual interest. Whilst the Council of Heads of States and the Council of Heads of Governments take decisions on the basis of consensus, Heads of States and Heads of Governments preside over the meetings on a rotating basis according to the Russian alphabetical order of the names of the Commonwealth Member States.¹⁸⁹

Other main bodies of the Commonwealth include the Council of Ministers for Foreign Affairs, the Council of Defence Ministers, the Council of the Frontier Troops Chief Commanders, and the Coordination and Consultative Committee. As a permanent executive and coordinating body of the Commonwealth, the latter comprises

185 Multilateral Charter of the Commonwealth of Independent States (with declaration and decisions). Adopted in Minsk on 22 January 1993.

186 Charter of the Commonwealth of Independent States, Chapter 1, Arts. 1 and 4.

187 Charter of the Commonwealth of Independent States, Chapter 4. See also Nuclear Threat Initiative, 2024.

188 Charter of the Commonwealth of Independent States, Chapter 4, Art. 21.

189 Charter of the Commonwealth of Independent States, Arts. 22–24.

permanent full-fledged representatives who are appointed according to the parity principle – two representatives from each state.¹⁹⁰

Two CIS bodies also merit attention: the Economic Court and the Commission on Human Rights. The Commission is a consultative body comprising representatives of all Commonwealth Member States.¹⁹¹

Despite its broad objectives, the CIS has faced numerous challenges. The organisation's effectiveness and relevance have been subjects of debate since its inception. Member States often pursue conflicting national interests, which limit the effectiveness of collective decision-making. Some members, such as Georgia, have reduced their engagement, whilst others, like Ukraine, have withdrawn entirely due to political tensions.¹⁹²

Although the Charter enshrines certain principles, in practice, the CIS lacks binding authority and relies on voluntary compliance, undermining its ability to implement agreements. Furthermore, Russia's dominance within the CIS poses a significant challenge to realising the principle of equality amongst Member States, as well as other principles such as sovereignty and the goals outlined in the Charter. This dominance raises concerns about the continued existence of the CIS itself.

A clear illustration of Russia's informal status as a leading and privileged member of the CIS is the designation of the official language. The original agreement to establish the CIS in December 1991 granted equal status to the languages of the three founding members – Russia, Belarus, and Ukraine – by creating three official copies of the agreement, each in one of the languages. However, the Charter designates Russian as the CIS' official language, and there is only one official copy of the Charter, which is in Russian. This situation undermines the status of the other two founding members.¹⁹³

Additionally, the initial text of the Agreement to Create the CIS included a significant provision stating that the CIS would have 'singular control' over nuclear arms. In practice, however, the CIS allowed Russia to maintain control over its neighbours similar to that exercised by the Soviet Union. Furthermore, the Charter permitted a Russian military presence in various CIS countries as part of their agreement to join the organisation.¹⁹⁴

190 Charter of the Commonwealth of Independent States, Art. 29.

191 Charter of the Commonwealth of Independent States, Arts. 32–33.

192 The Charter does have provisions that allow Member States to formally leave the CIS (Art. 9), but only Georgia and Ukraine have attempted to do so. Both countries were attacked by Russia shortly after indicating their intentions to withdraw from the CIS and have endured either direct annexation by or significant occupation from Russia. Ukraine severed all ties with the CIS in 2018; however, its departure has not been recognised by either the CIS or any of its Member States, as Ukraine is still listed as a founding and active member on the official CIS website. Contrastingly, Georgia was eventually permitted to fully leave the CIS. See Linich, 2023, p. 77.

193 Linich, 2023, p. 43.

194 Linich, 2023. Georgia, Belarus, Armenia, Moldova, Tajikistan, Kazakhstan, and Kyrgyzstan have had Russian troops in their countries as part of CIS military cooperation.

Several other developments support the claim that Russia, as a Member State, plays a leading role and that the equal status of other Member States is diminished. For instance, after significantly reducing its involvement in the CIS and considering an exit from the Russian-dominated organisation, Moldova's pro-Western government submitted a formal application for EU candidate status in 2022. It now seems more likely than ever that Moldova will leave the CIS and Russia's sphere of influence. The Moldovan leadership did not attend the CIS summit in Astana, Kazakhstan, in October 2022, and they have gradually withdrawn their representatives from the organisation over the past few years.¹⁹⁵

Despite its limitations, the CIS has made notable contributions. For example, the CIS Free Trade Area has facilitated trade amongst participating states, albeit with varying levels of implementation. The CIS has supported cultural and educational programmes, fostering ties amongst its nations. Whilst its influence has waned in recent years, it continues to serve as a platform for cooperation amongst its Member States and a forum for dialogue.

3. The Principle of Equality Amongst Member States in International Organisations With Supranational Elements

*Just as a midget is a man no less than a giant, so a tinny republic
is no less sovereign than the most powerful of kingdoms.*
Emmerich de Vattel

The principle of equality amongst Member States in international organisations is grounded in the concept of sovereign equality – a fundamental tenet of international law. This principle asserts that every sovereign state is entitled to be regarded as equal to all other states and that all states, regardless of their size, wealth, or power, share equal legal rights and responsibilities. In legal literature, the principle of state equality initially emerged as a development of natural law theory during the Enlightenment, drawing an analogy between the rights of individuals and those of states.¹⁹⁶

Over time, a principle initially conceived as a declaration of formal equality before the law evolved into a widely accepted postulate. Its original purpose was to protect smaller or weaker states from domination by larger, more powerful ones. This principle affirmed the independence of states, prohibited interference in their

¹⁹⁵ Linich, 2023, p. 78. Linich argued that these are the exact methods of pressure used with Georgia from 2004–2008. Unlike Ukraine and Georgia, Moldova does not share a border with Russia, nor do the two have any cultural or linguistic ties.

¹⁹⁶ See Rossi, 2017, pp. 4–5.

internal affairs, and granted each state immunity from the jurisdiction of others. However, it soon became evident that formal equality amongst states rarely translated into substantive equality – namely, an equality of power relations. Consequently, the principle faced criticism from proponents of legal positivism.¹⁹⁷ Hans Kelsen, amongst others, contended that the principle of equality – which holds that under identical conditions, states possess the same rights and duties – is an empty formula, as it remains applicable even in cases of extreme inequalities amongst states.¹⁹⁸

The principle of sovereign equality amongst states was upheld at the international peace conferences held at The Hague in 1889 and 1907, encapsulated in the motto ‘One State, one vote’. However, this principle was not mentioned in the Covenant of the League of Nations. Contrastingly, the United Nations Charter explicitly states, in its Preamble, that all nations, both large and small, have equal rights. Article 2(1) further emphasises that the organisation is founded on the principle of sovereign equality amongst its members.

The UN General Assembly recognises this principle as ‘the principle of the sovereign equality among States’ in its Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.¹⁹⁹ The Declaration outlines the specifics of ‘sovereign equality’ by asserting that all states possess equal rights and responsibilities and are equal members of the international community, regardless of any economic, social, political, or other differences. According to the Declaration, sovereign equality encompasses several key elements: (a) States are judicially equal; (b) Each state enjoys the rights inherent in full sovereignty; (c) Each state has a duty to respect the personality of other states; (d) The territorial integrity and political independence of each state are inviolable; (e) Each state has the right to freely choose and develop its political, social, economic, and cultural systems; (f) Each state is obligated to comply fully and in good faith with its international obligations and to live in peace with other states.

Rossi argued that this Declaration reflects a time when decolonisation was underway, and equality amongst states was widely viewed as a natural consequence of their independence as subjects of international law.²⁰⁰

In the fields of international relations and international law, it is widely recognised that the principle of formal equality amongst states, as outlined in international treaties, can lead to inequality and unfairness due to the unequal power dynamics that exist between them. To address this issue, international law has introduced exceptions to the principle of formal equality whilst still upholding it conceptually. These exceptions are based on the assumption that states within the international community are interdependent and voluntarily limit their sovereignty through the organisations and treaties they choose to join. However, these agreements can also

197 Rossi, 2017, p. 5.

198 Ibid.

199 Resolution 2625, 24 October 1970.

200 Rossi, 2017, p. 6.

provide a basis for substantive limitations on their formal equality, whilst considering other fundamental principles of international law, such as the principle of state sovereignty and the principle of sincere cooperation amongst states.²⁰¹

International and supranational organisations implement the principle of equality amongst their members – whether in its formal or substantive form – through two primary mechanisms: (a) quantitative representation in decision-making bodies and (b) voting rules. Rooted in democratic principles, both global and regional organisations often face the challenge of balancing diverse interests with equitable participation for all Member States. This tension highlights a central question in international law: is it more democratic and just to adopt a decision-making system that grants equal weight to all states based on their equal sovereignty, or is the principle of equality better realised through a system that accounts for the populations of individual states? In practice, relatively few international and supranational organisations have moved away from formal equality – such as the ‘One State, One Vote’ model – towards approaches that aim to reflect substantive equality, though interpretations of what substantive equality entails vary.²⁰²

In theory, the principle of equality amongst states implies that any decision affecting a state should require its consent, and no majority of states should impose decisions against the will of a single state. Consequently, in an international organisation, this principle would ideally manifest as a unanimous voting rule, granting smaller states veto power to protect their interests. However, because the unanimity rule often results in gridlock and undermines the organisation’s effectiveness,²⁰³ many international organisations seek to balance equality with efficiency by curtailing the former to enhance the latter. Notably, organisations that incorporate supranational elements into their structures increasingly adopt voting systems designed for efficiency, often excluding the veto power altogether.²⁰⁴

This Sec. focuses on three regional international organisations – distinct from the EU – that incorporate supranational elements into their structures or exhibit a clear tendency to develop such elements and to evolve from international to supranational entities. Each organisation will be introduced briefly, followed by an analysis of how the principle of equality is defined and applied in practice amongst Member States. The discussion highlights the significance of this principle, its implications, and the challenges it presents in fostering cooperation amongst Member States within each organisation.

201 Rossi, 2017, p. 7. The Declaration on Principles of International Law asserts, *inter alia*, that the basic principles of international law outlined in the Declaration are interconnected.

202 Rossi, 2017, p. 8.

203 Such an example is the League of Nations, whose decision-making ability had been paralysed by the unanimous voting rule. See Rossi, 2017, p. 9.

204 *Ibid.*

3.1. *The African Union*

3.1.1. *An Outline of the Creation, History, Objectives, Structure, and Functioning of the African Union*

The African Union (AU) is a continental body comprising 55 Member States (all 54 African UN members plus the Sahrawi Arab Democratic Republic) that make up the countries of the African continent. It was officially launched in 2002 as a successor to the Organisation of African Unity (1963–1999). The AU recognises democratic governance, peace, and security as the foundations of regional integration and sustainable development on the continent.

In May 1963, 32 leaders from independent African nations met in Addis Ababa, Ethiopia, to sign the Charter establishing the Organisation of African Unity (OAU)²⁰⁵ – the continent’s first institutional framework after gaining independence. The OAU represented a pan-African celebration of the continent’s cultural and shared heritage, reflecting a commitment to the communal values inherent in African societies and a vision for a united, liberated Africa that could determine its own future. This vision was articulated in the OAU Charter, where the founders emphasised the importance of freedom, equality, justice, and dignity in fostering collaboration amongst African nations. They sought to address the common desire for solidarity and unity amongst Africans, aiming to realise aspirations for cohesion that transcended ethnic and national divisions.²⁰⁶

The OAU Charter outlined several key objectives, including the elimination of the remnants of colonisation and apartheid from the continent, fostering unity and solidarity amongst African nations, enhancing cooperation for development, protecting the sovereignty and territorial integrity of Member States, and promoting international collaboration.²⁰⁷ The OAU Coordinating Committee for the Liberation of Africa played a crucial role in uniting the continent’s efforts and securing global support for the liberation movement and the fight against apartheid. Additionally, the OAU served as a vital platform for Member States to align their positions on common concerns, effectively advocating for Africa’s interests on the international stage.

Following the OAU’s decision in September 1999, to create a new continental organisation to build on its work,²⁰⁸ the AU was officially launched in July 2002 in Durban, South Africa. The decision to re-launch a pan-African organisation was the outcome of a consensus by African leaders that, in order to realise Africa’s potential,

205 Charter establishing the Organisation of African Unity, completed in the City of Addis Ababa, Ethiopia, 25 May 1963.

206 Charter establishing the Organisation of African Unity, Art. 3. See also Mattheis et al., 2023, pp. 4–5.

207 Charter establishing the Organisation of African Unity, Art. 2.

208 On 9 September 1999, the leaders of the OAU adopted the Sirte Declaration, which proposed the creation of the AU.

there was a need to refocus attention towards increased cooperation and integration of African states to drive Africa's growth and economic development. Article 3 of the Constitutive Act of the African Union²⁰⁹ and the Protocol on Amendments to the Constitutive Act of the African Union²¹⁰ lay out the aims of the AU, which include, amongst others: (a) achieving greater unity and solidarity between African countries and their people; (b) defending the sovereignty, territorial integrity and independence of its Member States; (c) accelerating the political and socio-economic integration of the continent; (d) promoting and defending African common positions on issues of interest to the continent and its peoples; (e) encouraging international cooperation; (f) promoting peace, security, and stability on the continent; (g) promoting democratic principles and institutions, popular participation, and good governance; (h) establishing the necessary conditions that enable the continent to play its rightful role in the global economy and in international negotiations; (i) promoting cooperation in all fields of human activity to raise the living standards of African peoples; (j) coordinating and harmonising policies between the existing and future regional economic communities for the gradual attainment of the objectives of the Union; (k) advancing the development of the continent by promoting research in all fields, particularly in science and technology; (l) working with relevant international partners in the eradication of preventable diseases and the promotion of good health on the continent; (m) ensuring the effective participation of women in decision-making, particularly in the political, economic, and socio-cultural areas; (n) developing and promoting common policies on trade, defence, and foreign relations to ensure the defence of the continent and the strengthening of its negotiating positions; (o) inviting and encouraging the full participation of the African Diaspora as an important part of the African continent in the building of the AU.

Amongst the AU's key objectives is also the promotion and safeguarding of human and peoples' rights in alignment with the African Charter on Human and Peoples' Rights and other pertinent human rights frameworks.

The AU comprises several decision-making organs and other key bodies. The most important of these is the Assembly of Heads of State and Government, composed of Heads of State and Government or their duly accredited representatives. The Assembly is the supreme policy and decision-making body, assisted by the AU Bureau, which comprises three vice chairpersons and one rapporteur, the latter being the outgoing AU Assembly Chairperson.²¹¹

The Executive Council is composed of Ministers or equivalents designated by the governments of the AU Members. It coordinates and takes decisions on policies in areas of common interest for Member States. This Council reports to the AU

209 Constitutive Act of the African Union, completed at Lome, Togo, 11 July 2000.

210 Protocol on Amendments to the Constitutive Act of the African Union, adopted by the 1st Extraordinary Session of the Assembly of the Union in Addis Ababa, Ethiopia, 3 February 2003, and by the 2nd Ordinary Session of the Assembly of the Union in Maputo, Mozambique, 11 July 2003.

211 Constitutive Act of the African Union, Arts. 6–9.

Assembly, considers issues referred to it, and monitors the implementation of policies formulated by the Assembly.²¹²

The Permanent Representatives Committee (PRC) is composed of Permanent Representatives of Member States accredited to the Union. The PRC is responsible for preparing the work of the Executive Council and acting on its instructions.²¹³

Specialised Technical Committees (STCs) address sectoral issues at Ministerial Level, such as rural economy and agriculture; monetary and financial affairs; trade, customs and immigration; industry, science and technology; energy, natural resources and environment; transport, communications and tourism; health, labour and social affairs; and education, culture and human resources.²¹⁴

The Pan-African Parliament ensures the full participation of African peoples in governance, development, and economic integration of the continent.²¹⁵ In June 2014, the protocol relating to the composition, powers, functions, and organisation of the Pan-African Parliament was adopted by Member States.²¹⁶

The Economic, Social and Cultural Council (ECOSOCC) is an advisory organ composed of different social and professional groups from the Member States of the Union.²¹⁷

The AU Commission, based in Addis Ababa, Ethiopia, serves as the AU's Secretariat. It comprises an elected chairperson, a deputy chairperson, six commissioners, and an estimated 1,700 staff members, half of whom hold administrative functions. The Commission plays a central role in the day-to-day management of the AU. It represents the Union and defends its interests; elaborates draft common positions; prepares strategic plans and studies for the consideration of the Executive Council; elaborates, promotes, coordinates, and harmonises the programmes and policies of the Union with those of the RECs; and ensures the mainstreaming of gender in all programmes and activities of the Union.²¹⁸

The Peace and Security Council, created following the decision of the Summit of Lusaka in July 2001, is the AU's organ for the prevention, management, and resolution of conflicts. It comprises representatives of 15 elected Member States, serving 3-year terms.

Organs handling judicial and legal matters, as well as human rights issues, include the African Commission on Human and Peoples' Rights (ACHPR); the African Court on Human and Peoples' Rights (AFCHPR); the AU Commission on International Law (AUCIL); the AU Advisory Board on Corruption (AUABC); and the African Committee of Experts on the Rights and Welfare of the Child.

212 Constitutive Act of the African Union, Arts. 10–13.

213 Constitutive Act of the African Union, Art. 21.

214 Constitutive Act of the African Union, Arts. 14–16.

215 Constitutive Act of the African Union, Art. 17.

216 Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament, adopted by the 23rd Ordinary Session of the Assembly, held in Malabo, Equatorial Guinea, 17 June 2014.

217 Constitutive Act of the African Union, Art. 22.

218 Constitutive Act of the African Union, Art. 20.

The AU's financial institutions include the African Central Bank, the African Investment Bank, and the African Monetary Fund.

Regional Economic Communities (RECs) and the African Peer Review Mechanism are also integral components of the AU's framework.

A protocol to set up the Court of Justice was adopted in 2003 and entered into force in 2009. However, it was superseded by a protocol creating the African Court of Justice and Human Rights. The merger protocol was adopted during the 11th African Union Summit in July 2008. The united court is based in Arusha, Tanzania.

To achieve its goals and fulfil the Pan-African Vision of a unified, prosperous, and peaceful continent, Agenda 2063 was established as a strategic blueprint for Africa's long-term socio-economic and integrative development.²¹⁹ This agenda emphasises the importance of enhanced cooperation and support for African-driven initiatives to realise the aspirations of the continent's people.

In their analysis of the African political integration process and its impact on EU–AU relations, Mattheis et al. argued that the AU is an intergovernmental regional organisation with supranational elements. However, the emphasis on national sovereignty by AU Member States, and their efforts to safeguard it, has resulted in an institutional structure with limited delegation of power to supranational bodies. Additionally, the governance structures for integration face significant challenges, including the lack of robust dispute resolution mechanisms.²²⁰

The AU Assembly is theoretically empowered to make decisions, monitor progress, and enforce policies, though it can delegate these powers to other organs. The AU Commission serves as the technical secretariat, but its role is primarily confined to providing expertise rather than executing policies, reflecting its constrained capacity. In practice, the implementation of major decisions largely depends on the Member States. Strategic matters are typically directed to the Executive Council, composed of foreign ministers, via the PRC, comprising ambassadors and representatives of Member States.²²¹

Resultantly, the enforcement of binding obligations from the AU Assembly hinges on the willingness of Member States, acting through the Executive Council, to delegate certain sovereign powers to the AU Secretariat, enabling it to function as a fully empowered Commission. A similar dynamic affects the African Court of Justice, whose limited authority undermines its ability to establish binding rules or impose sanctions on non-compliant Member States. Despite ongoing discussions to strengthen these institutions, the vision of a federalist 'United States of Africa' continues to lack widespread consensus across the continent.²²²

219 The African Union Agenda 1063, Framework Document, September 2015.

220 See Mattheis et al., 2023, p. 10. See also African Union, 2013, p. 7

221 Ibid.

222 Ibid.

3.1.2. *The Principle of Equality Amongst Member States of the African Union*

The principle of equality amongst Member States can be traced back to the founding of the Organization of African Unity (OAU), the AU's predecessor. The OAU's Charter emphasised the sovereign equality of all African states as a response to colonial legacies that had divided the continent.²²³ This foundational ideal was carried forward into the AU, reflecting a commitment to inclusivity and non-discrimination.

Pursuant to Art. 4 of the Constitutive Act of the AU, 'the Union shall function in accordance with the sovereign equality and interdependence among Member States of the Union'. Whilst this is the only provision of the Constitutive Act that explicitly refers to the principle of equality amongst Member States, the principle is also upheld by the design of the AU's institutional structures and decision-making rules.

The Assembly of the Union, as the supreme decision-making body, operates on a one-country, one-vote system, ensuring equal representation. The Assembly elects its Bureau based on rotation, agreed geographical representation, and regional consultations. At the request of any Member State and upon approval by a two-thirds majority of the Member States, the Assembly shall meet in extraordinary session. The Assembly takes its decisions by consensus or, failing that, by a two-thirds majority of the Member States. Procedural issues, including the question of whether a matter is one of procedure, are decided by a simple majority. Two-thirds of the total membership of the Union shall form a quorum at any meeting of the Assembly.²²⁴

Composed of foreign ministers, the Executive Council reflects the collective will of Member States without privileging any single nation. The same voting rules that apply to the Assembly also apply to the Council. The latter takes its decisions by a two-thirds majority if there is no consensus amongst the Member States. The Council also meets in an extraordinary session at the request of any Member State and upon approval by two-thirds of all Member States.²²⁵

The Peace and Security Council (PSC) includes both rotating and elected seats, selected on the basis of regional representation to serve 3-year terms. Its decisions require consensus or majority voting, preserving balance amongst members. A clear example of this balance is the conflict mediation in Sudan, where the AU's equal representation principle enabled diverse Member States to contribute to peace negotiations, ensuring a balanced approach.²²⁶

The principle of equality amongst AU Member States fosters inclusivity, which is essential for addressing diverse challenges such as conflict resolution, economic integration, and public health crises. By ensuring equal participation, the AU seeks to promote consensus-building and collective ownership of policies, boost smaller

223 Charter establishing the Organisation of African Unity, Art. 3.

224 Charter establishing the Organisation of African Unity, Arts. 6–7.

225 Charter establishing the Organisation of African Unity, Arts. 10–11.

226 See Mbaku, 2024.

states' confidence in the organisation's fairness, and strengthen regional integration by prioritising mutual benefits over individual dominance.²²⁷

Despite its significance, the principle of equality faces numerous challenges, including economic disparities amongst Member States, political instability, and gaps in implementation. Whilst financial contributions are adjusted to reflect the economic capabilities of Member States, this should not, in principle, result in unequal influence over decision-making. However, wealthier states may exert disproportionate influence through their financial contributions or bilateral agreements. Conversely, fragile states often face difficulties in fully exercising their rights within the AU framework. As noted by De Melo and Tsikata, small, fragmented, and isolated economies with resources distributed very unequally amongst them make a compelling case for African countries to integrate regionally to reap efficiency gains, exploit economies of scale, and reduce the thickness of borders. At the same time, in the absence of compensation mechanisms, the unequal distribution of gains has hampered progress.²²⁸ Ultimately, the disconnect between formal equality and practical realities risks eroding trust in the AU's processes.²²⁹

The principle of equality amongst Member States is fundamental to the AU's mission of fostering unity and collective progress. Despite ongoing challenges, upholding this principle is crucial for building trust, promoting inclusivity, and advancing sustainable development across the continent. To ensure that equality becomes a tangible reality within the AU framework, it will be essential to strengthen institutional mechanisms and address economic and political disparities.²³⁰

3.2. The Union of South American Nations

3.2.1. The Union of South American Nations in a Nutshell

The Union of South American Nations (*Unión de Naciones Suramericanas*, UNASUR) was initially established as the Community of South American Nations (CSN) during the Third South American Summit on December 8, 2004, in Cusco and Ayacucho, Peru. This founding moment, marked by the Cusco Declaration, outlined a vision to unite the region's two existing free trade blocs – the Southern Common Market (MERCOSUR) and the Andean Community of Nations (CAN) – whilst preserving their individual autonomy.²³¹

The CSN aimed to create a cohesive South American framework spanning political, social, economic, environmental, and infrastructural domains, thereby fostering a unique regional identity. Its strategic plan emphasised integration through

227 During the COVID-19 crisis, for example, the equal participation in AU-led health initiatives allowed equitable distribution of resources, such as vaccines and medical equipment.

228 See De Melo and Tsikata, 2014, p. 19.

229 Ibid.

230 Murithi, 2008.

231 Paredes Sanchez, 2011, p. 26.

South–South cooperation, with a strong focus on social and cultural dimensions. Core priorities included reducing inequalities, promoting fair integration, drafting a new South American social contract, advancing energy collaboration, improving regional connectivity through infrastructure, encouraging trade and industrial development, celebrating cultural diversity, and addressing environmental sustainability and defence concerns.²³²

In 2007, during the South American Energy Summit, Hugo Chávez, the President of Venezuela, proposed a deeper level of integration by establishing the UNASUR, with a permanent secretariat located in Quito, Ecuador. This transition from the CSN to UNASUR represented more than just a change in name; it embodied a vision for enhanced integration and marked a significant advancement in consolidating ideas debated in earlier diplomatic efforts. The shift demonstrated a political commitment to reconfiguring the region's structural framework.²³³

The Constitutive Treaty of the Union of South American Nations²³⁴ was signed on May 23, 2008, during the Third Summit of Heads of State and Government held in Brasília, Brazil. In 2010, the Additional Protocol to the Constitutive Treaty on Commitment to Democracy was approved, obligating Member States to promote and uphold the rule of law, democratic institutions, human rights, and fundamental freedoms, particularly the freedom of opinion and expression.

The UNASUR comprises 12 nation-states: Bolivia, Colombia, Ecuador, and Peru (also members of CAN); Argentina, Brazil, Paraguay, Uruguay, and Venezuela (also members of MERCOSUR); and Guyana, Surinam, and Chile. The establishment of UNASUR was characterised by its holistic approach to integration and cooperation, differing from previous processes of integration in the South American region. The Union has expressed its commitment to a multi-dimensional integration approach, focusing on areas such as infrastructure, education, health, energy, and security. Its goal is to promote long-term social and human development, aiming to enhance the quality of life for its population by reducing poverty and addressing regional inequalities. Alongside fostering social unity, the Union pursues significant macro-level economic and political objectives, striving to strengthen political cohesion and enhance the region's influence in international negotiations.²³⁵

The Constitutive Treaty outlines its primary goal as fostering integration and unity amongst its peoples in cultural, social, economic, and political domains. This process is to be achieved through a participatory and consensual approach, emphasising political dialogue, social policies, education, energy, infrastructure, financing, and environmental initiatives. UNASUR aims to eliminate socio-economic inequalities, promote social inclusion, and encourage civil society participation, whilst strengthening democracy and addressing regional asymmetries. All these efforts are

232 Paredes Sanchez, 2011, p. 26.

233 Paredes Sanchez, 2011, pp. 26–27. See also Diaz and Cano, 2007.

234 Constitutive Treaty of the Union of South American Nations, 23 May 2008, OXIO 179.

235 Paredes Sanchez, 2011, p. 25.

pursued within a framework that upholds and reinforces the sovereignty and independence of Member States.²³⁶

The Council of Heads of State and Government serves as the highest authority within UNASUR. Its responsibilities include setting policy directions, developing action plans, initiating and supporting programmes, and determining implementation priorities. Additionally, it has the authority to convene Sectoral Ministerial Meetings and establish Ministerial Councils. The Council also reviews and acts on proposals submitted by the Council of Ministers of Foreign Affairs and establishes political guidelines for relations with third parties.²³⁷

The President Pro Tempore is responsible for organising, convening, and presiding over meetings of UNASUR's bodies. Their duties include presenting an annual programme of activities, representing UNASUR at international events, fulfilling commitments made by UNASUR entities, and signing declarations with third parties, subject to the approval of the appropriate UNASUR bodies.²³⁸

The Council of Foreign Affairs Ministers is responsible for implementing the decisions made by the Council of Heads of State and Government. It adopts resolutions to this end and proposes draft decisions, coordinates positions on key integration issues, and fosters political dialogue and coordination. The Council also approves the annual programme of activities, adopts resolutions and regulations, and establishes working groups aligned with the priorities set by the Council of Heads of State and Government.²³⁹

The Council of Delegates is tasked with implementing the decisions of the Council of Heads of State and Government and the Council of Foreign Affairs Ministers, in collaboration with the President Pro Tempore and the General Secretariat. It organises meetings, drafts decisions, resolutions, and regulations, ensures compatibility, and coordinates UNASUR's initiatives with other ongoing regional processes.²⁴⁰

The UNASUR permanent General Secretariat, based in Quito, Ecuador, was established to eliminate the inefficiencies associated with rotating pro tempore secretariats amongst Member States. Under the leadership of the Secretary General, the Secretariat executes the directives of UNASUR's governing organs and represents them accordingly. Its responsibilities also include supporting various councils, proposing initiatives, overseeing the implementation of decisions made by the organisation's governing bodies, and preparing annual reports.²⁴¹

236 Constitutive Treaty of the Union of South American Nations, Art. 2.

237 Ibid., Art. 6.

238 Ibid., Art. 7.

239 Ibid., Art. 8.

240 Ibid., Art. 9.

241 Constitutive Treaty of the Union of South American Nations, Art. 10.

The Thematic Councils serve as UNASUR's primary mechanisms for achieving sustainable, long-term integration amongst its Member States. These councils are established based on the specific needs and priorities of the Union's countries.²⁴²

The Energy Council of South America, created by the Declaration of Margarita (17 April 2007), is also part of UNASUR.²⁴³

Pursuant to Art. 14 of the Constitutive Treaty, political consultation and coordination amongst UNASUR Member States shall be based on harmony and mutual respect, strengthening regional stability and supporting the preservation of democratic values and the promotion of human rights.

Erika Paredes Sanchez's analysis highlights that the challenges facing UNASUR stem partly from unmet agendas and overly ambitious goals from previous integration efforts. South America has a history marked by military coups and governments led by the Armed Forces, contributing to these difficulties. Additionally, financial constraints arise from increased competition for development and investment resources. Reducing asymmetries is essential for the success of UNASUR, as it is a prerequisite for sustainability and legitimacy. Although this issue has been acknowledged at the highest political levels, UNASUR struggles to turn this recognition into action. The presence of major regional powers, such as Brazil and Argentina, further complicates efforts to address these asymmetries. However, existing social agreements and their connections to economic objectives may help mitigate these disparities. Finally, within UNASUR, a plethora of integration proposals exists that dilute the effectiveness of initiatives. Many of these proposals lack a strong institutional framework capable of transferring capabilities and making sovereign decisions.²⁴⁴

UNASUR aimed to model its framework after the EU; however, it is challenging to identify any supranational elements within its institutional and decision-making structures. According to para. 5 of Art. 12 of the Constitutive Treaty, legislative measures issued by UNASUR's organs become binding on Member States only after being integrated into each Member State's domestic law, following their respective internal legal procedures.

3.2.2. The Principle of Equality Amongst Member States of the Union of South American Nations

UNASUR was established as a regional organisation aimed at fostering political dialogue, economic cooperation, and social development amongst its 12 Member States. Central to its mission is the principle of equality, which the Union understands

242 Currently, the active thematic Councils include the Council of Health; the Council of Education, Science, Culture, Technology, and Innovation; the Council of Infrastructure and Planning; the Council of Energy; the Council of Social Development; the Council to Fight Drug Trafficking; the Council of Defence; the Council of Economy and Finances; and the Electoral Council.

243 Constitutive Treaty of the Union of South American Nations, Art. 5.

244 Paredes Sanchez, 2011, pp. 33–34. See also Rojas, 2007; and Diaz and Cano, 2007.

as a normative value promoting solidarity and mutual respect amongst Member States.²⁴⁵ The principle is enshrined in the UNASUR Constitutive Treaty with a view to eliminating socio-economic inequalities, achieving social inclusion and participation, and reducing asymmetries within the framework of strengthening the sovereignty and independence of Member States.²⁴⁶ Establishing inclusive and equitable social and human development, in order to eradicate poverty and overcome inequalities in the region, is explicitly listed amongst UNASUR's Specific Objectives.²⁴⁷

In UNASUR, the principle of equality amongst Member States is upheld, *inter alia*, through ensuring equal representation and equitable participation in the Union's decision-making bodies and processes. The Presidency Pro Tempore of UNASUR is held successively by each Member State, in alphabetical order, for periods of one year.²⁴⁸ Extraordinary meetings of the Council of Heads of State and Government may be summoned through the Presidency Pro Tempore upon the request of any Member State, subject to the consensus of all Member States.²⁴⁹ Ordinary meetings of the Council of Ministers of Foreign Affairs may be convened by the Presidency Pro Tempore on an extraordinary basis at the request of half of the Member States.²⁵⁰ In the selection of employees of the General Secretariat, equitable representation for each Member State is guaranteed.²⁵¹ Whilst the Secretary General is appointed by the Council of Heads of State and Government for a term of two years, renewable only once, they shall not be succeeded by a person of the same nationality.²⁵²

Decisions within UNASUR are made based on consensus, ensuring that all voices are heard and that no single state can dominate the decision-making process. Decisions of the Council of Heads of State and Government, Resolutions of the Council of Ministers of Foreign Affairs, and Provisions of the Council of Delegates may be adopted with the presence of at least three-quarters (3/4) of the Member States.²⁵³ The Working Groups hold sessions and make proposals as long as a quorum of half plus one of the Member States is present.²⁵⁴ Each Member State may submit, for the consideration of the Council of Delegates, proposals for the adoption of policies, as well as the creation of common institutions, organisations, and programmes, which shall be adopted in a consensual manner.²⁵⁵

The financing of the ordinary budget for the functioning of the General Secretariat is based on differentiated contribution quotas of the Member States, taking

245 See Viana, 2018, pp. 1036–1058.

246 Constitutive Treaty of the Union of South American Nations, Art. 2.

247 Constitutive Treaty of the Union of South American Nations, Art. 3.

248 Ibid., Art. 7.

249 Ibid., Art. 6.

250 Ibid., Art. 8.

251 Ibid., Art. 10, para. 10.

252 Ibid., Art. 10, para. 3.

253 Ibid., Art. 12, para. 2.

254 Ibid., Art. 12, para. 4.

255 Ibid., Art. 13.

into account their economic capacity, shared responsibility, and the principle of equity.²⁵⁶

The principle of equality amongst Member States is a foundational element of UNASUR, promoting cooperation and solidarity in the face of diverse challenges. Whilst the commitment to equality is enshrined in UNASUR's governance framework, the practical implementation of this principle faces significant challenges due to political, economic, and social disparities amongst Member States. Larger and more economically powerful countries, such as Brazil and Argentina, may wield more influence in decision-making processes, potentially undermining the principle of equality.²⁵⁷ Moving forward, UNASUR must strengthen its institutional mechanisms to ensure that the principle of equality is upheld in practice, thereby enhancing regional integration and cooperation.

3.3. The South Asian Association for Regional Cooperation

3.3.1. An Outline of the Origin, Objectives, Structure, and Challenges of the South Asian Association for Regional Cooperation

The South Asian Association for Regional Cooperation (SAARC) is a regional intergovernmental organisation and geopolitical union of states in South Asia. It was established on 8 December 1985, with the aim of promoting economic growth, social progress, and cultural development amongst its Member States. The Secretariat of the Association was set up in Kathmandu, Nepal, on 17 January 1987. SAARC comprises eight member countries: Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka.

The SAARC's primary objectives, as outlined in the Charter of the South Asian Association for Regional Cooperation,²⁵⁸ include: (a) promoting the welfare of the peoples of South Asia and improving their quality of life; (b) accelerating economic growth and fostering social progress; (c) strengthening collective self-reliance amongst the Member States; (d) enhancing regional integration; (e) promoting active collaboration and mutual assistance in economic, social, cultural, technical, and scientific fields; (f) strengthening cooperation amongst themselves in international forums on matters of common interest and cooperation with other developing countries; and (g) cooperating with international and regional organisations with similar aims and purposes.²⁵⁹

²⁵⁶ Ibid., Art. 16.

²⁵⁷ For example, the response to the political crisis in Venezuela showcased the difficulties of achieving consensus amongst Member States with differing political alignments. Similarly, the challenges of addressing economic disparities amongst Member States have raised questions about the equitable distribution of resources and benefits derived from regional integration efforts.

²⁵⁸ Charter of the South Asian Association for Regional Cooperation, completed in Dhaka, Bangladesh, 8 December 1985.

²⁵⁹ Charter of the South Asian Association for Regional Cooperation, Art. 1.

In line with the Charter, cooperation within the framework of SAARC is based on respect for the principles of sovereign equality, territorial integrity, political independence, non-interference in the internal affairs of other states, and mutual benefit. Such cooperation is intended to complement, rather than substitute for, bilateral and multilateral cooperation and must not conflict with bilateral or multilateral obligations.²⁶⁰

SAARC's structure includes several key components. The Meetings of the Heads of State and Government constitute the highest decision-making authority and are held annually or biennially.²⁶¹

Comprising foreign ministers of Member States, the Council of Ministers formulates policies, reviews progress, decides on new areas of cooperation, establishes additional mechanisms as needed, and address other matters of general interest.²⁶²

Made up of foreign secretaries, the Standing Committee monitors and coordinates programmes of cooperation; approves projects and programmes and their financing modalities; determines inter-sectoral priorities; mobilises regional and external resources; and identifies new areas of cooperation based on appropriate studies. The Standing Committee submits periodic reports to the Council of Ministers and may establish Action Committees comprising the Member States concerned with implementing projects involving more than two, but not all, Member States.²⁶³

Comprising representatives of Member States, the Technical Committees are responsible for implementing, coordinating, and monitoring programmes in their respective areas of cooperation. They determine the potential and scope of regional cooperation, formulate, coordinate, and monitor programmes and projects, assess financial implications of sectoral programmes, and make recommendations regarding cost apportionment. The Technical Committees submit periodic reports to the Standing Committee.²⁶⁴

The SAARC Secretariat, located in Kathmandu, facilitates coordination and implementation of activities.²⁶⁵

The last Summit of Heads of State was held in Kathmandu in 2014. Since then, Nepal has been organising informal meetings of SAARC Foreign Ministers annually, with the most recent hosted virtually by Kathmandu in September 2020 on the margins of the UNGA.²⁶⁶

Areas identified for cooperation amongst Member States include agriculture and rural development; health and population; women, youth, and children; environment and forestry; science and technology; metrology; transport; and human resource development. Working groups have been established in the areas of information and

²⁶⁰ Ibid., Art. 2.

²⁶¹ Ibid., Art. 3.

²⁶² Ibid., Art. 4.

²⁶³ Ibid., Arts. 5 and 7.

²⁶⁴ Ibid., Art. 6.

²⁶⁵ Charter of the South Asian Association for Regional Cooperation, Art. 8.

²⁶⁶ European External Action Service, 2024.

communications technology, biotechnology, intellectual property rights, tourism, and energy. Additionally, under the auspices of the Association, various regional centres covering agriculture, tuberculosis, documentation, meteorological research, human resource development, culture, coastal zone management, and information operate from different SAARC capitals.²⁶⁷

Although the SAARC's movement in terms of achieving the objectives for which it was formed has been slow, and it is criticised as a house of cards or a house built on sand, which can fall apart at any time, Dhungel's analysis shows that the association can boast of some important achievements. Worth pointing out is the adoption of the SAARC's 1990 Convention on Narcotic Drugs and Psychotropic Substances, the 2002 Convention on Preventing and Combating the Trafficking of Women and Children for Prostitution, the 2002 SAARC Convention on the Regional Arrangements for the Promotion of Child Welfare in South Asia, the 2002 SAARC Plan of Action on Poverty Alleviation, the 2004 SAARC Regional Convention on Suppression of Terrorism, and the 2004 SAARC Social Charter. In the economic sector, in 2004, the SAARC first founded the South Asian Preferential Trading Arrangement (SAPTA) and then the South Asian Free Trade Area (SAFTA) to promote trade and commerce by reducing tariffs.²⁶⁸

Despite its achievements, the SAARC faces several challenges. Many agreements and initiatives remain unimplemented due to bureaucratic and political hurdles. Conflicts, particularly between India and Pakistan, the two nuclear powers, hinder cooperation. Challenges in achieving common goals are also generated by the wide gaps in economic development amongst Member States. The SAARC's cohesion is slowed by geopolitical dynamics and the influence of global powers. According to Dhungel, to enhance its effectiveness, the SAARC must consider, *inter alia*, establishing mechanisms for conflict resolution to mitigate political tensions; strengthening economic ties through deeper trade agreements and cross-border projects; strengthening inter-institutional cooperation and the transportation, transit, and communication links across the region; and addressing climate change, cybersecurity, and public health crises collaboratively.²⁶⁹

3.3.2. *The Principle of Equality Amongst Members States of the South Asian Association for Regional Cooperation*

The Charter of the SAARC states that 'cooperation within the framework of the association shall be based on respect for the principles of sovereign equality, territorial integrity, political independence, non-interference in the internal affairs of

267 See Dhungel, 2004, pp. 933–934. Beyond official linkages, the SAARC facilitates cooperation in the private sector through the SAARC Chamber of Commerce and Industry (SCCI), the SAARC Law, and the South Asian Federation of Accountants (SAFA).

268 Dhungel, 2004, p. 938.

269 Dhungel, 2004, pp. 939–941.

other States and mutual benefit'. Additionally, according to the Charter, cooperation within the framework of the SAARC 'shall not be a substitute for bilateral and multilateral cooperation but shall complement them and shall not be inconsistent with bilateral and multilateral obligations'.²⁷⁰

In a region characterised by stark disparities in size, population, and economic power amongst its members, the principle of equality is of particular importance. This is reflected in the Charter's provisions, which mandate equal representation, unanimity in decision-making, rotational leadership, and equitable resource allocation.

The representation of Member States in the highest organs of the SAARC is based on the principle of parity, as each Member State is represented by their Heads of State and Government, Foreign Ministers, and Foreign Secretaries. Their decision-making framework operates on the basis of consensus (e.g. decisions at all levels are taken on the basis of unanimity), granting each Member State an effective veto.²⁷¹ Whilst an extraordinary session of the Council of Ministers may be held only by agreement amongst the Member States, the Chairmanship of the Technical Committees normally rotates amongst them in alphabetical order every two years.²⁷² These mechanisms prevent the concentration of power, ensure balanced representation, and guarantee that no single state dominates the organisation's agenda, preserving the region's collective interests.

The SAARC institutions and programmes, such as the SAARC Development Fund (SDF), are designed to distribute resources equitably, prioritising projects that benefit multiple Member States and address shared challenges.

Despite its foundational commitment to equality amongst Member States, the SAARC faces several challenges in upholding this principle, such as disparities in economic and political power, bilateral tensions amongst members, and resource constraints. For example, India, as the largest and most economically powerful member, often plays a dominant role in regional affairs. Whilst this can drive initiatives, it sometimes creates perceptions of imbalance and undermines smaller states' confidence. Moreover, conflicts between Member States, notably India and Pakistan, frequently spill over into the SAARC proceedings, hampering consensus and the organisation's overall efficacy. Practical barriers to equality may also occur due to the limited financial and administrative resources of smaller states, which struggle to participate fully in the SAARC's activities.

270 Charter of the South Asian Association for Regional Cooperation, Art. 2, paras. 2 and 3.

271 Charter of the South Asian Association for Regional Cooperation, Art. 10.

272 Charter of the South Asian Association for Regional Cooperation, Art. 6.

4. The European Union: Federalism, Confederalism, Supranationalism, and the Principle of Equality Amongst Member States

4.1. *Between Federal, Confederal, and Hybrid*

Debates regarding the structure of the EU position it as federal, confederal, a hybrid integration combining elements of both, or *sui generis*, as a supranational formation. Elazar, for instance, described the EU – then the European Community – as a community rather than a union. He contended that it is more confederal than federal, as the primary expression of its constituent parts occurs at the national, Member-State level rather than through EU institutions. According to Elazar, whilst the EU exhibits some federal principles, it may be reluctant to fully commit to a federal structure, influenced by cultural, political, and social considerations that complicate the implementation of a fully federal system.²⁷³

Cerar observed that the EU's foundation on international treaties reflects the confederal principle, whilst the operation of the European Commission predominantly embodies the federal principle.²⁷⁴ Contrastingly, Skillen contended that the EU effectively has a written constitution through a series of overlapping treaties. Although the proposed 'European Constitution' (e.g. the Treaty establishing a Constitution for Europe) failed ratification, the Lisbon Treaty incorporates most of its key provisions and functions as a *de facto* constitution. This treaty framework emphasises non-centralisation of power and delineates different competencies between the EU and its Member States. The Court of Justice of the European Union (CJEU) plays a crucial role in interpreting these powers, thereby maintaining the balance of non-centralisation. The 'federal principle' is also reflected in the aspiration for an 'ever-closer union'.²⁷⁵

However, as Skillen argued, the federal principle within the EU is not particularly strong. The EU lacks a clear and real division of powers and does not fully embrace a strong federal principle. Similarly, it does not fit the definition of a confederation, as it possesses supranational elements and has directly elected representatives of its constituents. Drawing from Watts, Skillen contended that the EU is structured to govern for 'certain limited purposes'. Nevertheless, with the enhanced role of the European Parliament following the Lisbon Treaty, it is evident that the EU is not merely composed of delegates from Member States' governments. Moreover, the EU exercises certain supranational powers rather than being purely intergovernmental. The European Parliament employs various forms of majority voting in its legislative

273 Skillen, 2017, pp. 4 and 7. Skillen highlighted that the limitations identified by Elazar are also apparent in the current climate of Euroscepticism.

274 Cerar, 2007.

275 Skillen, 2017, p. 4.

procedures, and whilst consensus is generally sought in the Council of the EU, qualified majority voting is also utilised.²⁷⁶

Whilst the EU does not meet the criteria of a federation, it is more than a simple confederation. It exists between the two models, incorporating elements and tendencies of both. Consequently, both constituencies are represented within the EU – citizens as in a federation, and Member States as in a confederation.²⁷⁷ A key question for the future is whether one principle will ultimately prevail: will the EU evolve into a federal supranational power with broad legislative authority, revert to a confederal alliance based on consensus amongst sovereign states, or remain a hybrid supranational organisation that blends both principles?

4.2. On the Principle of Equality Amongst Member States in EU law

In the EU system, the principle of equality amongst Member States is set out in para. 2 of Art. 4 of the Treaty on European Union (TEU), which states, *inter alia*, that ‘[T]he Union shall respect the equality of member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government [...]’. This same provision also enshrines the principle requiring the EU to respect the Member States’ national identities, and the principle is coupled with that of sincere cooperation, which is set forth in the following para. 4(3) TEU and regarded as the true cornerstone of European integration.

Prior to the Lisbon Treaty, no explicit mention of the principle of equality amongst Member States was made in the Union’s primary law. However, before finding its place in the EU Treaties, the principle had already been expressed by the CJEU in its early rulings through the principle prohibiting discrimination by reason of nationality, which was enshrined in the Treaty Establishing the European Economic Community.²⁷⁸

The principle of equality amongst Member States is reflected in the institutional rules of the EU in various ways. Most prominent is the principle in the representation of each Member State in the Union’s institutions and in decision-making processes (e.g. in the voting rules). Legal provisions on both evolved throughout the European integration process, each EU charter introducing its own regimes.

The Lisbon Treaty redefined the composition and representation of Member States in the institutions, so that in the European Parliament the seats are allocated proportionally to the population of each Member State. A principle of degressive proportionality is applied, meaning larger states have more MEPs, but smaller states

²⁷⁶ Skillen, 2017, p. 7.

²⁷⁷ Skillen, 2017, p. 8.

²⁷⁸ See CJEU, Case 13/63 *Italian Republic v. Commission of the European Economic Community* EU:C:1963:20, and Case C-44/94 *The Queen v. Minister of Agriculture, Fisheries and Food, ex parte National Federation of Fishermen’s Organisations and others, and Federation of Highlands and Islands Fishermen and others* EU:C:1995:325, cited in Rossi, 2017, pp. 23–24.

have more MEPs per capita, whilst no Member State can have fewer than six seats or more than 96 seats.²⁷⁹

In the European Council, each Member State is represented by its Head of State or Government. Decisions are typically made by consensus, but some decisions are subject to qualified majority voting, which reflects both the population size and the number of Member States.²⁸⁰

The Council of the EU comprises government ministers from each Member State (each Member State sends one minister for the relevant policy area). The Lisbon Treaty introduced a reformed qualified-majority voting system, also known as the double majority system, which requires 55% of the Member States (at least 15 states out of 27) voting in favour, representing at least 65% of the total EU population. A blocking minority requires at least four Member States representing more than 35% of the EU population. The office of President of the Council shall be held in turn by each Member State for a term of six months.²⁸¹

The European Commission comprises one Commissioner from each Member State. Although the Treaty initially intended to reduce the number of Commissioners to two-thirds of the number of Member States, a political agreement maintained the rule of one Commissioner per Member State.²⁸²

The appointment of judges to the CJEU and to the General Court is now based on the rule of one or two seats per Member State. An exception to the rule, in favour of larger States, is only made in appointing Advocate Generals.²⁸³

These institutional arrangements reflect a balance between ensuring equality amongst Member States and recognising differences in population size, thus indicating a clear tendency towards enforcement of the principle of differentiated equality (e.g. dynamic, advanced equality).²⁸⁴

Important implications for the implementation of the principle of equality amongst Member States also arise from case law. According to the CJEU, the principle should be regarded, in the first place, as a duty of the EU institutions not to treat similar situations in different ways and different situations in the same way when addressing Member States. The Court used the principle as a basis for not admitting exceptions to common rules, especially in regard to the transitional period granted to new Member States, treating newer and older States differently on the grounds that they find themselves in a different situation. In the second place, according to the CJEU, the principle also sets some prohibitions for Member States, such as the prohibition of seeking positions of advantage to the detriment of other States.²⁸⁵

279 Art. 14 TEU.

280 Art. 15 TEU.

281 Art. 16 TEU.

282 Art. 17 TEU.

283 Art. 19 TEU.

284 Rossi, 2017, pp. 14–15.

285 Rossi, 2017, pp. 24–25.

In practice, disparities amongst Member States in terms of economic development, political influence, and legal integration continue to challenge the principle of equality within the Union. Despite its legal recognition, the principle is often compromised by power asymmetries amongst EU members. Larger economies, such as Germany and France, wield greater influence in shaping EU policies, particularly in areas requiring economic coordination, such as the Economic and Monetary Union (EMU). Differentiated integration – whereby some countries opt out of specific policies (e.g. the Schengen Area or the euro area) – further complicates the notion of equal participation. Considering that the EU enforcement mechanisms sometimes apply differently to different states, the CJEU and the European Commission have been criticised for selective enforcement of legal obligations, particularly in cases of rule-of-law disputes and economic governance, where more politically influential states may receive more lenient treatment.

Examining the relationship between the principle of equality amongst Member States and the differentiation mechanisms used in the EU integration process, Rossi argued that, in the EU system, the principle of equality amongst Member States is sometimes overshadowed by the idea of differentiated integration. The EU treaties provide different forms of differentiated integration for specific cases if freely accepted by the Member States.²⁸⁶ If all members agree, differentiated statuses amongst them can also be introduced under the protocols added to the founding Treaties. In these cases, a differentiated status in favour of the requesting State will be set up by relieving it of obligations it would otherwise have under the relevant treaty (an example being Protocol No. 30 on the application of the EU Charter of the Fundamental Rights to Poland and the United Kingdom). Alongside the modification of the founding Treaties, another form of differentiated integration is the possibility of States resorting to the classic instrument of international law by forming agreements amongst themselves. According to Rossi, one of the CJEU's duties is to assess the extent to which the individual examples of differentiated integration accord with the principle of equality amongst Member States and to offer a coherent and homogeneous reading of the fundamental principles and objectives of the founding treaties.²⁸⁷

286 Rossi, 2017, p. 20. In the provisions of the Union's founding Treaties, differentiation can be found in various limitations on the territorial scope of the Treaties, specific and temporary derogations, and a variety of safeguard clauses. For example, temporary derogations have been frequently applied in accession Treaties in order to enable new Member States to benefit from transitional periods. Similarly, the founding Treaties' rules on the EMU not only differentiate between Member States forming part of the euro area and those who do not form part thereof, but in the latter category still further between Member States with a derogation and Member States with an opt-out (i.e. Denmark and the United Kingdom before Brexit). Furthermore, whilst according to the Amsterdam Treaty, Ireland and Denmark are allowed to not participate in the rules concerning civil cooperation, immigration, and asylum, the Lisbon Treaty extended the possibility to opt out for these two countries in police and criminal law cooperation. See Wouters and Schmitt, 2017, p. 56.

287 See Rossi, 2017, p. 20.

5. Enhancing Equality Amongst Member States in the European Union: Synthesis and Conclusion

The concluding section of the chapter summarises, in a synthetic way, how selected federations, confederations, and international organisations with supranational elements compare to the EU in terms of structure and functioning and in view of ensuring equality amongst members. The author aims to derive lessons applicable to fostering greater equality amongst EU Member States.

The outline of the selected federal systems shows that each system's unique evolution reflects historical, cultural, and political influences, shaping how power is allocated and exercised. Whilst these systems share certain similarities in constitutional governance, distribution of power (e.g. multiple levels of authority), institutional design, fiscal mechanisms, and dispute resolution mechanisms, their implementations differ based on local contexts.

All selected countries enshrine federalism in a written constitution, serving as the supreme law that delineates powers and responsibilities. Each system has a bicameral legislature where one chamber represents the population and the other safeguards the interests of federal units. Furthermore, each federation has a formal division of powers existing between central and subnational governments, addressing legislative, executive, and judicial functions. In all selected federal systems, a judiciary with constitutional authority resolves disputes over power distribution. States, provinces, territories, or cantons possess varying degrees of autonomy, reflecting local priorities and preferences.

Significant differences between the five federal systems can be identified in their historical context and formation, power distribution, legislative structures, fiscal arrangements, and conflict resolution mechanisms. For example, the U.S. adopted federalism in 1787, emphasising a strong central government whilst preserving state sovereignty to unify independent colonies. Germany implemented federalism post-World War II to decentralise power and prevent authoritarianism. Belgium transitioned to federalism in the 1990s to address tensions between Flemish and Walloon communities. Switzerland evolved a confederal system into federalism to manage linguistic and cultural diversity. Similarly, Canada adopted federalism in 1867 to balance unity amongst provinces with significant linguistic and cultural differences. Whilst the U.S. and Switzerland are examples of coming-together federations, Belgium is an example of holding-together federalism.

Regarding power distribution, the U.S. employs a dual federalism model, with distinct responsibilities for federal and state governments. Contrastingly, Germany follows cooperative federalism, with extensive collaboration between federal and state levels. Switzerland and Belgium have introduced unique federal arrangements: whilst the former operates with high autonomy for cantons and significant direct democracy mechanisms, the latter model is tailored to linguistic divisions, granting

considerable autonomy to its regions and communities. Canada emphasises asymmetrical federalism, providing Quebec and other provinces specific powers.

The five federal systems resort to similar but distinct conflict resolution mechanisms for resolving federal–state disputes. Whilst the U.S. Supreme Court and the German Federal Constitutional Court safeguard constitutional compliance by the federal units, in Switzerland, conflicts between cantons are mediated through the judicial system and referendums. Canada’s Supreme Court adjudicates disputes, particularly regarding Quebec’s unique status. Belgium addresses inter-regional tensions by relying on negotiation and constitutional amendments.

Notable differences amongst federations can also be traced in their legislative frameworks and in finances and taxes. These two components of federal arrangements are particularly relevant in view of the effective application of the principle of equality amongst federal entities.

Federal constitutions often explicitly guarantee the equal status of constituent units within the federation. The principle ensures fairness, balance, and unity whilst maintaining the diversity inherent in federal systems. Equality amongst federal units ensures that the voices of smaller or less-powerful regions, whether defined by ethnicity, language, culture, or geography, are heard and respected. It helps avoid excessive disparities in political power or economic development across regions. If certain states or provinces are perceived as more privileged or less influential, this can lead to resentment, conflict, and fragmentation. The principle is typically upheld through the representation of federal units in central governing bodies and the decision-making rules at the federal level.

In the U.S., each state, regardless of size or population, has equal representation in the Senate, with two senators per state. This ensures that smaller states have a voice equal to that of larger states in the legislative process. By allocating power in the Senate equally amongst the states irrespective of the differences between them, the Framers counterbalanced allocating power in the House of Representatives based on proportional (‘relative’) equality, depending on a state’s share of the national population.

Similarly, in the Swiss Federal Assembly, the National Council is proportional to the population, whilst in the Council of States each canton has two representatives, ensuring symmetric equality amongst the cantons in the legislative body. Another safeguard for cantonal equality is the double-majority requirement for constitutional amendments. The Federal Constitution provides that the majority of the cantons must approve a proposal for a constitutional amendment. This ensures that smaller cantons cannot be overridden by the preferences of larger ones.

Germany’s Bundesrat represents the 16 *Länder* and gives them a direct role in national legislation. Each state has a number of votes based on its population, but all states have representation irrespective of size or economic strength, ensuring their interests are considered. The principle of (proportional) equality of federal units is also reflected in the composition of the Federal Convention – the body responsible for the election of the Federal President.

In Belgium, the Senate represents the regions and linguistic communities, with proportional representation for each region and community. This structure promotes the interests of smaller regions alongside larger ones, maintaining a balance in national governance. Both major linguistic groups are also represented in the Council of Ministers, composed of an equal number of Dutch- and French-speaking members.

The Senate in Canada is composed of appointed members from various provinces, with regions represented equally regardless of their population. This ensures that smaller provinces have a voice in federal decisions. The Senate's structure serves as a counterbalance to the population-based representation of the House of Commons, ensuring that provinces (except for Newfoundland and Labrador) are represented according to the principle of parity and that less-populous areas are not overshadowed in federal decision-making.

Overall, the principle of state equality manifests across multiple dimensions of the federal systems. For example, constituent units have equal rights to self-governance in areas of their exclusive jurisdiction, as outlined in the federal constitutions. Equality is reflected in the division of powers between the federal and state levels, with constituent units exercising autonomy over matters assigned to them. Federal constitutions and laws often include non-discrimination clauses, and constitutional courts or supreme courts in federal systems act as arbiters to ensure the principle of equality is upheld.²⁸⁸ In most federal systems, constituent units are granted equal participation or veto powers in the process of amending the federal constitution. Additionally, the principle of equality is relevant in the admission of new states, the electoral process, intergovernmental relations, and fiscal arrangements.²⁸⁹

Unlike federal systems, confederalism places sovereignty firmly with the Member States. In a confederation, central authority is typically weak and derives its powers from voluntary agreements or treaties amongst the states. Decision-making at the central level in a confederation usually follows the principle of unanimity rather than majority rule. Resultantly, no decision by the central government is binding on any regional government unless the latter explicitly agrees to it. The spheres of joint activity amongst the Member States of a confederal system are founded on the equality of rights of those states.

Historical examples of the implementation of confederal principles are the Swiss Confederation (1291–1848), the Articles of Confederation (1781–1789), and the German Confederation (1815–1866). Modern confederal arrangements are uncommon, as the model often faces inefficiencies and challenges in decision-making. However, elements of confederalism can be observed in various international and supranational organisations as well as regional unions. The CIS, established following

288 In most federal systems, the issue of providing equality amongst states has been invoked by court decisions interpreting relevant constitutional provisions. Notably, the U.S. Supreme Court has developed several interpretative principles and doctrines, including the principle of equal sovereignty and the equal footing doctrine.

289 Instruments such as fiscal equalisation, as seen in Germany, Switzerland, and Canada, redistribute resources to maintain relative parity amongst federal units, enhancing national cohesion.

the dissolution of the Soviet Union, may be considered one of the few remaining examples of a loosely confederal model aimed at economic and political cooperation.

A confederal model of government is often difficult to distinguish from an international or supranational organisation. The decision-making process in a confederal system is notably similar to that of international organisations such as the United Nations, where decisions are not binding on members unless they consent. However, an international organisation represents a looser association than a confederation. Whilst the former may act as a corporate entity for certain activities, each member nation retains its own system of external relations and distinct legal personality under international law. Similar challenges apply when distinguishing between a confederation and a supranational organisation.

Section 3 of this chapter examines the structural frameworks and operational mechanisms of three prominent regional international organisations: the AU, the UNASUR, and the SAARC. Section 3 focuses on their objectives, governance structures, decision-making processes, and challenges. These organisations play a crucial role in fostering collaboration amongst Member States and represent significant efforts to promote political, economic, and social integration within their respective regions. In particular, Section 3 examines how the principle of equality amongst the Member States of these regional organisations is operationalised. Furthermore, it explores whether these organisations can serve as models for enhancing equality amongst EU Member States, drawing comparisons between their structures, decision-making processes, and implementation mechanisms.

The AU, established in 2001, replaced the OAU. It aims to promote unity and cooperation amongst African nations. It comprises various organs, including the Assembly of Heads of State and Government, the Executive Council, the Commission, and specialised agencies. The AU's decision-making is characterised by a commitment to consensus, although voting mechanisms exist. The Constitutive Act of the African Union explicitly upholds the equal sovereignty of its 55 Member States. In the AU Assembly, each Member State has one vote, regardless of size or economic status. The AU Commission's leadership is rotated amongst regions, ensuring equitable representation across the continent. However, challenges such as disparities in financial contributions, economic capacity, and political stability amongst Member States hinder the effective realisation of equality. Larger economies often wield disproportionate influence, creating tension within the union.

Formed in 2008, the UNASUR seeks to enhance political dialogue and integration in South America. Its structure includes a Council of Heads of State and Government, a Council of Ministers, and various operational bodies. The UNASUR's consensus-based decision-making requires unanimity, ensuring that all Member States have an equal say. Leadership roles within the organisation are rotated amongst Member States to prevent dominance by larger countries such as Brazil and Argentina. Despite these measures, the UNASUR has faced significant challenges, including political polarisation and economic disparities.

Established in 1985, the SAARC comprises eight Member States with significant disparities in size, population, and economic power. It focuses on promoting economic and regional integration amongst South Asian countries. Its decision-making setup includes a Summit of Heads of State or Government, a Council of Ministers, and a Secretariat. The SAARC operates on the principle of non-interference in domestic affairs, which shapes its decision-making process and limits its effectiveness in addressing regional issues. The organisation's charter emphasises sovereign equality, and its structures reflect this commitment. Each Member State has one vote in the SAARC Council, ensuring formal equality. The presidency of SAARC rotates annually, allowing all Member States to share leadership responsibilities. However, geopolitical tensions, particularly between India and Pakistan, have significantly undermined the principle of equality.

Turning to the EU, whilst it does not meet the criteria for classification as a federation, it exceeds the characteristics of a mere confederation. Scholars analysing the EU's structure often associate it with federalism or confederalism, describe it as a hybrid system combining elements of both, or argue that it is neither, instead characterising it as a *sui generis* supranational organisation. Consequently, the EU is widely recognised as a unique and distinctive model of regional political and economic integration that balances supranational governance with national sovereignty.

When comparing the nature, structure, and functioning of the EU with those of federal systems, several key differences emerge. EU Member States retain their sovereignty and remain independent entities under international law. The delegation of powers to the EU is voluntary and limited to specific areas. Moreover, Member States have the right to withdraw from the EU under Art. 50 of the TEU.

In contrast, the constituent units of federal states are not sovereign entities under international law; sovereignty resides with the federal state as a whole. The powers of these constituent units are constitutionally granted and cannot be unilaterally withdrawn or reclaimed. Since the constituent units are permanently integrated into the federal state, secession is typically prohibited or subject to significant restrictions under federal constitutions.

The EU is based on treaties agreed upon by Member States, who remain the masters of the treaties. Changes to the EU's legal framework require unanimous consent of all Member States. Whilst primary law (e.g. founding treaties) retains supremacy in relation to the internal law of Member States, the EU's legal system allows for considerable autonomy in how Member States implement EU directives. By contrast, federal constitutions clearly delineate the powers of the federal government and the constituent units. Amendments to the constitution typically require participation of constituent units. Federal law is supreme and uniformly applicable, with limited scope for local variation.

The EU operates on the principle of subsidiarity, where powers are exercised at the most local level possible unless they can be better managed collectively. Member States retain control over critical areas such as defence, taxation, and social policy, with shared competencies in areas such as trade and environmental policy.

Member States can negotiate treaties and engage in international diplomacy independently of the EU. Comparing the operation of the EU with constituent units of federal states, in the latter, powers are divided between federal and state governments as defined by a constitution. States have exclusive control over certain matters, whilst federal powers typically cover national concerns such as defence and foreign policy. Additionally, states cannot engage in international diplomacy or act independently in matters of federal jurisdiction.

In the EU, legal disputes are resolved by the CJEU, which ensures uniform interpretation of EU law. However, Member States often retain the ultimate authority to interpret their own constitutional compatibility with EU law, leading to occasional conflicts (e.g. Germany's and Poland's constitutional court rulings on EU matters). In federal states, disputes between constituent units and the federal government are resolved by a federal constitutional or supreme court. Federal courts generally have the final say, and constituent units must comply.

The principle of equality amongst Member States is enshrined in the EU's foundational treaty, the TEU. The Union's decision-making processes include mechanisms designed to balance formal equality with proportionality. For example, in the European Parliament, seats are allocated based on the population of each Member State, but a principle of degressive proportionality is applied – larger states have more MEPs, whilst smaller states have more MEPs per capita.

In the European Council and the Council of the EU, the Heads of State and Government and ministers from each Member State ensure equal participation in high-level decision-making. However, a reformed qualified-majority voting system, also known as the double-majority system, allocates votes according to population size whilst ensuring that smaller states retain significant influence. Furthermore, policies such as the Cohesion Fund aim to reduce disparities amongst Member States, fostering both economic equality and deeper integration.

Despite these mechanisms, tensions remain regarding the equal treatment of larger and smaller, as well as newer and older, Member States. Whilst the EU demonstrates a clear inclination towards differentiated integration – its treaties providing various mechanisms for specific cases that are voluntarily accepted by Member States – the CJEU has emphasised that, in the context of newer and older Member States, the principle of equality obligates EU institutions to avoid treating similar situations differently or different situations in the same way when addressing Member States. Ultimately, the EU's experience underscores the challenge of achieving genuine equality within a framework marked by significant economic and political asymmetries.

In conclusion, the principle of equality is a shared ideal across (con)federations as well as international and supranational organisations, but its implementation varies significantly. This principle functions differently in the context of EU Member States compared to the constituent units of federal states. The primary distinction lies in the fact that the EU is a supranational organisation of sovereign states, whereas federal states are unified political entities with a single federal sovereignty.

In both federations and the EU, representation in the legislative process balances population size with state equality. However, in the EU, this balance is achieved through a more sophisticated and differentiated approach. Many federations, such as Germany and Canada, employ fiscal equalisation mechanisms to reduce regional wealth disparities, ensuring all constituent units can provide comparable public services. This reflects a stronger commitment to internal equality compared to the EU, where the budget includes mechanisms such as structural and cohesion funds aimed at promoting economic cohesion and reducing disparities amongst Member States.

Another notable difference is in the process of amending the legal framework. Changes to the EU's legal framework require unanimous consent from all Member States. Contrastingly, constitutional amendments in federal systems typically involve participation from constituent units but do not necessarily require unanimous consent from each unit.

Turning to regional organisations, the AU has established robust institutional mechanisms to promote equality, whereas the UNASUR and the SAARC rely heavily on consensus-based decision-making. The EU's legal and institutional framework serves as a model for resolving disputes, whereas such mechanisms are notably absent in the SAARC and UNASUR.

Economic and, to a lesser extent, political asymmetry present a challenge – in terms of equality – across all four organisations, with wealthier or more influential states often exerting disproportionate influence. The EU's experience underscores the importance of balancing formal equality with proportionality, whilst the AU's focus on solidarity emphasises consensus-driven decision-making and the value of rotational leadership. The struggles of the UNASUR and SAARC highlight the critical need for strong institutions and effective conflict resolution mechanisms.

The central question posed by the author of this chapter is whether the EU's structure can benefit from analysing governance models such as federations, confederations, and international organisations that manage diverse and asymmetrical memberships. In particular, the author aims to establish whether the Union can derive valuable lessons from these models in its efforts to ensure equality amongst its Member States.

The EU, compared to federations for example, has greater economic diversity with significant gaps between wealthier and poorer nations. If the EU were to introduce a stronger federal system, this might impose uniform policies that do not account for these differences, potentially disadvantaging less-developed regions.

Some EU countries advocate for more integration (e.g. France, Germany), whilst others resist (e.g. Scandinavian countries, Eastern European states). Further federalisation of the EU would require consensus, which is difficult to achieve given these divisions. This corresponds with the fact that most federations benefit from a strong national identity that supports federal authority, whereas the EU has diverse national identities and languages, making federal governance more complex.

Without a unified political culture, enforcement of federal laws and redistribution policies could face resistance.²⁹⁰

Drawing insights from federal systems, the EU could enhance equality amongst Member States and advance sustainable integration by, for instance, further adjusting voting structures in the European Parliament and the Council to ensure even fairer representation of smaller states. Additionally, strengthening the role of the CJEU could promote more consistent legal interpretation and implementation of EU law. Considering that the EU, with its current intergovernmental approach, struggles with disparities due to varied national policies, a stronger federal system could enhance equality amongst Member States by enforcing more uniform standards in taxation, labour laws, and social benefits.

In the realm of economic and fiscal integration, the EU could establish a more structured financial and fiscal equalisation system and expand developmental support initiatives. Most federal governments have extensive fiscal powers, including taxation and budgetary control, allowing them to implement programmes that reduce economic disparities between states. Were the EU to adopt a stronger federal model, a centralised fiscal policy could help redistribute wealth more effectively, directing funds to less-developed Member States to enhance equality.

Considering international organisations with supranational elements (such as the AU, UNASUR, and SAARC), it can be argued that bodies and institutions of these organisations have weaker enforcement powers, meaning their models may not be directly applicable to the EU's more integrated legal and economic system. Nevertheless, the EU can be inspired by other organisations with supranational elements in areas such as political balance, legal enforcement, fiscal oversight, and solidarity mechanisms.

For example, drawing from these organisations, the EU could explore models where smaller nations have stronger representation in EU decision-making, preventing dominance by larger economies. It could enhance financial oversight mechanisms and expand funding for economic convergence programmes, particularly in response to social, economic, or health crises. Furthermore, the EU could take inspiration from these organisations in areas where harmonisation rather than deep centralisation is needed. For instance, a more flexible economic framework could allow Member States to align gradually on social and tax policies whilst preserving national control where necessary. Inspired by the AU, for example, the EU could enhance its cohesion funds and structural funds, ensuring that economic disparities amongst Member States are addressed more effectively, thus creating a more solidarity-driven redistribution mechanism. However, full adoption of these models is unlikely due to the EU's unique structure, economic disparities, and political divisions. Instead, the

290 Unlike federal units in federations, which cede significant powers to the federal government, EU Member States are reluctant to give up national control over taxation, social policies, and legal systems. Many countries (e.g. Hungary, Poland) resist deeper political integration, making federalisation politically difficult.

EU could selectively integrate best practices, whilst maintaining its distinct governance system.

Overall, by improving its representation mechanisms and conflict resolution frameworks, as well as financial and fiscal redistribution instruments, the EU could further uphold the principle of equality whilst reinforcing its resilience, cohesion, and sustainable integration. Therefore, ensuring equality amongst Member States remains essential for maintaining the stability and legitimacy of the European project, requiring continuous institutional and policy evolution.

References

Bibliography

- Accetto, M. (2007) *Sodni Federalizem Evropske Unije: primerjava z ameriškim in nekdanjim jugoslovanskim modelom*. Ljubljana: Uradni list Republike Slovenije.
- African Union (2013) 'Governance of Integration in Africa: Challenges and Way Forward' [Online]. Available at: https://au.int/sites/default/files/newsevents/workingdocuments/26630-wd-issue_paper_on_governance_of_integration_en.pdf (Accessed: 5 December 2024).
- African Union (2015) 'African Union Agenda 1063. Framework Document' [Online]. Available at: https://au.int/sites/default/files/documents/33126-doc-framework_document_book.pdf (Accessed: 5 December 2024).
- Agranoff R. (1999) *Accommodating Diversity: Asymmetry in Federal States*. Baden Baden: Nomos.
- Benz, A. (2013) 'Dimensions and Dynamics of Federal Regimes' in Benz, A., Broschek, J. (eds.) *Federal Dynamics Continuity, Change, and the Varieties of Federalism*. Oxford: Oxford University Press, pp. 70–90; <https://doi.org/10.1093/acprof:oso/9780199652990.003.0004>.
- Bogdanor, V. (1999) *Devolution in the United Kingdom*. Oxford: Oxford University Press.
- Borzal, T., Hosli, M.O. (2003) 'Brussels Between Bern and Berlin: Comparative Federalism Meets the European Union', *Governance: An International Journal of Policy, Administration, and Institutions*, 16(2), pp. 179–202 [Online]. Available at: <https://doi.org/10.1111/1468-0491.00213> (Accessed: 5 December 2024).
- Cerar, M. (2007) 'Federalno in konfederalno načelo (princip)', *IUS-INFO* [Online]. Available at: <https://www.iusinfo.si/medijsko-sredisce/kolumne/10232> (Accessed: 13 November 2024).
- Colby, T.B. (2016) 'In Defense of the Equal Sovereignty Principle', *Duke Law Journal*, 65(1087), pp. 1087–1171 [Online]. Available at: <http://scholarship.law.duke.edu/dlj/vol65/iss6/1> (Accessed: 29 November 2024).
- Constitution Annotated (2024) 'ArtI.S3.C1.1 Equal Representation of States in the Senate', [Online]. Available at: https://constitution.congress.gov/browse/essay/artI-S3-C1-1/ALDE_00013339/ (Accessed: 13 November 2024).
- Croissant, M. (1992) *Le fédéralisme dans les démocraties contemporaines*. Paris: Montchrestien.
- Da Silva, M. (2023) 'Federalism as an institutional doctrine', *Journal of Social Philosophy*, 55(1), pp. 81–105 [Online]. Available at: <https://doi.org/10.1111/josp.12540> (Accessed: 13 November 2024).
- De Melo, J., Tsikata, Y. (2014) 'Regional Integration in Africa: Challenges and Prospects', Foundation pour les études et recherches sur le développement international [Online]. Available at: <https://ferdi.fr/dl/df-6Lm5LieRw5yaW5shkAeNSSBj/ferdi-p93-regional-integration-in-africa-challenges-and-prospects.pdf> (Accessed: 8 November 2024).
- de Montesquieu, B. (1899) 'The Spirit of Laws', translated by Thomas Nugent [Online]. Available at: <https://archive.org/details/spiritoflaws01montuoft/page/n3/mode/2up?view=theater> (Accessed: 6 November 2024).
- Dhungel, D. (2004) 'South Asian Association for Regional Co-operation (SA ARC): Prospects for Development', *The Pakistan Development Review*, 43(4), pp. 933–941 [Online]. Available at: <https://doi.org/10.30541/v43i4Ipp.933-941> (Accessed: 13 November 2024).

- European External Action Service (2024) 'South Asian Association for Regional Cooperation (SAARC)', *Strategic Communications*, 24 November 2021 [Online]. Available at: https://www.eeas.europa.eu/eeas/south-asian-association-regional-cooperation-saarc_en (Accessed: 24 October 2024).
- Elazar, D.J. (1987) *Exploring Federalism*. Tuscaloosa: University of Alabama Press.
- Elazar, D.J. (2024) 'The Hellenic-Ionian Legues: The First European Confederations' [Online]. Available at: <https://dje.jcpa.org/articlesArts/hel-ion-eurconfed.htm> (Accessed: 22 November 2024).
- Fenna, A. (2022) *Comparative federalism: what is a federation and how do we study more than one?* [Online]. Available at: <https://www.elgaronline.com/edcollchap-oa/book/9781800885325/book-part-9781800885325-10.pdf> (Accessed: 22 November 2024).
- Føllesdal, A. (2003) 'Federal Inequality Among Equals: A Contractualist Defense', *Metaphilosophy*, 32(1–2), pp. 236–255 [Online]. Available at: <https://doi.org/10.1111/1467-9973.00184> (Accessed: 22 November 2024).
- Fossas, E. (2001) 'National Plurality and Equality' in Requejo, F. (ed.) *Democracy and National Pluralism*. London, New York: Routledge, pp. 63–83.
- Füglister, K., Wasserfallen, F. (2014) 'Swiss federalism in a changing environment', *Comparative European Politics*, 12(4/5), pp. 404–421 [Online]. Available at: <https://doi.org/10.1057/cep.2014.28> (Accessed: 22 November 2024).
- Grad, F., Kristan, I., Perenič, A. (2004) *Primerjalno ustavno pravo*. Ljubljana: Pravna fakulteta.
- Graves, H.R.G. (1940) *Federal Union in Practice*. London: George Allen & Unwin.
- Gunlicks, A.B. (2003) *The Länder and German federalism*. Manchester, New York: Manchester University Press; <https://doi.org/10.7228/manchester/9780719065323.001.0001>.
- Halberstam, D. (2012) 'Federalism: theory, policy, law' in Rosenfeld, M., Sajo, A. (eds.) *The Oxford Handbook of Comparative Constitutional Law*. Oxford: Oxford University Press, pp. 576–608; <https://doi.org/10.1093/oxfordhb/9780199578610.013.0029>.
- Kelsen, H. (1945) *General Theory of Law and the State*. Translated by Wedberg, A.. Cambridge: Harvard University Press.
- Kincaid, J., Leckrone, J.W. (2023) 'Introduction to Teaching Federalism: Multidimensional Approaches' in Kincaid, J., Leckrone, J.W. (eds.) *Teaching Federalism: Multidimensional Approaches*, Cheltenham: Elgaronline, pp. 1–3 [Online]. Available at: <https://doi.org/10.4337/9781800885325> (Accessed: 12 December 2024).
- Kincaid, J. (2005) 'Comparative observations' in Kincaid, J., Tarr, G.A. (eds.) *Constitutional Origins, Structure, and Change in Federal Countries*. Montreal, Kingston: McGill-Queen's University Press, pp. 409–448; <https://doi.org/10.1515/9780773572553-016>.
- Kleingeld, P. (2004) 'Approaching Perpetual Peace: Kant's Defence of a League of States and his Ideal of a World Federation', *European Journal of Philosophy*, 12(3), pp. 304–325 [Online]. Available at: <https://doi.org/10.1111/j.0966-8373.2004.00212.x> (Accessed: 4 December 2024).
- Legal Information Institute (2024) 'Amdt10.4.3 Equal Sovereignty Doctrine', *U.S. Constitution Annotated Toolbox* [Online]. Available at: <https://www.law.cornell.edu/constitution-conan/amendment-10/equal-sovereignty-doctrine> (Accessed: 1 December 2024).
- Linder, W., Mueller, S. (2021) *Swiss Democracy: Possible Solutions to Conflict in Multicultural Societies*. 4th edn. London: Palgrave Macmillan; <https://doi.org/10.1007/978-3-030-63266-3>.
- Linich, L.D. (2023) 'The Commonwealth of Independent States: A Symbolic Union or Another USSR?' [Online]. Available at: https://digitalcommons.bard.edu/senproj_s2023/182 (Accessed: 12 December 2024).

- Mattheis, F., Deleglise, D., Staeger, U. (2023) 'African Union: The African political integration process and its impact on EU-AU relations in the field of foreign and security policy', European Parliament, Policy Department for External Relations, Directorate General for External Policies of the Union [Online]. Available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2023/702587/EXPO_STU\(2023\)702587_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2023/702587/EXPO_STU(2023)702587_EN.pdf) (Accessed: 12 December 2024).
- Mbaku, J.M. (2024) 'African Union's Mediation Efforts in Sudan: More is Needed', *African Liberty* [Online]. Available at: <https://www.africanliberty.org/2024/01/26/the-african-union-intervention-in-sudan-is-good-but-limited/> (Accessed: 29 November 2024).
- McWhiney, E. (1962) *Comparative Federalism*. Toronto: University of Toronto Press.
- Molitor, A.B. (2014) 'Understanding Equal Sovereignty', *The University of Chicago Law Review*, 81(4) [Online]. Available at: <https://chicagounbound.uchicago.edu/uclrev/vol81/iss4/9> (Accessed: 16 December 2024).
- Murithi, T. (2008) *The African Union: Pan-Africanism, Peacebuilding, and Development*. London: Routledge.
- Nuclear Threat Initiative (2007) 'Commonwealth of Independent States (CIS) – Treaty Overview', May 2007 [Online]. Available at: <https://www.nti.org/education-center/treaties-and-regimes/commonwealth-independent-states-cis/> (Accessed: 29 November 2024).
- Ola, O. (1968) 'Confederal systems: A comparative analysis', *Civilisations*, 18(2), pp. 270–284 [Online]. Available at: <https://www.jstor.org/stable/41231119?seq=1> (Accessed: 16 December 2024).
- Palermo, F. (2009) 'Asymmetries in constitutional law – an introduction' in Palermo, F., Zwilling, C., Kössler, K. (eds.) *Asymmetries in Constitutional Law, Recent Developments in Federal and Regional Systems*. Bolzano: Europäische Akademie Bozen/Accademia Europea Bolzano, pp. 11–17.
- Paredes Sanchez, E. (2011) 'The Union of South American Nations at the Onset of a Socio-Regional Integration', Geneva, Graduate Institute of International and Development Studies [Online]. Available at: https://observatorylatinamerica.org/pdf/BecasPNK/workingPapersPDF/PNK_wp_Paredes_ENG.pdf (Accessed: 23 October 2024).
- Plischke, E. (1962) *Contemporary Government of Germany*. Boston: Houghton Mifflin & Co.
- Requejo, F. (2011) 'Decentralization and federal and regional asymmetries in comparative politics' in Requejo, F., Nagel, K.-J. (eds.) *Federalism Beyond Federations: Asymmetry and Processes of Resymmetrisation in Europe*. Farnham: Ashgate, pp. 1–12.
- Reybrouck, K. (2022) 'The division of powers in Belgian federalism – a modern approach to the dual foundations – Summary of Research', *KU Louven Research Portal* [Online]. Available at: <https://research.kuleuven.be/portal/en/project/3H160538> (Accessed: 7 November 2024).
- Richard, J.D. (2005) 'Federalism in Canada', *Duquesne Law Review*, 44(5), pp. 5–33 [Online]. Available at: <https://dsc.duq.edu/dlr/vol44/iss1/4> (Accessed: 23 September 2024).
- Rolland, P. (1994) 'La théorie proudhonienne du fédéralisme et l'Europe aujourd'hui', *Raison présente*, 114(2), pp. 57–80 [Online]. Available at: <https://doi.org/10.3406/raipr.1995.3273> (Accessed: 23 September 2024).
- Rossi, L.S. (2017) 'The Principle of Equality Among Member States of the European Union' in Rossi, L.S., Casolari, F. (eds.) *The Principle of Equality in EU Law*. New York: Springer, pp. 3–42; https://doi.org/10.1007/978-3-319-66137-7_1.

- Rousseau, J.-J. (1917) 'A Lasting Peace through the Federation of Europe and The State of War', translated by Vaughan, C.E. [Online]. Available at: https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/1010/Rousseau_0147_EBk_v6.0.pdf (Accessed: 23 September 2024).
- Sahadžić, M. (2023) 'Asymmetric vs. symmetric federalism: equity vs. Equality' in Kincaid, J., Leckrone, J.W. (eds.) *Teaching Federalism: Multidimensional Approaches*. Elgaronline [Online]. Available at: <https://doi.org/10.4337/9781800885325.00023> (Accessed: 23 September 2024).
- Saldatos, P. (1989) *Le système institutionnel et politique des Communautés européennes dans un monde en mutation*. Théorie et pratique, Bruxelles: Bruylant.
- Scharpf, F.W. (1988) 'The Joint-Decision Trap: Lessons From German Federalism and European Integration', *Public Administration*, 1988/66, pp. 239–278 [Online]. Available at: <https://doi.org/10.1111/j.1467-9299.1988.tb00694.x> (Accessed: 2 September 2024).
- Schweitzer, P. (1991) 'Federalism in Switzerland', *India International Centre Quarterly*, 18(4), pp. 161–169 [Online]. Available at: <https://www.jstor.org/stable/23002254> (Accessed: 3 September 2024).
- Skillen, L.M. (2017) *Between Federation and Confederation: the EU's 'Accountability Deficit' as the Result of Structural Hybridity*, IFF Working Paper Online, No. 20 [Online]. Available at: https://www.unifr.ch/federalism/en/assets/public/files/Working%20Paper%20online/20_Laura%20M.%20Skillen.pdf (Accessed: 23 September 2024).
- Swenden, W. (2002) 'Asymmetric Federalism and Coalition-Making in Belgium', *Publius: the Journal of Federalism*, 32(3), pp. 67–87 [Online]. Available at: <https://doi.org/10.1093/oxfordjournals.pubjof.a004960> (Accessed: 23 September 2024).
- Swenden, W. (2003) 'Belgian Federalism: Basic Institutional Features and Potential as a Model for the European Union', Royal Institute of International Affairs [Online]. Available at: <https://www.chathamhouse.org/sites/default/files/public/Research/Europe/swenden.pdf> (Accessed: 29 September 2024).
- United States Senate (2024) 'About the Senate & the U.S. Constitution, Equal State Representation' [Online]. Available at: <https://www.senate.gov/about/origins-foundations/senate-and-constitution/equal-state-representation.htm> (Accessed: 29 September 2024).
- Vatter, A. (2018) *Swiss Federalism. The Transformation of a Federal Model*. London: Routledge; <https://doi.org/10.4324/9781315231693>.
- Verney, D.V. (2002) 'Choosing a Federal Form of Governance for Europe' in Heinemann-Grüder, A. (ed.) *Federalism Doomed? European Federalism between Integration and Separation*. New York, Oxford: Berghahn Books, pp. 17–37; <https://doi.org/10.2307/j.ctv287sdfp.6>.
- Viana, A. (2018) 'The Principle of Equality in International Law: A South American Perspective', *International Journal of Constitutional Law*, 16(4), pp. 1036–1058.
- Watts, R. (1997) *Comparing Federal Systems in the 1990s*. Montreal, Kingston: McGill-Queen's University Press.
- Wheare, K.C. (1963) *Federal Government*. 4th edn. Oxford: Oxford University Press.
- Wouters, J., Andrienne-Moylan, A. (2020–2021) 'Federalism: a Lifeline for Belgium?', *Jura Falconis*, 57(3), pp. 755–771 [Online]. Available at: https://www.researchgate.net/publication/352211306_Federalism_a_Lifeline_for_Belgium (Accessed: 30 September 2024).
- Wouters, J., Schmitt, P. (2017) 'Equality Among member States and Differentiated Integration in the EU' in Rossi, L.S., Casolari, F. (eds.) *The Principle of Equality in EU Law*, New York: Springer International Publishing, pp. 43–82; https://doi.org/10.1007/978-3-319-66137-7_2.

Žagar, M. (1990) *Sodobni federalizem: s posebnim poudarkom na asimetrični federaciji v večnacionalnih državah*. PhD Thesis. Ljubljana: Pravna fakulteta.

Legal sources

- Basic Law for the Federal Republic of Germany (*Grundgesetz*), 23 May 1949, Federal Law Gazette, p. 1, BGBl III 100-1.
- Belgian Constitution, as updated following constitutional revisions of 6 January 2014, Belgian Official Gazette of 31 January 2014.
- Case C-44/94 *The Queen v. Minister of Agriculture, Fisheries and Food, ex parte National Federation of Fishermen's organisations and others and Federation of Highlands and Islands Fishermen and others* EU:C:1995:325.
- Charter establishing the Organisation of African Unity, done in the City of Addis Ababa, Ethiopia, 25th of May 1963.
- Charter of the South Asian Association for Regional Cooperation, done In Dhaka, Bangladesh, 8 December 1985.
- CJEU, Case 13/63 *Italian Republic v. Commission of the European Economic Community* EU:C:1963:20.
- Constitution of the Socialist Federal Republic of Yugoslavia [*Ustava Socialistične Federativne Republike Jugoslavije*], Official Gazette of the Socialist Federal Republic of Yugoslavia, no. 9/74.
- Constitution Act, 1867, 30 & 31 Vict, c 3.
- Constitutive Act of the African Union, done at Lome, Togo, 11th July 2000.
- Constitutive Treaty of the Union of South American Nations, 23rd May 2008, OXIO 179.
- Constitution of the United States: A Transcription. National Archives, U.S. National Archives and Records Administration, 4 May 2020.
- Coyle v. Smith*, 221 U.S. 559, 567 (1911).
- Federal Constitution of 18 April 1999 of the Swiss Confederation.
- Multilateral Charter of the Commonwealth of Independent States (with declaration and decisions). Adopted at Minsk on 22 January 1993.
- Northwest Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203 (2009).
- Protocol on Amendments to the Constitutive Act of the African Union, Adopted by the 1st Extraordinary session of the Assembly of the Union in Addis Ababa, Ethiopia, 3 February 2003 and by the 2nd Ordinary Session of the Assembly of the Union in Maputo, Mozambique, 11 July 2003.
- Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament, Adopted by the Twenty-Third Ordinary Session of the Assembly, held in Malabo, Equatorial Guinea, 17th June 2014.
- Protocol on Amendments to the Constitutive Act of the African Union, Adopted by the 1st Extraordinary session of the Assembly of the Union in Addis Ababa, Ethiopia, 3 February 2003 and by the 2nd Ordinary Session of the Assembly of the Union in Maputo, Mozambique, 11 July 2003.
- Protocol to the Constitutive Act of the African Union Relating to the Pan-African Parliament, adopted by the Twenty-Third Ordinary Session of the Assembly, held in Malabo, Equatorial Guinea, 17th June 2014.
- Resolution 2625 XXV, 24 October 1970, Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations.
- Shelby County v. Holder*, 570 U.S. 529, 544 (2013).
- Supreme Court of Canada, Reference re Secession of Quebec, (1998) 2 SCR 217.