

*Title of the Entry:* **Federalism and the EU**

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## **A. Defining Federalism**

- 1 In order to understand the relationship between federalism and the European Union (EU), it is necessary first to define the federal principle. However, clear definitions are difficult to achieve for ‘a chameleon-like concept’ (Post 227). The reason for that might be the fact that federalism can be a normative idea, a political aspiration, and a descriptive category of political institutions, sometimes almost simultaneously.
- 2 ‘To begin with what might seem only a matter of semantics, it is worth recalling that the word “federal” (*Föderativ, federal*) is derived from a Latin root (*foedus*) which in Roman Law referred to an international treaty, and in wider usage extended to concepts of “covenant”, “compact” and “agreement”’ (Aroney 16–17). It comes as no surprise that when modern federalism emerges with the rise of the European states system, it is associated with the political relations between independent/sovereign States (Schütze 14).
- 3 It is the American experiment with federalism, however, which has largely shaped our contemporary understanding of it as a constitutional system of governance. United States Supreme Court Justice Kennedy, has once proudly proclaimed that modern ‘federalism was [the American] Nation’s own discovery’ (*US term Limits Inc v Thornton*). The gradual evolution of the American constitutional order from confederation to federation and from a dual federal model to a more cooperative one has greatly influenced the academic and political debate on federalism (Elazar 144–46; Schütze 75–127). This is why ‘today “federal” and “federalism” are understood primarily in terms of the American hybrid form of governance as opposed to the older idea of federalism as confederation’ (Halberstam, 2012, 579).
- 4 In his pioneering *Federal Government*, KC Wheare defines the federal principle as ‘the method of dividing powers so that the general and regional governments are each, within a sphere, coordinate and independent’ (Wheare 10). In that context, he noted the importance of the existence of a written constitution ‘expressly conferring powers on the central and regional governments, a system of direct elections for both levels of government, the power of each level of government to act (or not act) independently of the other, and the existence of an independent high court to serve as the “umpire” of federalism’ (Choudry and Hume 357).
- 5 This definition which stresses on the one hand the legislative autonomy of the different levels of government in a federal order and on the other the combination of self-rule and shared-rule over the same territory has informed a number of other analyses such as the

one provided by Riker. Riker's understanding of federalism echoes the one of Wheare by suggesting the following rule of identification: '[a] Constitution is federal if (1) two levels of government rule the same land and people, (2) each level has at least one area of action in which it is autonomous, and (3) there is some guarantee (even though merely a statement in the constitution of the autonomy of each government in its own sphere)' (Riker 11).

- 6 The influence of Wheare's definition can be also seen in the work of Watts, who elaborated further the aforementioned constitutional model. In his very detailed federal 'checklist', Watts added the formal distribution of legislative and executive authority, the allocation of sufficient revenues to ensure the autonomy of each order of government, the representation of regional views in the central legislature (eg through an upper chamber), a constitutional amendment procedure requiring a substantial degree of regional consent, and an enforcement mechanism that included courts, referendums or a special role for the upper chamber (Watts, 1966). More recently, he redefined federalism as a normative term that 'refers to the advocacy of multi-tiered government combining elements of shared rule and regional self rule' (Watts, 2008, 8). Despite the elaborate nature of Watts' model of federalism, his more recent and refined definition echoes the one of Elazar who referred to 'shared rule plus self rule' (Elazar 12).
- 7 Overall, despite their differences, in all those classical writings, federalism is associated with polities where:
  - (i) shared rule is combined with territorially based self rule (Annett 109); and
  - (ii) every level of the government—whether central or sub-state—enjoys a constitutionally guaranteed claim to some degree of organisational and jurisdictional authority (Halberstam, 2008, 142).
- 8 If we accept the aforementioned as a working definition of the concept, we will realize that federalism as an organizing principle sits very comfortably with the structure of the EU constitutional order of States. Having said that—as already indicated in the beginning of this entry—since the days of the Schuman Declaration, federalism is also seen as a political aim linked with the finality of the project of European integration. As such, it has polarized the political debate in a way that no other constitutional principle has.
- 9 To highlight the Janus-faced role that the federal principle has played in the history of European integration, the entry covers the following issues. Section B briefly reviews how federalism has been linked with the political finality of the European project, noting that although the idea for the federal organization of Europe has always been present, the actual term has never appeared in the ratified text of the EU Treaties. However, federalism as an organizing principle is tacitly present in the institutional structure and the division of competences of the Union as a constitutional order of States (Section C). In that sense, one may argue that the EU is a legal order that exhibits federal characteristics without being a federation (Section D).

## B. Federalism as a Political Finality

- 10 Since the beginning of the current European integration process, concepts of federalism have served as guidelines for visions of the European integration. Already in 1941, Spinelli argued that the experiences of the totalitarian era had made the European peoples 'far more disposed than [they were] in the past towards a federal reorganisation of Europe' (Spinelli and Rossi 7). He went as far as claiming that the peoples of Europe were ready for revolution in order to achieve that.
- 11 Instead of revolution, however, the project of European integration was actually based on Monnet's 'federalism by instalments' (or functionalism), namely small incremental steps which could culminate in a federal Europe (Burgess, 2009, 33). As early as 1943, he declared: '[t]o enjoy the prosperity and social progress that are essential, the states of Europe must form a federation or a "European entity" which will make them a single economic unit' (Monnet 222). In fact, he advocated in favour of seeing the creation of the supranational High Authority established by the European Coal and Steel Community 'as the first move towards a federation' and not just 'the best means for solving economic problems' (Monnet 222). Monnet's piecemeal approach is also evident in the Schuman Declaration. There, it was noted that the 'pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe' (Schuman Declaration).
- 12 Neither the Treaty of Paris nor the Treaty of Rome ever used the terms 'federal(ism)'/ 'federation'. To the extent, however, that they established another level of government by pooling sovereignty to common supranational institutions, they created a federal structure. To use Riker's definition, from then on, there would be at least two levels of government in the European continent ruling the same land and people.
- 13 At the beginning of the 1990s, when the Maastricht Treaty was negotiated, the Luxembourg Presidency in Article A of a draft treaty proposed that '[t]his Treaty marks a new stage in a process leading gradually to a Union with a federal goal' (Laursen 14). Although the term 'federal goal' appeared in the text right up to the final draft, it was never included in the final text of the Treaty due to the objections of the British, the Danish, and the Portuguese (Laursen 14). What was included instead was a reference to the principle of subsidiarity—a constitutional principle that underpins a number of federal orders.
- 14 Moving forward another decade, the federalist idea was put back on the agenda by the then German Foreign Affairs Minister Joschka Fischer who called for a 'lean European Federation' (Fischer). In his famous speech in Humboldt University in May 2000, he linked the federalisation process with the *finalité politique* of the European project.
- 15 This debate was also echoed in the negotiations for the Constitutional Treaty. When its first draft articles were revealed, draft Article 1(1) provided that 'this Constitution establishes a Union ... which shall administer certain common competences on a federal basis' (European Convention). Again, the term 'federal basis' was not included in the final text which was

agreed in 2004. According to the President of the Convention Giscard d'Estaing the word 'federal' had to give way to the more neutral term 'Community way' after the British and a number of new Member States had highlighted their opposition (Giscard d'Estaing 34).

- 16 Moving to the text of the treaties applicable in the 2020s, unsurprisingly the Lisbon Treaty did not refer to the federal principle either. What we can find in the preamble instead is a commitment to 'the process of creating an ever closer union' (reflecting back to the preamble of the Treaty of Rome). Such commitment is closely linked with the political finality of the project. This is perhaps why the then Prime Minister David Cameron requested and managed to secure an 'opt-out' from such political aim for the United Kingdom (UK) during the ill-fated negotiations that he conducted with the Union before the Brexit referendum.

### **C. Federalism as a Constitutional Principle**

- 17 Although the term 'federalism' never appeared in the ratified text of the EU Treaties, a closer look at the institutional structure and the division of competences, reveals that the constitutional order of the EU exhibits federal characteristics. In particular, we note that shared rule is combined with territorially based self-rule and every level of the government—whether central or sub-state—enjoys a constitutionally grounded claim to some degree of organizational and jurisdictional authority.

#### **1. Shared rule combined with territorially based self-rule**

- 18 Although the EU institutional structure does not adhere to a classic *Montesquieuvian* model of separation of powers (legislature, executive, judiciary), it points to the existence of shared rule within the EU. Firstly, the European Council is composed by the Heads of the Governments and/or State. It provides 'the Union with the necessary impetus for its development and ... define[s] the general political directions and priorities thereof' (Art. 15 Treaty on European Union ('TEU')). Even though there was no formal remit of its meetings until the Single European Act, the European Council has played and continues to play a leading role in shaping EU policy since it authorizes important changes in the institutional structure, considers the accession of new Member States, initiates/develops particular policy strategies, and has a central role in the external relations of the EU. Clearly, the European Council is a rather atypical institution for a federal polity which owes its existence to the fact that the Union's constitutive basis remains a series of international treaties under general public international law. However, the entrenched participatory rights that the Member States enjoy in the European Council enhance shared rule with regard to the political directions and priorities of the European project.
- 19 Despite its cardinal importance for the political orientation of the Union, the Treaties do not attribute to the European Council any legislative functions. The Council of the EU (Art. 16 TEU) with the European Parliament (Art. 14 TEU), jointly exercise such legislative functions. The Council consists of a representative of each Member State at 'ministerial level, who

may commit the government of the Member State in question and cast its vote' (Art. 16(2) TEU). It is not prescribed to which internal level of the government that representative shall belong. Ministers from regional governments may represent their Member States if the national constitution so provides. This points to the fact that within the EU shared rule potentially involves all three levels of governmental power: the supranational, the national, and the sub-national.

- 20 The European Parliament is composed of representatives of the Union citizens who are 'elected for a term of five years by direct universal suffrage' (Art. 14(3) TEU). Following the amendments introduced by the Lisbon Treaty, the co-decision procedure as described in Article 294 Treaty on the Functioning of the European Union ('TFEU') has been extended to most areas of Union activity (Art. 189 TFEU). Special legislative procedures whereby the Council is the sole legislator remain for certain limited areas. The bicameral nature of the European legislature with the participation of representatives of the Governments and of the Union citizens allows for shared rule in Union legislation. This is crucial for establishing that the EU polity exhibits federal characteristics.
- 21 The main initiator for Union legislative proposals is the Commission (Art. 17 TEU). In a way, it is the Commission that plays the role of the executive within the Union order although it is often the Council or the European Council which prompts it into drafting legislation. Notwithstanding the role of the Council and the European Council in the initiation of legislative proposals, the fact that the Commission's primary role is to ensure the application of the Treaties 'creates an institution that represents the Union as greater than the sum of its parts. An independent Union identity and interests are put forth as separate from the identity and interests of member states. This is the nucleus of a federal relationship' (Annett 117).
- 22 Moreover, the competences that have been transferred to this constitutional order of States are enumerated in Title I TFEU. They are divided into exclusive (Art. 3 TFEU), shared (Art. 4 TFEU), coordinating (Art. 5 TFEU), and supporting (Art. 6 TFEU).
- 23 In the areas where the EU holds exclusive powers, the Member States are pre-empted from legislating. This means that with regard to customs union, competition rules necessary for the functioning of the internal market, monetary policy for the Eurozone, the conservation of marine biological resources, and the common commercial policy only the Union may legislate and adopt legally binding acts securing shared rule over those critical areas.
- 24 In the areas of shared competences, the Member States can legislate to the extent that the Union has not acted upon them. Generally speaking, shared competences contain only a potential for the Union to exercise them. '[I]n the absence of such exercise, the Member States remain competent to act, albeit they may not, in doing so, hurt in any way the [Union's] interests' (Lenaerts 224). The list of shared competences is rather extensive ranging from the internal market and transport to agriculture and the area of freedom, security and justice. Finally, in the areas where the Union has the competence to carry out

supportive, coordinating, or supplementary actions, it is not supposed to supersede the competences that the Member States enjoy. This guarantees that the Member States are able to exercise their legislative autonomy (self-rule) in critical areas such as education, health etc (Art. 2(5) TFEU).

25 More importantly, territorially-based self-rule is guaranteed by the fact that significant residual powers remain with the Member States (Arts 4(1) and 5(2) TEU). Such a residual powers clause, together with the aforementioned list of competences, secures a certain degree of organizational and jurisdictional autonomy for all tiers within the order. What is unusual, however, from a comparative federalism point of view is that while in most federal systems shared rule is provided in areas such as external relations and defence, the EU does not enjoy the breadth and depth of the powers that classical federations have over those areas. In the field of Common Foreign and Security Policy (Arts 23–46 TEU), for instance, its intergovernmental nature acts as a guarantor of the self-rule that Member States wish to enjoy.

## **2. Constitutional guarantees of autonomy**

26 The division of competences and the fact that the residual powers remain with the Member States ensure the territorial self-rule and a certain degree of autonomy for all layers of this multi-level system of governance. In fact, jurisdictional and organizational authority is to a certain degree constitutionally guaranteed within the EU constitutional order of States. Given the intertwined (Ziller) and composite (Besselink; Claes) nature of the European constitution such guarantees are sometimes enshrined either in the Treaties and/or in the constitutions of the Member States.

27 First of all, the Union may only exercise powers that have been conferred upon it in the Treaties (Art. 5 TEU). In addition, Article 4 TEU provides for a residual clause in favour of the Member States. Both the principle of conferral and the residual clause consist of constitutionally enshrined guarantees ensuring the territorial self-rule of the Member States and the jurisdictional and organizational autonomy of all the tiers of the Union order.

28 In addition, the exercise of 'Union competences is governed by the principles of subsidiarity and proportionality' (Art. 5(1) TEU). In accordance, with the principle of subsidiarity, the Union could only act where the objectives of the proposed action cannot be sufficiently achieved by the Member States either at central level or at sub-state level in areas which do not fall within its exclusive competence. In addition, the EU shall not act unless it can better achieve the objectives than the Member States (Art. 5(3) TEU). On the other hand, under the principle of proportionality, the 'content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties' (Art. 5(4) TEU). Despite the difficulties that the Court of Justice of the European Union seems to have with the application of those principles (Martinico), it is important to stress that together with the principles of conferral and the residual clause, they consist of entrenched constitutional

guarantees ensuring the territorial self-rule of the Member States and the organizational and jurisdictional autonomy of all tiers within this constitutional order of States.

29 It has been argued, however, that the ‘residual powers of the Member States have no reserved status’ (Lenaerts 220) as there ‘simply is no nucleus of sovereignty that the Member States can invoke, as such, against the [Union]’ (Lenaerts 220). It is true that the Member States as the *Herren der Verträge* might amend the Treaties to the effect that the residual powers might be minimized or even removed. However, one should not undermine the fact that important actors within the constitutional orders of the Member States have occasionally attempted to define such nucleus of sovereignty. The decisions of the German Constitutional Court in the *Solange* cases and the Maastricht-Urteil, the *Lisbon Treaty* judgments of the Czech, German, and Polish Constitutional Courts as well as the discourse of the French *Conseil Constitutionnel* on constitutional identity precisely suggest that certain Member States believe that such a nucleus of sovereignty does exist and it can be invoked against the Union. In a recent judgment the German Constitutional Court has gone as far as to acknowledge that some measures adopted by the European Central Bank to respond to the financial crisis are *ultra vires* (*Re PSPP*). To partially address those concerns, Article 4(2) TEU provides that the EU respects the national identities of the Member States, ‘inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government’.

#### **D. Federalism but not Federation**

30 So far, we have noted that despite the fact that the term federalism does not appear in the Treaties, the EU legal order has federal characteristics. Notwithstanding, the federal nature of the EU legal order has been endlessly debated and questioned in the academic and political circles.

31 As noted in the beginning of the entry, the American experience has largely shaped our contemporary understanding of federalism. This is perhaps why the literature on federalism and the EU is often centred around the question whether federations may come into existence through treaties (Oliver). Or as Stein put it ‘[i]s there such a thing as a treaty-based federalism?’.

32 Broadly speaking, scholars such as Grimm, Hartley, and Schilling have stressed that the EU constitutional order depends on ‘both international law and the legal systems of the Member States for its validity and effectiveness’ (Aroney 12). For them, a constitution ‘is founded upon a constitutive act of a sovereign people, acting as an original pouvoir constituant or constituent power’ (Aroney 12). The EU does not satisfy such conditions. At the other end of the spectrum, authors like Piris and Mancini highlight that the EU legal order has been progressively constitutionalised into a form ‘reminiscent of a federal state’ (Mancini). Mancini, in particular, argues that ‘a European federal-state, consisting of “a plurality of nations and yet founded upon a [singular] demos” is indeed conceivable, feasible and desirable’ (Aroney 13). Between those two positions, scholars such as

Nicolaïdis accept that the EU does not have a unitary *demos*. Instead, she proposes that the project should be built upon the conception of a constitutional ‘demoi-cracy’, founded upon ‘co-existing multiple demoi’ (Nicolaïdis 10). Such middle ground argument is further supported by the work of Schütze. According to him, the EU is an ‘(inter)national phenomenon that stands on -federal- middle ground’ (Schütze 73). It is a Federation of States and as such it may even ‘represent the best manifestation of “true” federalism that presently exists in positive law’ (Schütze 73).

33 So, what should one make out of such debate?

34 Overall, federalism as a constitutional principle should be understood as a term ‘taken philosophically or ideologically rather than institutionally’ (King 74). This is why it should be somehow distinguished from the term ‘federation’—one particular kind of federal arrangement. As Watts has noted:

Within the genus of federal political systems, federations represent a particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other, ie each has sovereign powers derived from the constitution rather than another level of government, each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers and each is directly elected by its citizens (2008, 10).

In that sense, federalism is ‘the general phenomenon (be it normative or institutional) and federation [is] a more specific institutional manifestation’ (Halberstam, 2012, 581). For it is possible that a constitutional order exhibits federalism without being, strictly-speaking, a federation. Examples of this phenomenon include Spain, the UK and, as we have seen, the EU. At the other end of the spectrum, there are cases of federations that are not characterized by a great level of federalism such as Austria (Erk).

35 The conceptualization of the EU legal order as one that exhibits federalism without necessarily being *stricto sensu* a federation is helpful in another front as well. It offers an alternative to the rather sterile debate on the precise category of federal arrangements to which the *sui generis* EU belongs. The German-speaking literature has been especially focused on the distinction between *Staatenbund* (confederation) and *Bundesstaat* (federation) while the German Constitutional Court in *Lissabon-Urteil (Re Lisbon Treaty)* categorized the EU as an association of sovereign states (*Staatenverbund*) rather than a state union (*Staatsverband*).

36 More importantly, the significant historical and political differences in the federalizing processes and their end results may point to the fact that federalism should be better seen as an evolutionary process or as a continuum in Friedrich’s sense (Friedrich). According to him:

federalism seems the most suitable term by which to designate the process of federalizing a political community, that is to say the process by which a number of separate political organizations, be they states or any other kind of association, enter into



arrangement for working out solutions, adopting joint policies and making joint decisions on joint problems (Friedrich 594).

Burgess strongly supported using such an analytical framework to understand European integration. According to him, such 'flexible conception of social organization and political authority ... produced a flexible model of federalism that transcended the modern state' (Burgess, 2012, 163).

- 37 Such understanding of federalism as an evolutionary process/continuum, however, does not predetermine the political finality of any of those federalizing processes including the EU one. For as Lenaerts and Stepan (writing separately in different fields) pointed out, federalism can be distinguished between 'integrative' or 'coming together' and 'devolutionary' or 'holding together'. In the former, 'independent states form a federation to reap the gains of unity while maintaining the individuality of their component parts' (Halberstam, 2012, 583). In the latter, 'a unitary state devolves power to component governments in an effort to appease political demands for decentralization or to pacify separatist movements while maintaining the unity of the overarching state' (Halberstam, 2012, 583). Evidently, such classifications are not written in stone. Systems of governance like the EU one 'may undergo successive periods of integration and devolution over time' (Halberstam, 2012, 585).
- 38 Overall, the debate on the EU as an entity exhibiting federalism is a debate where the conflicting visions about the political future of this entity are clearly depicted. In that sense, the EU citizens and elites comprise of a divided society representing competing perspectives about the political finality of this political order (Lerner 31). In such societies where there is deep disagreement over the vision of the political community, Lerner believes that a rather incrementalist approach to constitutional-making is more appropriate. Such an approach is characterized among else by a rather evolutionary approach to constitution-making, representation of the existing disagreements and the transferring of important decisions to political sphere (Lerner). This is perhaps why federalism as an organising principle is ever present at the EU order but never quite proclaimed.
- 39 Such understanding of the role of federalism in the EU legal order is compatible with the nature and the use of this constitutional principle in many legal orders. As Jackson has noted 'federalism provisions of constitutions are often peculiarly the product of political compromise in historically situated moments, generally designed as a practical rather than a principled accommodation of competing interests' (Jackson 273–74).

### **Select Bibliography**

I Annett 'The Case of the EU: Implications for Federalism' (2010) 20(1) Regional and Federal Studies 107.

- N Aroney, 'Federal Constitutionalism/European Constitutionalism in Comparative Perspective (European Essay No. 45)' (The Federal Trust 2009).
- L Besselink, *A Composite European Constitution/Een Samengestelde Europese Constitutie* (Europa Law Publishing 2007).
- M Burgess, 'Federalism' in A Wiener and T Diez (eds), *European Integration Theory* (Oxford University Press 2012) 25.
- M Burgess, *In Search of the Federal Spirit* (Oxford University Press 2012).
- M Claes, *The National Courts's Mandate in the European Constitution* (Hart Publishing 2005).
- S Choudry and N Hume, 'Federalism, devolution and secession: from classical to post-conflict federalism' in T Ginsburg and R Dixon (eds), *Research Handbook on Comparative Constitutional Law* (Edward Elgar Publishing 2011) 356.
- D Elazar, *Exploring Federalism* (The University of Alabama Press 1987).
- J Erk, 'Austria: A Federation without Federalism' (2004) 34(1) *Publius* 1.
- J Fischer, 'From Confederacy to Federation: Thoughts on the Finality of the European project' (12 May 2000) available at:  
<https://ec.europa.eu/dorie/fileDownload.do?docId=192161&cardId=192161>
- CJ Friedrich, *Man and his government: an empirical theory of politics* (McGraw-Hill 1963).
- V Giscard d'Estaing, *Valéry Giscard d'Estaing présente la constitution pour l'Europe*. (Éditions Albin Michel 2003).
- D Grimm, 'Does Europe Need a Constitution?' (1995) 1(3) *European Law Journal* 282.
- D Halberstam, 'Comparative Federalism and the Role of the Judiciary' in K Whittington, D Kelemen, and G Caldeira (eds), *Oxford Handbook of Law and Politics* (Oxford University Press 2008), 142.
- D Halberstam, 'Federalism: Theory, Policy, Law' in M Rosenfeld and A Sajó (eds), *The Oxford Handbook of Comparative Constitutional Law Politics* (Oxford University Press 2012) 577–608.
- VC Jackson, 'Narratives of Federalism: Of Continuities and Comparative Constitutional Experience' (2001) 51(1) *Duke Law Journal* 223.
- P King, *Federalism and Federation*, (Beckenham 1982).

F Laursen, 'Federalism: From Classical theory to Modern Day Practice in the EU and Other Polities' in F Laursen (ed.) *The EU and Federalism, Politics and Policies Compared* (Ashgate Publishing 2011) 3.

K Lenaerts, 'Constitutionalism and the Many Faces of Federalism' (1990) 38(2) *American Journal of Comparative Law* 205.

H Lerner, *Making Constitutions in Deeply Divided Societies* (Cambridge University Press 2011).

Martinico 'Dating Cinderella: On Subsidiarity as a Political Safeguard of Federalism in the European Union' (2011) 17(4) *European Public Law* 649.

F Mancini, 'Europe: The Case for Statehood' (1998) 4(1) *European Law Review* 29.

J Monnet, *Memoirs* (Collins 1978).

K Nicolaïdis, 'We, the Peoples of Europe ...' (2004) 83(6) *Foreign Affairs* 97.

C Oliver, 'The Enforcement of Treaties by a Federal State' (1974) 1 *Recueil Des Cours* 331.

RC Post, 'Justice Brennan and Federalism' (1990) 7 *Constitutional Commentary* 227.

J-C. Piris, 'Does the European Union Have a Constitution? Does it Need One?' *Harvard Jean Monnet Working Paper* 5/00.

WH Riker, *Federalism: Origin, Operation, Significance* (Brown and Company 1964).

T Schilling, 'The Autonomy of the Community Legal Order: An Analysis of Possible Foundations' (1996) 37(2) *Harvard International Law Journal* 389.

R Schütze, *From Dual to Cooperative Federalism: The Changing Structure of European Law* (Oxford University Press 2009).

A Spinelli and E Rossi, 'The Manifesto of Ventotene' (1941) available at: [https://www.cvce.eu/en/obj/the\\_manifesto\\_of\\_ventotene\\_1941-en-316aa96c-e7ff-4b9e-b43a-958e96afbcecc.html](https://www.cvce.eu/en/obj/the_manifesto_of_ventotene_1941-en-316aa96c-e7ff-4b9e-b43a-958e96afbcecc.html)

E Stein, 'Treaty-Based Federalism, A.D. 1979: A Gloss on Covey T. Oliver at the Hague Academy' (1979) 127(4) *University of Pennsylvania Law Review* 897.

A Stepan, 'Federalism and Democracy: Beyond the US Model' (1999) 10(4) *Journal of Democracy* 19.

RL Watts, *New Federation: Experiments in the Commonwealth* (Clarendon Press 1966).

RL Watts, *Comparing Federal Systems* (3rd edn McGill-Queen's University Press 2008).

KC Wheare, *Federal Government* (4th edn Oxford University Press 1964).

J Ziller, 'National Constitutional Concepts in the New Constitution for Europe' (2005) 1 *European Constitutional Law Review* 247 and 452.

### **Select Documents**

'Declaration of 9 May 1950', available at: [https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950\\_en](https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en)

European Convention, Draft Articles 1 to 16 of the Constitutional Treaty CONV528/03, available at: <https://wayback.archive-it.org/org-1495/20200228015423/http://european-convention.europa.eu/pdf/reg/en/03/cv00/cv00528.en03.pdf>.

### **Select Cases**

#### **German Federal Constitutional Court**

*Solange I-Beschluß*, BVerfGE 37, 271; 2 BvL 52/71.

*Solange II, Re Wuensche Handelsgesellschaft*, BVerfG, 22 October 1986, [1987] 3 CMLR 225265.

*Re Maastricht Treaty*, 12 October 1993, VerfGE 89, 155.

*Re Lisbon Treaty*, BVerfG 30 June 2009, 2 BvE 2/08.

*Re PSPP*, BVerfG 5 May 2020, 2BvR 859/15.

#### **US Supreme Court**

*US term Limits Inc v Thornton*, 514 U.S. 779, 838 (1995).

#### **Czech Constitutional Court**

*Treaty of Lisbon II*, 3 November 2009, Czech Constitutional Court, File no Pl. ÚS 29/09.

#### **Polish Constitutional Court**

*Re Lisbon Treaty*, 24 November 2010, Polish Constitutional Tribunal, 2010 K 32/09.

**French Constitutional Court**

CC Décision no 2006-540 DC, 27 July 2006, French Constitutional Council.

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