Debating an Ideal Federal Arrangement for the European Union: A Comparative Analysis of Switzerland, Canada and the European Union

by

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Abstract

There are few who would deny the overwhelming and already existing federal elements in the European Union (EU). The EU’s growing responsibilities supported by the Treaty of Maastricht and the newly proposed EU Constitutional Treaty are clear evidence of this. The challenges of managing an enlarged and a more diverse EU will require new arrangements to achieve the ‘ever-closer union’. These arrangements will need a federal model in order to maintain the already existing quasi-federal EU.

The federal model, as distinct from the unitary nation-state, can offer possible solutions to remedying such EU dilemmas as: the legitimacy of the EU institutions, the capacity for decision-making, the democratic deficit and the accommodation of territorial and cultural distinctiveness of member states.

The research focuses on comparative analysis and works toward explaining the rationale behind the federal model for the European Union. The study presents the historical background and the theory behind ideas of federalism in Europe. It evaluates existing federal arrangements showcasing the examples of Canada and Switzerland.

On the basis of a five point federal test, which serves as a comparative tool, this study suggests that federalism is the relevant model for the European Union. Moreover, the paper proposes that the federal model, due to its strict definition, can benefit the EU’s multi-level governance and reinforce the legitimacy of already existing EU treaties. The process of EU integration, though an ongoing political and economic experiment, must look for viable sources of reliable and valuable past experiences. In search for the most suitable federal model for the EU, the comparative experience of Swiss and Canadian federations allow us to identify similarities and differences, successes and failures, as well as provide mechanisms and processes which may help to deal with any future problems of EU integration.
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Federalism and its application in the context of the European Union (EU) have been at the forefront of the political debate since the EU’s conception. The idea of a peaceful and united Europe based on the principles of the federal model has been examined by many scholars and politicians. The concept of a Federal Europe, where independent and sovereign nation-states are willing to submit to a higher collective authority, has always provoked considerable backlash. As a matter of fact, it still does. The anxieties and dilemmas provoked by pre and post-enlargement discourses among the political and intellectual elites of Europe prove the point. The clash of the key EU integration concepts of ‘deeper integration’ vs. ‘broader integration’ highlights the deep divisions regarding how the EU should evolve. For many, the idea of ‘deeper integration’ relates to a federal Europe, thus forcing a strong opposition to a federal constitutional arrangement. This opposition comes from some of the EU states and groups that view the end of the Westphalian state model as a threat to their national identity.

Some observers, however, suggest that the proposed Constitutional Treaty appears as a direct response to the needs of the European Union’s growing sphere of competencies over the last decade. Additionally, the dramatic increase of member states caused by last year’s EU enlargement also calls for re-alignment. This is particularly important considering that the post-Maastricht EU is a complex entity with an already existing common currency (EMU), a European Central Bank (ECB), a European Court of Justice (ECJ) and an economic free market zone.

Undeniably, these diverse factors suggest that a federal model for the European Union is still relevant, particularly, in the context of the EU’s multi-level
governance, economic integration and intergovernmental bargaining. In fact, the EU with its present form of quasi-federal, multi-level governance represents a challenge to federal theory as “any form of multi-level governance invites some confusion over which level of government will be responsible for exercising which powers” (Baier, 2005: 210). As a response to this confusion, despite functioning multi-level governance in the EU, federalism still offers significant appeal in defining and clarifying lines of competencies among the member states and the EU. As pointed out by Börzel

the EU may be described as a system of multi-level governance, where sovereignty powers are shared and divided between supranational, national and sub-national institutions. While traditional theories of International Relations and European integration have difficulty capturing the multi-level nature of the emerging European polity, the constitutional language of federalism is more helpful in analysing and discussing the ways in which the division of power is organized among the different levels of government in the EU (Börzel, 2005: 246).

This opinion is also shared by Hooghe and Marks when they address the merits of federalism in classifying and organizing the EU’s multi-level governance which in general is associated with describing the EU’s multi-tier political system. According to the authors, the authority of the European states, particularly since the 1950s, became not only more dispersed (causing a shift of power from the national to the European Union level) but also created significant devolution of decision-making competencies among the member states. The authors’ distinction of two types of multi-level governance, however, limits federalism to a tool of partial applicability in distinguishing and specifying the virtues of two models (‘type I’ and ‘type II’) which describe the present EU’s multi-level governance.
Consequently, with this approach, they filter the thorough analysis of the EU’s multi-level governance through a lens of federalism and its existing models (Hooghe and Marks, 2003: 233-243).

This thesis is going to examine the appeal of a modern federalism in the search for an ideal federal arrangement for the European Union. Through the process of investigation it will provide possible answers as to whether the EU has the potential to achieve a federal bargain. Addressing the necessity for an appropriate federal model is of high significance to the present EU. Exploring to what extent the EU can be characterized as a federation and defining what kind of federal model is most suitable for the existing Union does not guarantee magic solutions to the EU’s integration project. Comparing, however, the EU to traditional notions of federalism, and the history and experience of other federal models can provide valuable insight into the EU’s modus operandi. On the basis of these criteria, this paper claims that federalism and its models might not only help in reflecting the EU’s finalité politique but they may also facilitate a better understanding of the current EU’s multi-level governance. As Burgess notes, federalism has

infinite capacity to accommodate and reconcile the competing and sometimes conflicting array of diversities having political salience within the state. Toleration, respect, compromise, bargaining and mutual recognition are its watchwords and ‘union’ combined simultaneously with ‘autonomy’ is its hallmark (Burgess, 1993: 7).

Fortunately, in the process of examining a potential federal bargain for the EU, one can look to a variety of models, theory and research. In order to find the most suitable federal model for the EU these various options need to be taken into
consideration. Despite strong indications of a move even slightly towards a federal Europe, the idea continues to be highly contested among scholars, political elites and voters. The recent French and Dutch double no to the Constitutional Treaty are cases in point.

In spite of strong opposition to 'Creeping Federalism', there are few who would deny the overwhelming and already existing federal elements in the European Union and its structures (Burgess, 1993, 2000, 2004; McKay 1999, 2001; Baier 2005; Börzel and Risse, 2000; Sidjanski, 2000; Börzel, 2005). There is clear evidence of this in the EU's growing responsibilities supported by the Treaty of Maastricht and the newly proposed EU Constitutional Treaty.

The challenges of managing an enlarged and a more diverse EU will require new arrangements to achieve the 'ever-closer union' based upon a simple axiom championed by Brussels: 'unity in diversity'. These arrangements will need a federal model in order to maintain the already existing quasi-federal EU. Federalism, however, will only be welcomed by all members of the newly enlarged EU (particularly those from the new member states) if the perceived costs of federalizing the EU are lower than the potential costs of a loss of sovereignty. The biggest challenges will come in accommodating cultural, ethnic and economic diversity in the post-enlargement EU.

The federal model, as distinct from the unitary nation-state, can offer possible solutions to remedying such EU dilemmas as: the democratic deficit, the legitimacy of the EU institutions, capacity for decision making, accommodation of territorial and cultural distinctiveness of member states and reduction of the threat caused by economic globalization (Habermas, 2001: 5-15). The EU's
Constitutional Treaty already addresses some of these issues, giving the European Union a strong sense of legitimacy, providing clearer division of competencies between member states and the EU, and at the same time serving as an important step in achieving a federal bargain.

The research, presented here, which focuses on comparative analysis, will work toward explaining the rationale behind the Federal model for the European Union. The study will present the historical background and the theory behind ideas of federalism in Europe. It will evaluate existing federal arrangements showcasing the examples of Canada and Switzerland. These two examples are the most valuable in the context of federal comparative analyses. They can provide answers in the quest for the most suitable federal model for the EU. Both, Canada and Switzerland, are characterized by accommodation despite their respective cultural diversity, language and ethnic composition. Both have long traditions of constitutionalism, distinctive division of powers and, particularly in Canada, a strong emphasis on intergovernmental relations. They serve also as interesting models of geographical diversity and size. A systematic historical and analytical comparison between the European Union, Canada and Switzerland can serve as grounds for identifying the appropriate federal arrangement for the EU.

The goal of this study is to suggest that federalism provides a relevant model for the European Union. Moreover, the paper proposes that the federal model, with its strict definition, can benefit the EU’s multi-level governance and reinforce the legitimacy of already existing EU treaties. The comparative examinations with Canada and Switzerland illustrate federal bargains that have their own particular characteristics which accommodate ethnic, cultural and
linguistic diversity. In this context the Canadian and Swiss federal experiences can be helpful in considering an appropriate federal model for the EU. The process of EU integration, though an ongoing political and economic experiment, must look for viable sources of reliable and valuable past experience. In the search for the most suitable federal model for the EU, the comparative experience of these federations allows us to identify similarities and differences, successes and failures, as well as provide mechanisms and processes which may help to deal with any future problems of EU integration (Watts, 1999: 2).
Chapter One

The great moment of truth arrives when it is realized that in the last resort the mainspring of federalism cannot be emotion but must be reason

Pierre Elliot Trudeau

Establishing a framework for examination

The signing of the Constitutional Treaty for the European Union (EU) in Rome, on October 29, 2004, began not only the necessary (though highly uncertain) process of Treaty ratification by the 25 members, but also established the possible next step to achieving an ‘ever closer union’. The components of the constitutional arrangement of the EU based on the EU’s Constitutional Treaty would create a necessary foundation for further developing a federal arrangement among the EU states. The Constitutional Treaty embodies some of the criteria with which senior scholar of federalism Daniel J. Elazar was concerned. He suggested that the following factors constitute the essential elements of federalism: (a) a written constitution; (b) non-centralization; (c) a real division of power; (d) direct contact with people and (e) a mechanism to maintain non-centralization (Laffan, 2002: 7-9).

This chapter examines to what extent the European Union is leaning towards a finalité politique in the context of the federal destination. The theoretical framework of federalism will serve as a tool in this assessment. This approach may also answer whether the European Union can achieve a federal bargain. In addition to an examination of the quasi-federal model of the EU, this chapter will present and evaluate other federal models in the context of federal
theory. The intention is to establish that in the present European Union, political and economic structures are in fact already framed in the context of a federal model. Moreover, federalism is still relevant to the European integration project, and by its strict definition, is a preferable model to multi-level governance and the system of already existing EU treaties.

Federalism is not an unachievable model for the EU. The federal model is a workable and viable option which needs to be examined and attuned to the requirements of the European Union. In order to find out if the EU is able to achieve a federal bargain and which model out of the existing federal models can serve as a point of reference, comparative analysis is required. Thus, to conduct an investigation about the applicability of the federal model to the EU’s integration project we need to understand what federalism is.

Federalism, in brief, is a political order where final authority is divided between sub-units and a center. In contrast to a unitary state, sovereignty is constitutionally allocated between at least two territorial levels where each level possesses its authority and is able to execute its powers independently in particular constitutionally assigned areas of jurisdiction. The level of authority allocation between the center and sub-units (cantons, provinces, länder, states) varies, as the individual characteristics ultimately define particular federal models. As outlined by K.C. Wheare in *Federal Government*, federalism is 
an association of states, which has been formed for certain common purposes, but in which member states retain a large measure of their original independence (Wheare, 1946: 1).
Consequently, the allocation of authority between the sub-units and the center varies; usually the center retains powers in the spheres of defense and foreign affairs. This, however, does not exclude sub-units from participating in areas of central decision-making which depend on the constitutionally allocated division of powers (Davis, 1978: 76-145). Based on our brief definition of federalism it is crucial to recognize that

federations have varied and continue to vary in many ways: in the manner and in the significance of the underlying economic and social diversities; in the number of constituent units and the degree of symmetry of asymmetry in their size, resources and constitutional status (Watts, 1990: 1).

As such, federal models, in any comparative analysis, cannot be allocated in the same categories due to the simple fact that "there is no single pure model of federation that is applicable everywhere" (Watts, 1999, 1).

It is also important to examine what federal models and institutions have to offer and to what extent they are relevant in explaining the legitimacy and responsiveness of the growing division of powers between the EU and member states in the existing EU’s multi-level governance.

The creation and evolution of voluntary federal models are characterized by two distinctive factors: (a) the perception of external threat, thus the creation of a union which serves mainly security purposes; and (b) the desire for a strong and secure economic co-operation in the form of a union among the participating members (Burgess, 2004: 25-29). These key components are evident in the creation of the American, Canadian and Swiss political federal models. Arguably, the same is found in the EU. Slowly, in incremental fashion the European Community (EC) evolved into the European Union, which by the process of
ratification of its Constitutional Treaty is on the verge of clarifying division of the
authority between Brussels and the member states. By legitimizing its own
structures along the lines of further federalization, the Union becomes, in fact,
nothing less than a federal Europe, but not necessarily a federal state as we know

Studies of federalism recognize three types of federations: (a) the
Westminster model, which is based on the British Empire and Commonwealth
parliamentary tradition; its main features are framed in the context of
representative and responsible governments, mostly found in Canada, Australia
and India; (b) the republican presidential model, a hallmark of the United States
federal model; and (c) the hybrid model, combining elements of both models,
examples being Switzerland and Germany (Burgess, 2003: 71). Based on this
classification, federal institutions can be divided into two categories: those which
embody the separation of executive and legislative powers, and those which
involve the fusion of executive and legislative powers in a parliamentary executive
which is responsible to an elected chamber of the federal legislature. These two
categories form the federal institutions and are ultimately responsible for the
political dynamics in a federation. In the former the power is divided among the
federal center and sub-units but at the same time it is also divided within each
level of government. By contrast, in the latter model the executive power is based
in and controlled by the legislature which, in turn, is in constant check by the
process of democratic elections (Watts, 1999: 84-85).
Dual and Cooperative Federalism

An examination of the federalist models and their comparative analysis in the context of the EU provides the necessary criteria and principles for the territorial organization of political power. The political institutions of federalism are more than a constitutional arrangement. They are the main elements of legitimization and responsiveness of any federal model. Comparative federalism suggests two distinguishable federal models which can be directly associated with ideas already suggested by Montesquieu. They are: (a) *separation des pouvoirs* or dual federalism and (b) *distribution des pouvoirs* or cooperative federalism (Börzel and Hosli, 2003: 183-185). Dual federalism is characterized by the institutional autonomy of different levels of governments with the objective of clear vertical separation of powers. In this version, each level of government is presented with an independent field of competencies. These competencies are allocated along the lines of policy sectors and not according to policy functions. Each level of government possesses both legislative and executive powers, at the same time though; the entire government structure is somehow duplicated because each level of government is involved in managing its own affairs. The arrangement of dual allocation of competencies, in this model, is complemented by some representation of federal units at the central level of government. These federal units convey their interests by co-ordination and co-operation with the central government at the national level.

Cooperative federalism is characterized by a concept of a functional division of powers between different levels of government. Generally, the federal or central government is responsible for making the laws and the sub-units are in
charge of their implementation. This model requires a strong representation of the federal sub-units at the national level, not only to provide efficient implementation of those laws, but also as a safeguard, protecting the sub-units from becoming mere instruments in the hands of the central federal government. Contrary to the dual federal model, in this case, the sub-units exercise a much higher level of participation in the process of overall federal decision making even though the major decisions demand the consent of the majority of the sub-units and the central federal government (Börzel and Hosli, 2003: 183-185; Wachendorfer-Schmidt, 2000: 6-9).

It is important to mention that federal arrangements can be tailored to provide cooperation between the government levels over their autonomy, in the case where social integration is an objective. At the same time, the federal institutions accommodate the federal units, when the autonomy of the sub-units, their self-determination and diversity is paramount for a particular federal arrangement (Wachendorfer-Schmidt, 2000: 6-9).

No single federation is a perfect example of the dual or cooperative model. The reality of the 21st century, with the variety of multi-level governments and their political entanglement and interdependence, suggests that no existing federal arrangement can be classified in terms of each particular model in strict definitional terms (Börzel and Hosli, 2003: 183-185; Kelemen, 2003: 184-193; Bakvis, 1994: 259-263). Moreover, the reality of the increasing expansion of the sphere of competencies and functions at all levels of national governments forces classical federalism to succumb to jurisdictional overlap and policy interdependence. Consequently, this reduces the classical federal notion of
'watertight compartments' or truly independent jurisdiction. That feature is consistent with the fundamental definition of federalism identified by K.C. Wheare, where no level of government is subordinated to the other (Bakvis and Skogstad, 2002: 7; Bakvis, 1994: 260). Nevertheless, as noted by Watts, the classical federations and their constitutional federal arrangements (United States (1789), Switzerland (1848), Canada (1867) and Australia (1901)) have displayed great resilience over the years when confronted with changing conditions. Despite occasional problems, these federal models show great flexibility and adaptability, proving the fundamental appeal of a federal arrangement, namely the capacity for re-invention and resilience. Having said that, it is imperative to understand that despite great accomplishments of different federations there is no single pure federal model that might be applicable everywhere. Federations vary immensely in many aspects deriving their characteristics from their particular socio-economic diversities, the number of political units involved, political tradition, and the scope of the allocation of legislative, executive and fiscal arrangements. (Watts, 1999:1-5).

**Federal Test**

To examine further the applicability and appeal of a federal model to the present EU it is important to conduct a federal test which would highlight how the EU and its Constitutional Treaty classify and comply with federal principles. This would help us to understand the federal elements which exist within the present EU as well as expose those that as yet do not. To conduct such a test I have selected five elements which should reveal the presence and viability of a federal
model. The test covers the following: (a) constitutional arrangement; (b) distribution of powers/competencies; (c) political representation and democratic deficit; (d) cultural integration; and (e) fiscal arrangements.

The main objective of this five-element test is to point out the key characteristics of the two selected federal models: Switzerland and Canada, as well as the quasi-federal EU, and examine how these models fare with respect to the suggested federal test. Furthermore, the intention is to apply the findings of this test based on federal theory and its various perspectives, as a comparative mechanism, in examining the European Union’s project. By doing this, I intend to provide comparative lessons and answers to the key questions presented in this thesis, namely: how federalism and the federal arrangement apply to the European Union; can the EU achieve a federal bargain; and to what extent the federal model is an appealing one for the present multi-level EU.

(a) Constitutional arrangement

The fundamental principle of a federal model is based on the legality of its constitution. Constitution, in any federal model, becomes the ultimate written document holding a significant measure of supremacy over regular and secondary law. The constitution and its constitutional arrangement should explain in detail the principal characteristics of the interaction between the federal central government and the sub-units. The constitution becomes, in effect, a social contract which implies that all participating sub-units must give their consent, and provide similar endorsement in any ensuing revisions. In fact, any ratification of the constitution should be a federal procedure because it requires, as pointed out by Madison in Federalist No.39, the consent of each federal sub-unit. Because of
this, any form of ratification calls for mutual participation of all sub-units and the center (Abromeit, 2002:4; Auer, 2005:420-425; Baier, 2005: 210; Smith, 1988: 446-448).

(b) Distribution of powers/competencies

The first basic characteristic of federalism is a guaranteed division of power between the central and regional governments (sub-units). As noted by Riker federalism is a political organization in which the activities of government are divided between regional governments and central government in such a way that each kind of government has some activities on which it makes final decisions (Wachendorfer-Schmidt, 2000: 5).

This kind of arrangement induces the second basic characteristic of federalism, namely decentralization where a significant portion of power is exercised at the level of the federal sub-units (provinces, länder, states, cantons) (Wachendorfer-Schmidt, 2000: 5).

In addition to these two characteristics, federalism with its division of power and decentralization is complemented by what can be described as 'joint decision-making'. This feature varies in its execution depending on the type of federation in which it operates, namely collaborative federalism and so called dual federalism (Wachendorfer-Schmidt, 5-7). The federal division of powers distributes constitutional competencies to the federal sub-units where all the responsibilities are split or shared amongst two levels of government.

In the case of conflict resolution, related to the shared competencies and powers of either level of the government, a constitutionally designed process of litigation, arbitration or judicial decision must be provided. This method, in the
form of constitutional adjudication, is not only highly prevalent in any form of federal arrangement but is also hardly avoidable. As noted by Auer "as federalism fosters and promotes constitutional adjudication procedures, courts are entrusted, entitled and indeed obliged to decide upon constitutional questions" (Auer, 2005: 424-427; Abromeit, 2002: 4). Considering that constitutions bear examination for what they reveal about the nature of political conflict and the balance of political power in a federal state, constitutional adjudication combined with a constitution and its supremacy are indeed irrevocably connected. They present the blueprint for proper design and functioning of any federal model. In doing this they provide not only an unbiased judicial empire in terms of constitutional matters but also, by preventing political institutions from being involved, reinforce faith in the institutions of federations (Baier, 2005: 215).

(c) Political representation and democratic deficit

The majority of federal models possess bi-cameral parliaments at the center where people of the sub-units and 'people as a whole' are represented (Abromeit, 2002: 17-18). Almost all federal models feature two overlapping elements of representation. Each citizen possesses an equal entitlement to vote. This is executed in a vote at the federal level (center) and at the regional (sub-units) level (King, 1993: 98-99). Consequently representation becomes the expression of its own demos where as suggested by Alain-G. Gagnon federalism is examined as a conflict-solving mechanism... as an expression of democratic practices encouraging innovation in policy preferences and political choices at the territorial level...(it) does not entail the elimination of political conflict. Rather, it proposes to account for situations in which diversity can be fully expressed and find solutions acceptable to all (Gagnon, 1993:15-24).
The political parties, similar in any democratic society, then become the main agents for expressing the interests of the federal center and sub-unit level. They become instrumental in the federal political process. Furthermore, their participation and quality of performance can increase or decrease the level of the so-called democratic deficit. They can also play the role of legitimizing agents in achieving equilibrium between the center and the sub-units in the federal division of power (McKay, 2001: 5-6).

(d) Cultural integration

By design, federalism is about balancing opposite forces. It is about defending and even promoting some level of cultural diversity. Federalism is intended to integrate societies with regard to their different linguistic and religious groups. It may even grant rights to all the groups at all levels and domains of the federal arrangement.

This characteristic, in the broader perspective, becomes the main raison d'être of federal participation where, in the name of 'unity in diversity', the small federal sub-units can be guaranteed the privileges of the larger sub-units in any particular federal political arrangement. This is demonstrated, particularly, in the protection of minorities in territorially fragmented societies, allowing them to maintain their desire for self-determination according to their particular way of living but at the same time obtain assurance of their participation and support for a greater cause in a federal arrangement. Moreover, for the majority of ethnic groups and territorially organized sub-units and communities, federal models provide an accommodation for, and possible answers to, dealing effectively with

(e) Fiscal arrangements

Fiscal arrangements lie at the heart of the federal model as they allocate financial resources to each level of government in the federal structure. This factor, the allocation of revenues and expenditures, represents a key element of the constitutional arrangement. Fiscal autonomy, of both the center and the sub-units, completes the other federal characteristics which add together to form the test. The importance of proper financial allocation is twofold: it facilitates or restrains the two levels of federal government in exercising their constitutionally allocated legislative and executive powers; and it provides critical mechanisms for using taxing authority to influence the economy. It also provides an important mechanism for reducing disparities among the sub-units in different equalization programs in the form of transfer payments, grants, refunds or subsidies (Watts, 1999: 43).

In sum, this chapter presented the fundamental principles of federalism and its models. Based on federal theory and its application I have constructed a federal test which will provide a basis for examination of the applicability and the appeal of federalism to the European Union. Comparative analysis based on the federal five-point test in chapter three, drawn from the Swiss and Canadian federal models, combined with historical outline of European federal thought presented in the next chapter will provide us with possible answers to this investigation.
Chapter Two

European Federal Path – Historical Perspective  
*(ex nihilo nihil fit)*

If we want to come to terms with the prospect of the European Union moving toward a federal and constitutional arrangement we must examine the history of federal thought and its influences on the project of European integration. The federal vision for Europe, its influence and its place in the contemporary quasi-federal European Union has been directly and indirectly connected to European integration. A brief historical evaluation is therefore necessary as a critical tool to illustrate the importance of the federal model in the discourses related to the EU. Historical evaluation is an essential prerequisite which allows us to understand that the federalist model is not a new concept. This chapter makes a contribution to the argument that federalism’s appeal is still present in the context of the European integration project. The prospect of achieving a federal Europe has never been easy, despite the fact that it has always been at the forefront of European political thought. This chapter provides additional answers to illustrate the importance of the federal model in the discourses related to the EU and its integration. Through examination of the writings by various federalist authors I intend to illustrate their contributions, from the historical perspective, to the idea of federal Europe.

The meaning of ‘federal’ which derives from the Latin term *foedus* is characterized as ‘a particular kind of union whose legitimacy rests firmly upon its capacity to sustain the federal values’ (Burgess, 2003: 67). This is framed in the context of particular principles associated with the terms ‘federalism’ and ‘federation’ which can be characterized by the following: mutual respect, compromise, consent, equality, toleration, reciprocity, bargain...
and conciliation. These terms are intrinsically associated with an almost moral imperative, or an obligation towards mutual benefit and well being of all members of the federal union. In our case – it is the European Union (Burgess, 2004: 26).

The most important thinkers in the post World War II European integration process have been consistently federal in their leanings. Throughout the writings of the early federalist theoreticians, dating to the XVI century, there is evidence that the main reason for the creation of a federation of small republics is derived from the desire to provide more security and peace in Europe (the theme paramount to federal European thought throughout the last four centuries). The main idea was to avoid the constant struggle for power and dominance between the monarchs who exercised their divine right of kings. New political concepts needed to be presented. The ideas outlined by Abbé de Saint Pierre, and subsequently the critical works by Althusius, Bodin, Baron de Montesquieu, Jean-Jacques Rousseau and Immanuel Kant (also Proudhon in the 19th century) set the foundation for a new political model. Their ideas started to gain a significant following not only in Europe from the late 1700s on, but proved a major force behind the creation of the United States of America and its federal structure as elaborated by the authors of The Federalist (Heffernan, 1998: 89-120).

The Treaty of Five Articles by Abbé de Saint Pierre was an important step for devising a European Republic where, under one strong institution, all participating members would be treated equally according to the signed treaty and legislative power of the Diet. This relatively simple but important five-point proposal for a 'perpetual and irrevocable alliance' tried to deal with issues later defined by Rousseau. His idea for a federate arrangement in regards to member states and their citizens saw its central objectives in the following provisions: division of powers, the representation of member
states in central institutions, and constitutional amendment procedures (Rousseau, 1955: 100-101).

In fact, Jean Jacques Rousseau's, *A Lasting Peace*, deals with the imaginary proposal of an alliance outlined earlier by Abbé de Saint Pierre. According to Rousseau, the main concept of the *Treaty of Five Articles* appeals to the fundamental concept of the federation of Europe. Such a federation of European states would guarantee the scheme of lasting peace on the continent. Unfortunately, the suggested federal project did not reflect the political reality of 17th and 18th century Europe. Rousseau explained that any chance of convincing monarchs to give up their powers would be unrealistic since there was no financial or territorial gain. He also pointed out that the monarchs' loyal ministers make themselves indispensable, benefiting from the constant necessity for war, and therefore create no incentive for "lasting peace" (Rousseau, 1955: 100-101). Rousseau's criticism of the feasibility of such an idea derives from the assessment of the political mind set, or rather lack of it, among the European elite of that era. Montesquieu had similarly noted the differences between monarchies and republics: "the spirit of monarchy is war and expansion; the spirit of republics is peace and moderation" (Montesquieu, 1989: 132). His observations in *the Spirit of the Laws*, however, are no more than 'praise for the aggregate value of the classical confederacy' (Davis, 1978: 71). This issue, only a few decades later, was re-visited and used to full advantage by the Founding Fathers of the American Constitution.

Another compelling argument of that era for perpetual peace, the union of republics and the federal concept, was suggested by the German philosopher Immanuel Kant. In his works he argues that the only way to achieve peace on the European
continent was to promote the federal concept of political and economic co-operation through a league of nations. Such economic co-operation, legitimate and intentionally promoted, would generate larger incentives to create unions between republics-democracies which would not wage war against each other but rather form federative unions. According to Kant the danger at the end of the 18th century came not from average citizens but from the condition in which the European states operated. His description, in fact, depicted the European community of states which, due to their constant wars, existed in a Hobbesian 'state of nature'. Kant suggested that the creation of republics does not guarantee the concept of 'perpetual peace' which can be promoted only through a set of laws and institutions (Kant, 1992: 335 - 336).

Regrettably, this important observation did not materialize on the European continent until the second part of the twentieth century.

The concepts outlined above by Rousseau, Montesquieu and Kant provide a prevailing theme in *The Federalist* papers published in 1787 – 1788. In these 85 articles Alexander Hamilton, John Jay and James Madison defend the federal republic created by the Constitution of the United States of America. The authors, under the name *Publius*, presented a series of articles which explained the benefits of the political structures of a new political model: the federal union with its institutions, constitution, concept of 'checks and balances' through the division of power, economic co-operation, significant symbolism and recognition of the state. These innovative concepts were implemented in the context of the specific character of the geography and political reality of the North American continent in the late 1700s. Alfred Stepan in his essay *Federalism and Democracy: Beyond the U.S. Model* suggests that "despite the prestige of the U.S. model of federalism, it would seem to hold greater historical interest than contemporary
attraction for other democracies" (Stepan, 1999: 32). The U.S. model is difficult to implement in other unions of states because they are often multinational and multi-linguistic democracies, which may require an asymmetrical relationship. As Stepan suggests, "under the symmetrical American model, many of the things that are most essential in a multinational context cannot be accomplished" (Stepan, 1999: 31). This is an important argument which I will return to in later sections suggesting that indeed the Swiss or Canadian models are more suitable for a potential federation of states of the European Union. Bearing this in mind, we should recognize, however, the importance of the American constitutional and federal arrangements which not only provided guidelines for other contemporary federal models but also served as a benchmark in developing the 'federal principle', which according to K.C. Wheare, "has come to mean what it does because the United States has come to be what it is" (Baier, 2005: 205).

It is not until the first half of twentieth century (1918-1945) that the federal idea becomes more appealing to the political elites and intellectuals of Europe. The immediate experiences of both the First and the Second World Wars made a profound impact on European federalist thought. As early as the 1920s a federalist like Coudenhove-Kalergi, a founder of the Pan-Europa Union, argued for a federal constitution among the nations of Europe as a base for peace and prosperity after the First World War (Moussis, 2003: 6). The idea which gained support in the intellectual groups of Europe was followed up by a proposal in 1929 by the French foreign minister Aristide Briand who called for a European federal union (Wistrich, 1994: 21). Finally, it took another War to solidify stronger aspirations towards the federal model for Europe. In 1941, in the midst of the Second World War a group of Italians, led by Altiero Spinelli and Ernesto Rossi, issued the Ventotene Manifesto and eventually in 1943 founded the
Italian Movimento Federalista Europeo (MFE) (Wistrich, 1994: 25). The end of the Second World War brought an intellectual wave of federalist thought which articulated the conscious realization that new ideas were needed to be implemented in order to stop further European self-destruction in the name of discredited nationalism. Across Europe, branches of the European Union of Federalists (EUF) were founded and voices of a federal vision were expressed by Winston Churchill, Jean Monnet, Altiero Spinelli, Alexander Marc, Henri Burgmans, Denis De Rougemont and Paul-Henri Spaak. The federal model was particularly attractive to the European continent torn apart by war because, as Michael Burgess points out, "the basic appeal of the federal state lies in its institutional and structural capacity both to accommodate and reconcile different kinds of union with different kinds of diversity" (Burgess, 2004: 29).

Post-1945 federal thought can be classified into three different strands which were an immediate consequence of a split regarding how to achieve the federal objective within the framework of European realities after the Second World War. They were: (a) 'constitutional method' or 'democratic radicalism' represented by Altiero Spinelli with its emphasis on the creation of a parliamentary assembly along with a constitutional treaty for Europe, direct pan European taxation and joint structures for European decision making; (b) 'community method', 'Monnet method', or 'federalism by installments' championed by Jean Monnet and characterized by a political strategy of concrete incremental economic and political steps to achieving federal objectives. 'The Monnet method' in sharp contrast to 'democratic radicalism' by Spinelli emphasized small institution building, 'functional' links between European states which were indispensable for the removal of physical and mental barriers which would conclude in a federal Europe; (c) 'integral' or 'Proudhonian federalism' often referred to by many
federalists as Utopian federalism. This strand places emphasis on the notion of European society in broad political and sociological context. An individual, confronted by global society is cut off from his family, neighbours and local associations which eventually causes his alienation. 'Proudhonian federalism' attempts to reduce this alienation by bringing political authority back to an alienated individual who becomes again an active part of the society. The main objective of this model in the context of European integration can be seen in promoting more active citizen participation in complex contemporary society. This raises an issue related to the EU's current dilemma of the democratic deficit which I will discuss further in chapter three and four when examining the Canadian and Swiss federal models (Burgess, 2004: 31-34; Burgess, 2003: 72-76; Sidjanski, 2000:188-204).

Relevance to the European Union context

The history of federal Europe is relevant to the EU's evolution along the federal path. At the same time, as defined by Burgess (2004: 29), "[n]o federation is identical to another. The way the salient differences and diversities are incorporated in each federal state and how they adjust and adapt to changing circumstances will be shaped and determined by unique historical factors". It is essential, therefore, to summarize the key federal elements which characterize the present EU. In sum, we recognize that federalist thought contains two relatively constant features: one is to obtain political union among separate states, and the second is to install a federal system of government with particular advantages and disadvantages over the unitary system. A federal model is "a method of dividing powers of government so that the central and regional governments are within a limited sphere co-ordinate but independent"
The ideas expressed by the European federalists in the early post-1945 reality of Europe ultimately found their implementation in the successive treaties and their provisions. The combined achievements of the Single European Act and the Maastricht Treaty (subsequently the Constitutional Treaty) were based on the 1984 European Parliament Draft Treaty for European Union, an initiative of Altiero Spinelli (Wistrich, 1994: 44).

The achievements of the past two decades in the EU’s integration process underline strong federalist trends and the direct impact of federal ideas. They are apparent in various areas of the day to day operations of the Union. The Kantian concept of the ‘spirit of commerce’ has found many applications, judging the EU from today’s perspective, and can be classified as a crucial ingredient for preventing wars and promoting peace and economic prosperity. The EU as one harmonized trade area is probably one of the best examples of this spirit. The federal ideas of lasting peace and economic and political co-operation have become essentially a key element of the contemporary EU. Jean Monnet’s ‘community’ or ‘functionalist method’ was in a way the only option for Europe in exercising peaceful co-existence and economic co-operation in the post-World War II era. Consensus, compromise, co-operation and collective security became a trade mark of the Union. In this sense, the EU integration project, a remarkable achievement of peace and economic co-operation among the EU members since 1945, proves that peace is feasible. This peace was not achieved in one single manner; it required a significant ‘stop and go’ policy in order to accommodate all the states of the Union and their interests. Thus, in my opinion there are significant correlations between the ‘elders’ of federalism and the main figures of contemporary
federalism who have influenced concepts of federal arrangements in the present day European Union.

In fact, the beginnings of the European project were not 'democratic radicalism' as represented by Spinelli's federalist approach in creating federal Europe, but Jean Monnet's pragmatism and vision in relation to past and future historical factors. Monnet directed European federalism into institutionalism and functionalism abandoning along the way the principal basis of Spinelli's federal Europe - political integration (Burgess, 2004: 37). From the beginning, the European Union institutions have always entailed federal elements.

Even if from today's perspective the EU's early beginnings in the 1950s seem like small insignificant steps, they have nonetheless been contributing to a federal cause. For example according to the Article 240 of the 1957 Treaty of Rome, there was an institutionalized policy allowing future enlargements which would create "a voluntary union of states and citizens" (Burgess, 2004: 39). Similar federalist possibilities were also presented in the Articles 138, 155, 171-7 of the same Treaty allowing for the future possibility of direct elections to the European Parliament (EP), increasing the powers of the European Court of Justice (ECJ) as well as establishing the future European Commission which was to be independent of the member states and only accountable to the European Parliament (Burgess, 2004: 38-41). Moreover, the European Community (EC), predecessor of the European Union, had its own legal order established by permission of the member states, where the Court of Justice had powers to be superior to the laws of its own member states. Already in the 1960s and 1970s the Court exercised significant transfers of powers from the member states to the then European Community. This allowed for an institutional framework for the Court's
functioning between the European and national courts by applying the principles of
primacy, of direct effect and of direct applicability in accordance with the community
law which consequently had direct effect on the citizens of the present EU (Auer, 2005:
428-429).

Needless to say, judging from the perspective of five decades past, and as
suggested by Michael Burgess: "the wheel, it would appear, has come full circle"
(Burgess, 2004: 42). The European Union is being confronted with an huge dilemma. Its
particular situation and the necessity for political integration can be compared to a
crucial crossroad where only one alternative means progress and further development in
the context of the enlarged EU. This alternative seems to be a federal model with a well
designed constitutional arrangement. Everything else would merely maintain the status
quo at best, and at worst, would mean going backwards. As history teaches us, the
European Union and Europe cannot afford that.
Chapter three

Examining Switzerland and Canada through the federal test

The examination of the most suitable federal model, its relevance to the European Union and subsequently an assessment of the EU Constitutional Treaty requires a comparative approach. Consequently, the Canadian and Swiss constitutional models are presented in this section as analytical tools and as points of reference. The selection of these two federal models is not coincidental. The Canadian and Swiss federal models, by way of their constitutional arrangements, division of powers and multi-cultural character hold strong similarities to the EU and can provide comparative linkages in the assessment of the already existing quasi-federal model and multi-level governance of the European Union.

This chapter outlines the modern Swiss and Canadian federal political systems. In the process of highlighting the main features of their contemporary federal structures the main focus will be directed to (a) constitutional arrangement; (b) division of powers/competencies; (c) political representation and democratic deficit; (d) cultural integration; and (e) fiscal arrangements.

The assessment of the pertinence of these models is based on the federal test identified in chapter one. This will help to facilitate comparisons of the Canadian and Swiss federal experience in the context of the quasi-federal European Union. Each section identifies key elements which would be beneficial and applicable (or not) to the structures of the European Union.
It is important to point out that both Canada and Switzerland, despite being among the oldest extant, and the most successful federations, are not fixed entities (Davis, 1978: 217-218). They are continuously evolving constitutional arrangements marked by their own political dynamics. As suggested by David McKay constitutional amendments altering the initial constitutional arrangements are extremely complicated, though possible. They may be re-negotiated at a later date due to further centralization or decentralization of a particular federal arrangement (McKay, 1999: 183). Federal experience teaches us that constitutional change, although possible, is not an easy task. Both Canada and Switzerland serve as examples in this regard. It is important to point out that both countries presented in this comparative analysis, despite their federal heritage, are still referred to in terms of their own anachronistic official state terminology, as confederations.

Switzerland (Confoederatio Helvetica)

The following brief assessment examines the contemporary Swiss federal model and its potential federal appeal for the European Union. While discussing the post-1848 Swiss federal constitutional arrangement we ought to be aware of the long confederal history of the region going back to the fourteenth century. For many who construct the Swiss ethos that history goes back even further to 1291 when the small communities Uri, Shwyz, and Unterwalden formed a 'perpetual league' or a confederation in search for joint security (Church and Dardanelli, 2005: 164; McKay, 2001: 105).
Awareness of the historical confederal experience is paramount in the Swiss case, as it has undeniably influenced the contemporary Swiss federal arrangement and political culture. This is particularly visible, despite strong decentralization, in the Swiss national identity which demonstrates a strong sense of multi-tier belonging (Bern, cantons, and communes) and fervent support for federalism along with the federal organizational structures and political life. The Swiss model, despite its small size and population, represents one of the most interesting among the federal models. Its historical political heritage combined with the immense tradition and richness of the political institutions and unique socio-cultural society provides a formidable case for comparisons (Trechsel, 401-403).

Swiss federalism, as noted by Daniel Thurer,

is a product of the varied topography and the linguistic and religious pluralism of the country. Federalism appears to be a state of mind (...) it is not conceived as an end in itself but as a means to protect, above all, two basic values underlying this institutional order. These principles are the maintenance and strengthening of regional and local communities with their varied identities on the one hand, and the possibility of creating an optimal form of self government and political freedom for citizens within those communities on the other (Thurer, 1996; 220).

To examine further the Swiss federalism we turn now our investigation to the federal five-element test which was introduced in chapter one.

(a) Constitutional arrangement

The Swiss constitution ratified in 1848 (revised comprehensively in 1874 and in 1999) is the supreme law and contains the list of competencies which are allocated to the center and sub-units of the federal state. The Swiss federal model and its process of federalization correspond greatly to the concept often referred
to as 'joint decision-making' or 'coming together'. This is reflected in the fact that the Swiss federal model contains complex consultation procedures where sub-units (cantons) or even sub-sub-units (communes) are allowed to participate in the federal legislative decision making process. The implementation of these decisions is placed in the sphere of administrative rather than legislative federalism, a process which favors co-operative arrangements. The constitution is very specific on allocation of powers between different governments and it requires constitutional amendments in the case of any change in the allocation of those powers.

The Swiss Constitution denies the Swiss Federal Court the capacity to review the constitutionality of federal laws. As a result, all major changes in the constitution or intergovernmental relations require cantonal approval. An interesting trait of the Swiss constitutional arrangement is a guarantee to all three levels of citizenship: national, cantonal and communal. This characteristic, where the citizens are recognized at all three levels constitutionally in a so called 'complex self-identification’ cannot be found in any country, except the quasi-federal EU. Undeniably, the Swiss constitution ensures, through a series of institutional checks and balances, cantonal sovereignty and embodies a compromise between the sub-units’ and center’s interests (Trechsel: 2005: 403-405; Thurer, 1996: 220-221; McKay, 2001: 105-121).

(b) Division of powers/competencies

Despite the fact that the Swiss constitution designates significant powers to the federal government, with the remaining powers allocated to the cantons, the country represents one of the most decentralized federal models in the world. This
highly decentralized federalism is a trademark of the Swiss federal experience. The constitutional allocation of competencies, however, puts a significant amount of power in the sphere of the autonomous cantons. Since the cantons are responsible to administer large segments of the federal legislation this leaves the federal government in a significantly dependent position. The Swiss model is characterized by significant symmetry in terms of each cantons' authority, despite the fact that 6 out of 26 cantons are classified only as 'half cantons' and only possess half the representation in the national Council of States. The Swiss, multi-level federal system, is divided in such a way that each level of government (central and sub-units) has assigned competencies in which it can exercise final decision.

The Federal Assembly (the national parliament) consists of two chambers. The National Council (the first chamber) is popularly elected. In the Council of States (the second chamber) each canton is represented with two seats and the six half-cantons with one. The Federal Assembly is responsible for electing the other branches of government, namely the executive and judiciary. The legislative power is shared equally between the National Council and Council of the States. The cantons' function is dual. They are represented in the Council of States where all legislations require the majority; and they approve referendum votes which must be passed by the majority of the cantons.

The executive, the Federal Council, is represented in the form of a collegial body of seven members who are entrusted with the power of the government. There is no one-person executive. According to an unwritten proportionality rule the Federal Council cannot have more than one councilor from the same canton.
The college should also contain at least two non-German speakers and both Catholics and Protestants. The cantonal power, however, is carried out through the Council of States directly on the other two branches of government. Moreover, the cantons maintain control over the selection process of the members of the Council of States which, according to the constitution, are direct representatives of the cantons in the federal government. In practice, cantonal representation is exercised through intergovernmental conferences of cantonal ministers and cantonal presidents (Trechsel: 2005: 403-405; Watts, 1999: 22-23; Church and Dardanelli, 2005: 174-175; McKay, 2001: 105-108).

(c) Political representation and democratic deficit

Switzerland has a multi-party system with a proportional representation electoral system. This is characterized by a fixed-term executive which contributes to the stability of the Swiss federal legislature and its main political parties. In the context of democratic deficit, the Swiss federal model represents one of the most advanced models of direct democracy with its widespread usage of referendums and initiatives (at the national and sub-unit level). This is due to the role of cantons in any decision making at the federal level, as they are obliged by the concept of so called double majority. This requires a majority of Swiss citizens to approve any proposed constitutional measures through specific referenda. These measures became an instrument of the expression of power by the center and sub-units at the federal level. The immense emphasis in the Swiss model on referenda and popular initiatives has constructed, over the decades, a strong sense of direct democracy consequently shaping Swiss political culture and
the strong national identity (McKay, 2001: 105-108; Church and Dardanelli, 2005: 169).

(d) Cultural integration

The Swiss federation is renowned for its cultural, religious and linguistic diversity. Despite a predominance of German Swiss the country has three official languages: German, French and Italian. A fourth, recognized as a 'national language', is Romansh. The country is also divided along religious lines. It has two dominant faiths: Roman Catholic and Protestant which are not restricted to particular ethnic groups but represent a real patchwork, covering the whole territory of Switzerland. This duality in linguistic and religious terms creates interesting territorial cleavages where adjacent cantons, regardless of their ethnic composition, form very distinctive identities and different cantonal alignments (Watts, 1999: 22-23).

(e) Fiscal arrangements

The Swiss fiscal arrangement reflects the complexity of the division of competencies where the legislative power is related to the center, and the policy implementation is largely left to the sub-units. All three levels of the federal model in Switzerland: the federal government in Bern, the sub-units (cantons) and the sub-sub units (communes) possess revenue raising capability and tend to achieve self-financing capability. The Swiss model represents a considerable degree of revenue sharing even though there are limits on the income tax capabilities exercised by the federal government. As a result, the ultimate fiscal power, reflected in the allocation of policy implementation, lies in the hands of cantons and communes. Any federal compensation to the cantons and the
communes is made through sharing of federal taxes, refunds, compensation and grants. These constitute the equalization fund, the main objective of which is to minimize the imbalances between cantons. This, as noted by McKay, is similar to the concept of the EU's structural funds. In reality, the Swiss equalization system fares poorly in providing appropriate levels and quality of federal equalization when compared to other federal arrangements, particularly Germany and Canada. This fiscal arrangement can be considered as a unique characteristic of the Swiss model where despite significant differences in the cantonal inequalities in wealth and income, the federal government does not play a significant role in narrowing the gaps (Church and Dardanelli, 2005: 174; McKay, 2001:110-115).

Having examined the Swiss federal model through the lens of the five-element federal test we can arrive at certain conclusions. The test produces interesting and mixed results. It reveals that there are elements which put Switzerland and its federal structure forward as a model of an 'ideal' federal arrangement, but at the same time there are elements which show some deficiencies. Swiss federalism, according to the federal test, triumphs in the areas of cultural integration, political division of powers (in the form of high decentralization) and political participation where the democratic deficit is reduced through the unique culture of direct democracy in the form of referenda. These elements represent the great achievements of the Swiss federal model and are true trademarks which may serve as lessons for the quasi-federal EU and other federations. On the other hand, there are areas which are surprisingly deficient, namely the absence of involvement of the highest court in decision-making with
respect to constitutional change, and very weak levels of federal equalization programs. Nevertheless, the example of Swiss federalism can be very useful in designing a federal structure for the highly decentralized, multi-level governance of the EU. The next chapter, which examines the current quasi-federal EU and its possibility for federal arrangement, will address these issues.

Canada/ Le Canada

Canada is among the oldest and most successful federal countries in the world. This, however, does not mean that the Canadian federal experience has always had a smooth evolution. To a certain degree, the attractiveness of the Canadian model for comparative research lies in its capacity for adaptation and re-invention when confronted with adversity. As suggested by Peter Russell, due to its 'mega-constitutional politics' particularly in the 1980s and 1990s, Canada experienced an unprecedented level of national institutional and constitutional debate (Fossum, 2004; 14). The Canadian federal model represents an ongoing experiment. Its constitutional and political dilemmas, framed in the Westminster style of responsible government, provide interesting findings in the field of comparative federalism. Furthermore, this attractiveness is reinforced by another characteristic which has always been framed as the most distinctive and intriguing feature of the Canadian federal model, namely in the French-English duality characterized by the particular character of Quebec and strong regionalism expressed through the provinces (Watts, 1999: 23-24).

Again, as in the previous section, our assessment of Canada turns now to the federal test introduced in chapter one.
(a) Constitutional arrangement

The founding Canadian constitution, *British North America Act* (BNA Act) of 1867, (Constitution Act presently) was an immediate result of a deadlock caused by the lack of a political solution to the realities of the United Province of Canada (created by the Act of Union of 1840), by the fear of an American invasion, and by economic interests. The creation of Canada was achieved by accommodation of the English and French speaking majorities and resulted in the creation of the new union (con/federation), which was formed by the four provinces: Ontario, Quebec, Nova Scotia and New Brunswick. Over the years the Canadian federation has been joined by other provinces and, as of the 1999 territorial re-arrangement of the north consists of ten provinces and three territories. (Watts, 1999: 23-24).

The Constitution Act (1982) is the supreme law and provides specific division of powers between the federal government and the provinces. In case of arbitration the Supreme Court of Canada provides judicial process solving any disputes between the center and the sub-units. Due to constantly changing character of the Canadian federation, its decentralizing trends and failure of constitutional renewal over last thirty years (the Meech Lake Accord and the Charlottetown Accord) there has been growing tendency toward non-constitutional change. This trend puts emphasis on the intergovernmental relations which in the process reduces meaning of a classical federal constitutional arrangement.

Consistent with the Canadian tradition of the parliamentary responsible government the official procedures involving constitutional amendments require approval by the Parliament and unanimous consent (or a proportion depending on the amending formula) of provincial legislatures. The constitutional amendment
procedure is quite rigid. In fact, there have been only seven minor amendments completed since 1982. There are five formulae for amending the Constitutional Act (1982). The general amending formula demands the agreement of Parliament and the two thirds of the provincial legislatures (7 out of 10) which constitutes 50 per cent of the population of the provinces. The first formula, however, which deals with amendments in the areas of the official languages, the Crown, the Supreme Court of Canada and the amending formula itself requires unanimous consent of Parliament, federal government and all provinces (Saunders, 1996: 49-50; Jackson and Jackson, 60-61; Smith, 2002: 46-56, Baier, 2005: 207-208).

(b) Division of powers/competencies

The original Constitution Act of 1867 provided strong levels of centralization where the federal government was able to override, in some circumstances, the legislative authority of the provinces. These nationally assigned veto powers of reservation and disallowance towards the sub-units (provinces) placed the provinces in a significantly disadvantaged position. Such union, as noted by K.C. Wheare in *Federal Government*, could best define the Canadian model as quasi-federal. (Baier, 2005: 208). This highly centralized system evolved gradually over time as relations between the federal government and the provinces became a growing source of political frustration at the provincial level. As a result the courts were forced into being the ultimate problem solving mechanism between the center and the sub-units (Baier, 2005: 208).

The constitutional division of powers is divided into two exclusive groups: federal and provincial. The Canadian model also contains an interesting third level of so called concurrent powers where the major powers reside within the sphere
of federal government (Ottawa). At present, due to strong dualism and regionalism, Canada is fairly decentralized on both legislative and administrative levels. The Canadian federal division of powers is partnered with a fusion of legislative and executive powers typical of a parliamentary responsible government. This feature, and the 'majoritarian character of the parliamentary federal institutions', influences greatly the dynamics of federal politics (Watts, 1999: 23-24). Also, the original dual allocation of power in the form of sections 91 and 92 of the original BNA Act resulted in a significant role for judicial review as an arbiter of the constitutional division of powers. Canadian federalism since the 1960s has been characterized as co-operative, with a high degree of decentralization and increasingly shared competencies between provinces and the federal government in the sphere of cost-sharing and growing political and bureaucratic federal-provincial interaction (Baier, 2005: 209).

(c) Political representation and democratic deficit

The Canadian party system remains territorially fragmented. Different parties with distinct ideological and organizational variation operate at the federal and at the provincial level. The Canadian 'first-past-the-post' parliamentary arrangements usually guarantee the dominance of one single party in the federal national political arena (McKay, 56-57) although the election of the first minority federal government in thirty years in the last federal elections in June 2004 proves that nothing is constant in the constantly evolving Canadian federal model. Moreover, the Canadian federal political party system is strictly interlocked with its characteristic Westminster system. Its features represent a visibly controlled and restrained party system, both federally and provincially, which provides
overstated control to the executive. As a result, the Canadian legislative branch operates in the context of agendas set by leaders of the center and the sub-units, and their respective governments. The meetings to set the agendas serve as informal and formal forums during which direct interaction between the federal government and the provinces can occur. This vital characteristic of the Canadian executive federal model relies heavily on intergovernmental relations and cooperation between the federal government (center) and the provinces (sub-units) (Baier, 2005: 206). These characteristics are summed up well by Tomblin the Canadian federal system is an example of 'interstate federalism', and because of the tradition and practices of a cabinet-parliamentary system, power is heavily concentrated in the hands of the political executive and decisions tend to be reached 'between governments' as opposed to 'within' national institutions. Premiers dominate their legislatures in a way that allows them an opportunity to speak for their communities with the confidence and knowledge that they are in control of the public agenda (Tomblin: 2000: 154).

d) Cultural integration

The Canadian federal model is recognized as a multi-national, multi-cultural entity. It possesses two official languages: English and French. The main emphasis is on diversity where the protection of distinctive national and regional identities is paramount to the federal identity. (Fossum, 2004: 11-12). Although Canada is deeply rooted in the British and French traditions the country represents a very ethnically and culturally diverse entity. Since the 1960’s Canada, in sync with its pendulum swinging towards further political decentralization, has also undergone significant social and cultural change towards becoming a 'just society' and affecting the nature and practice of
contemporary Canadian federalism. This change created a unique Canadian model of society within North America where diversity is welcome, supported and has become part of the Canadian trademark - multiculturalism. This characteristic is often highly appreciated and utilized as a model around the world (Brown-John, 1990: 177).

(e) Fiscal arrangements

As noted by Douglas M. Brown, fiscal federalism and its arrangements function not only according to the Canadian Constitutional Act but also contribute an essential operational element between the center and the sub-units. Canadian federal objectives put great emphasis on social solidarity. This strong sense of social cohesion is exercised through fiscal arrangements which foster the sense of community and unity within the all sub-units (provinces) of the Canadian federation. The main characteristic of the Canadian fiscal structure are its programs which can be characterized by the high degree of flexibility in adaptation as seen when Canadian federalism moved from the heavily centralized to a decentralized model. The key components of the growing powers directed to the provinces are framed by an equalization program in the form of the transfer of tax points and grants. The equalization transfers remain the main component of the trademark of the Canadian fiscal arrangement which serves as a residual mechanism in leveling the consequences of other transfer payments, grants and tax allocations between the center and the sub-units. In effect, as pointed out by Brown, equalization of all the intergovernmental arrangements, [it] is probably the most understood and the most broadly supported. It is also strongly underpinned by a constitutional commitment. More important still is that equalization makes fiscal and program
decentralization possible in Canada. It seeks to ensure a basic level of comparable services at comparable tax rates, without which most provinces could not contemplate the degree of provincial autonomy they enjoy (Brown, 2002: 59-79).

In sum, the Canadian federal model has significant appeal. Its highly decentralized structure makes it possible for Canadian federalism to function well under very diverse conditions. The appeal is particularly strong considering that the Canadian federal beginnings were characterized by a strong center. The evolution of the Canadian model had to find significant new ways to adapt to the changing conditions of political life, ethnic and linguistic cleavages as well as geographical enormity. The most significant evolution, however, can be seen in the adaptation of Canada and its federal arrangement when confronted with internal and external realities of the changing world. Canadian federalism has not only preserved national unity by decentralization, and the innovative system of transfer payments, but has also developed a political, cultural and national identity which is often identified as a model of multi-cultural, multi-level governance.

Having noted this, it is imperative to point out that Canadian federalism still faces several threats which could alter, or even put in question, the existence of Canada. The constant threat of Quebec’s separation, growing regionalism (particularly coming from the western provinces) along with the unresolved constitutional bargain does present multiple obstacles for Canadian federalism and its continuous evolution. The federal test reveals that Canada has fared well in the areas of Constitutional arrangement, fiscal arrangements and cultural integration. Deficiencies are evident in the particular arrangements between the center and
the sub-units. They are characterized by strong emphasis on intergovernmental relations. These, however, expose a significant lack of democratic openness during the political bargaining process between the center and sub-units increasing the democratic deficit (Baier, 2005: 218).
The EU, its federal context, the federal test and the Constitutional Treaty

This chapter examines the contribution that the EU Constitutional Treaty has made to the battle of ideas on how to achieve the so called *finalité politique* for the European Union. In addition to an examination of the Constitutional model of the EU, this chapter presents and evaluates key components of the EU’s quasi-federal model through the federal test in search for the appeal of federalism to the European Union integration project.

It is necessary to establish how and to what extent the present EU is framed in the context of a federal model. The EU federal model and its constitutional process were forged by member states through a series of treaties establishing legal foundations from 1957 through 2004 in the form of a special law based on those treaties called *acquis communautaire*. The European Union’s Treaty of Rome (1957), the Single European Act (1986), the Treaties of Maastricht (1992), Amsterdam (1997) and Nice (2001) derived their legal foundations to a large extent from the democratic legitimacy of the member states (Bulmer, 2001: 3-30). In the late 1990s, in the post Maastricht EU, it became evident that in establishing the political Union beyond the economic sphere, more needed to be done. There was a growing need for a more direct legitimization of the European integration process which would enhance the EU’s political capacity and reduce the so called democratic deficit. This approach required definite benchmarks defining where and how the legitimacy of the European Union would lie. Drawing lines of competencies between the EU and its
member states required the process of official constitution-making within the EU's political arena (Fossum, 2004:14-15).

It should come as no surprise that the European integration project and the last four years of real constitutional debate seem, from the federalist perspective, to be a true contemporary 'federalist revolution'. Federalism, with its constitutionalism, has the potential to create appropriate constitutional divisions of powers, appropriate institutions, political rules of engagement and ultimately political culture (Elazar, 1994: 62-71).

Constitutional design forms an essential prerequisite for any federal model. As noted by K.C. Wheare in his Federal Government "if government is to be federal, its constitution, whether it be written or unwritten, or partly written and partly unwritten, must be supreme" (Wheare, 1963: 53). In this line of argument, it is obvious that the Constitutional Treaty of the European Union, even if not a perfect document, provides the Union with an immense opportunity to lay out Europe's 'social contract' favoring a 'formal/procedural vision of federalism' (Baier, 2005: 210).

The Constitutional Treaty establishes, in effect, the Constitution for Europe. It amalgamates all existing Treaties (apart from the Euroatom Treaty of 1958) providing the European Union with a single legal personality under domestic and international law. Furthermore, the Constitutional Treaty amalgamates previously existing Treaties functioning under the notion of the 'three-pillars' which have formed the foundation of the political and operational framework for the EU since the Treaty of Maastricht (1992). The so called 'three-pillar' post-Maastricht structure forms not only a legal entity – the European Union, but also
distinguishes three separate entities for which the EU was responsible. They are: the Community pillar (relating to the Community Treaties), the Common Foreign and Security Policy (CFSP) pillar and the Justice and Home Affairs (JHA) pillar (Moussis, 2003: 19-26).

The Constitutional Treaty consists of four parts. Part I deals with the definition of objectives, powers, institutions and decision making processes of the EU. Part II consists of the Charter of Fundamental Rights. Part III deals with the EU’s policies and actions integrating the terms of the existing Treaties and Part IV provides the procedures for revision of the Constitutional Treaty. Moreover, the Constitutional Treaty simplifies the EU’s ‘legal instruments’ reducing them from the existing fifteen (presently in use) to six which will fall into the following three groups: (a) legislative acts; (b) implementing acts; and (c) non-binding acts (Grevi, 2004; 1-12).

The Constitutional Treaty also addresses the main changes to the institutional framework of the current EU. The existing European Council (the central EU agenda-setter) will gain a permanent political position, ensuring proper preparation, continuity and cohesion with other EU institutions as well as providing a strong external representation at the European level. The European Council will be chaired for two and a half years by an appointed president. A newly created position of the EU Minister of Foreign Affairs will merge the duties of the current High Representative for the Common Foreign and Security Policy, and the External Relations Commissioner. The EU Foreign Minister will be a member of the Commission and will chair the Foreign Affairs Council. The Council of Ministers will continue to alternate on an equal basis and its formation will be
left up to the European Council. The European Parliament will benefit from higher competencies and increased powers as 95% of European laws will be adopted under the co-decision procedure. The Commission will maintain the present structure of one commissioner per member state until 2014. Afterwards the Commission will be reduced to two-thirds of the member states and it will be chosen on the basis of equal rotation between the member states (Grevi, 2004:1-12).

One of the Constitutional Treaty's main objectives is to include and involve EU citizens in the decision-making process. This has already been achieved by involving various political groups from all the 25 member states in the Constitutional Treaty’s European Convention. This continues with the ratification process which includes several referenda conducted by some of the member states on a voluntary basis. Also, the Constitutional Treaty, apart from the obvious clarification of 'who does what?', strengthens the decision-making capacity of the institutions in the enlarged EU, increasing its democratic legitimacy. By doing this, the Constitutional Treaty has the possibility to become a real social contract which establishes common values for EU citizens and provides a true foundation for the EU's identity. As pointed out by John Palmer from the European Policy Center in Brussels, the Constitutional Treaty along with the Charter of Fundamental Rights and other innovations marks considerable progress compared to the currently existing treaties because the proposed Constitution has embedded an extensive statement of the basic mission and values of the European Union. What was implicit before is now much more explicit – a fact which should help public understanding of what too often is seen as a remote and arcane political process (Palmer, 2004: 3).
From the purely federalist perspective, however, the EU constitution falls short on a number of issues, notably decision-making procedures in the form of qualified majority voting (QMV). Although a new formula proposed by the Convention for calculating the qualified majority is part of the Treaty this came as a compromise at the cost of more complexity and less efficiency. According to the new formula, which abolishes the old system, the threshold for adopting a decision is set now at 55% (originally suggested 50%) of member states representing 65% (originally suggested 60%) of the population of the Union. Furthermore, in the case of a proposal not originating from the Commission, the threshold increases to 72% of the member states and 65% of the EU population to support the vote. This enhances the blocking power of each member state but undeniably makes the decision making less efficient.

In addition, there is significant obscurity in the present document about how to deal with possible amendments to the Constitutional Treaty. According to the Constitutional Treaty, any amendments would have to be met with unanimous agreement followed by unanimous ratification imposing, in effect, an ‘anachronistic straitjacket’ on the Union’s constitutional decision-making structures (Grevi, 2004: 2-12).

**EU’s Constitutional Treaty – examining the present**

Bearing in mind the importance of the constitutional arrangements with their clear division of competencies between the EU and member states we will turn to a brief assessment of current issues that affect the implementation of the EU’s Constitutional Treaty. The realities of the present political arrangement
emphasize, even more, the importance of the Constitutional Treaty. The newly
enlarged European Union (EU) represents a new set of paradigms framed in the
context of the present and future efficiency and functionality of the European
project. The post-enlargement EU represents a new and much more diversified
entity where decision making becomes at times a chaotic barrage of national
interests exposing diverging ideas on what the Union’s purpose is, and which
future direction ought to be taken. The last European Council in Brussels on June
15-17, 2005 is a case in point. Slowly but surely the effects of the 2004
enlargement, the largest in the history of the EU, are revealing serious divisions
among the old Member States. Failure to reach a compromise on the EU budget,
and particularly on how to react to the EU’s Constitutional Treaty ratification
fiasco, clearly proves the point. It appears that the EU’s 2004 enlargement
brought not only changes to the size of the Union, but possibly exposed the key
weakness of a larger club, namely how to achieve consensus in the EU’s decision-
making areas.

Regardless of the obstacles and rhetoric coming from Brussels, the present
Constitutional Treaty crisis is forcing what to many federalists always seemed
unavoidable – the necessity for agreement on a European Union Constitution. The
proposed document drafted under the auspices of the European Convention and
the leadership of the former French president Valery Giscard d’Estaing as well as
all the representatives of the member states took several years of painstaking
political compromise and was agreed upon in Brussels on June 18, 2004.

As the recent failures of referendum ratifications in France and the
Netherlands suggest, the proposed Constitutional Treaty for the EU is far from a
fait accompli. In fact, the double no in the ratification process represents a serious setback for the EU Constitutional Treaty, proving that some EU member states have profound misgivings about enlargement and the EU’s transparency, not to mention the shape of their economies and other domestic political concerns. Consequently, amidst this constitutional stalemate, the European Council at its meeting in Brussels on June 15 - 17, 2005 decided to postpone the date of ratification until 2007, putting the Constitutional Treaty on an indefinite hold, politely referred to in Brussels circles as a ‘time of reflection’ (The Economist, 25.06.2005).

Despite the apparent setback, the Constitutional Treaty ratification process should not be considered outright dead as some member states suggest. The current setback is not the end to the argument about what kind of constitutional arrangement the EU needs. It is just the beginning of a debate which eventually is going to provide a clear set of rules defining competencies between Brussels and member states. There is a danger, however, that the lack of such implementation could launch the EU into another long term period of economic and political stagnation known as Eurosclerosis. The ensuing crisis would turn the Union inwards, towards endless institutional negotiations, and away from the local and global challenges, resulting in a weak and divided Europe. At the same time, the current crisis could potentially instigate a ‘tectonic shift’ launching the EU towards a true federal arrangement, a model of renewed co-operation, where the needs of the newly enlarged EU would meet its own finalité of the European integration project (Burgess, 2004: 25; Grant, 2005: 6).
The EU’s Constitutional Treaty – in quest of meaning

The scope of the European Union constitution lies beyond present or future technicalities of decision making and execution by the European Union. The constitution is an essential element of further integration where institutions must meet the required tasks of the Union. As suggested by Jurgen Habermas in *The New Left Review*

The economic advantages of European unification are valid as arguments for further construction of the EU only if they can appeal to a cultural power of attraction extending far beyond material gains alone (...) Till recently the efforts of the Union were constructed on the creation of monetary and economic union...But today we need a broader perspective if Europe is not to decay into a mere market, sodden by globalization. For Europe is much more than a market. It stands for a model of society that has grown historically (Habermas, 2001: 9).

In fact, this next step - the EU Constitution, increases the EU’s role in the future shape of the Union model. This new model which is being “determined by unique historical factors” (Burgess, 2004: 29) would constitute a different kind of union between states and their citizens thus creating a ‘federal bargain’ unique to the EU.

The necessity for the EU Constitution is directly related to the realities of the past and present EU. It needs to involve the public, reduce the democratic deficit and reshape the political landscape in Europe. The EU’s democratic deficit quandary has been caused by the political process of European integration which has been executed until now as a project designed by elites instead of a process of full democratic participation by the European polity. The lack of public involvement in the EU decision-making process begs the question of whether
there is any possibility that the EU integration project can continue to thrive. It seems that the EU has reached its integration potential in the economic field. Despite having achieved the most successful economic union ever on the European continent, common currency and prosperity, the EU is not a state and cannot be treated as such. Any further ‘spill over’ from the economic sphere into the political one seems to have reached its limits. Pushing beyond economics will require a new vision – in the form of a federal bargain between the EU member states. As pointed out by Livingston “[f]ederal governments’ constitutions do not grow simply by accidents. They arise in response to certain stimuli” (Livingston, 1956: 1-15).

In this context, the European Union’s present quasi-federal model is a product of internal and external tensions related to the 2004 enlargement, and ratification of the Constitutional Treaty. The EU is bound to experience tensions similar to other maturing federations. The ‘certain stimuli’ described by William Livingston were, in fact, an essential part of the initial reasons supporting the creation of the Canadian and Swiss federations and fall under some of K.C. Wheare’s criteria for a federal model: (a) the need for common defense; (b) a hope of economic advantage; (c) similarity of political institutions; (McKay, 1999: 24).

Pushing beyond a ‘mere market’ makes room for further objectives and demands the legitimization of ‘shared values’ among Europeans (Habermas, 2001: 8). These values, representing a particular way of life, namely a European society leaning toward social, political and cultural inclusion, can be utilized politically to convey the importance of democratic participation. Consequently the
democratic deficit would be reduced and institutions would be reinforced with a clear political design. It seems that the EU’s Constitutional Treaty can provide a sense of belonging and common objectives for the present EU through its innovative constitutional provisions which include: (a) an EU president elected by the governments of member states thus increasing potential sense of symbolism among the European public; (b) a more definite ‘single voice’ foreign and defense policy; (c) a reformed EU commission; (d) a new qualified double majority voting (QMV) preventing potential post enlarged EU deadlocks caused by the unanimity voting of the present system; (e) a more prominent role for the EU Parliament along side the national parliaments in decision-making and the Council of Ministers; (f) a ‘legal personality’ creating primacy over the laws of the member states; (g) the establishment of the European Public Prosecutor’s office; (h) the co-ordination of tax policies within the euro-zone; and (i) the incorporation of the Charter of Fundamental Rights agreed in December 2000 (The Economist, 24.06.2004).

As suggested by David McKay in his book Designing Europe, the elements which were included in the EU constitution form the essential mix of institutional structures representing the two key factors found in other existing federal entities such as the US, Canada, Germany, Belgium, Australia and Switzerland. They are (1) an institutional framework; (2) the interaction of formal constitutional rules with other institutions and in particular political parties which become agents of legitimization (McKay, 2001: 13-17).

The present ratification process and past discussions around the EU Constitutional Treaty provide examples of the variety of criticism coming from
euro-skeptics who fear an EU based on constitutional foundations. In fact, even from the perspective of the keen euro federalist, the constitution falls short in achieving a pure federal bargain. Despite the ‘light’ version of the European Union Constitutional Treaty there are many who suggest that a federal model is not what Europe needs, as the psyche of the citizens of many EU member states is too engrained in the Westphalian model of a nation state. Others point to the failure of the federal model in the former Soviet Union and Yugoslavia, fearing further divisions among European nations. Or, they point out the complexities and inadequacies of other federal political structures, for example, the political conflict between Quebec and the rest of Canada. For many, mostly from the UK, Denmark, Sweden and Poland, the EU was always supposed to be no more than a fine working economic model providing prosperity and co-operation. They do not see the need for a constitution, nor for any further ‘deeper’ integration within the EU. Any talk of a federal model for Europe therefore provokes a great deal of hostility and increased skepticism towards Brussels and the EU itself.

Casting any negative or overly optimistic judgment on the EU’s Constitutional Treaty is premature. This, however, should not stop us from either comparing or analyzing to what extent federal constitutional arrangements in Canada and Switzerland are pertinent, regardless of their contradictions, to the context of the continuously evolving European integration project.

With this in mind, it is necessary to address the key tendencies occurring within the Swiss and Canadian federal models which characterize not only federal arrangements in these countries but also provide lessons and possible directions for the present EU. They are as follows: (a) a tendency towards executive
federalism and privileging of intergovernmental relations (Canadian model); (b) evolutionary constitutional arrangement; (c) compromise, and (d) deep commitment to federalism from elites in achieving particular objectives (McKay, 1999: 26).

Considering that federalism is a process of continuous adaptation, one notes immediate parallel between the EU and Canadian and Swiss federal models. Neither federal arrangement was created 'by design' in terms of an ultimate finalité politique. In both cases, as we discovered through the federal test of Switzerland and Canada, the constitution served as an initial foundation for further evolution of each particular federal model. To investigate further the appeal of federalism in the EU we turn now to examine the current EU through the lens of the federal test.

(a) Constitutional arrangement

The present binding instruments (regulations, directives and decisions) that constitute derivative European Union law, known as acquis communautaire are based on law derived from the series of Treaties signed by the member states between 1957 and 2000. These Treaties constitute the supreme reference and law with respect to the division of powers between the EU and its member states creating an official single legal personality for the Union. The presently existing arrangements which form the legal base of the EU will potentially be enhanced by the genuine and comprehensive Constitutional Treaty of the European Union (2004) which is presently in the process of being ratified by the member states. At the present, any changes to the existing acquis communautaire can be amended only through unilateral measures (along with sub-unit ratification which
is mandatory) proving that the EU member states remain the ‘masters’ of the Treaties (Moussis, 2003: 27-37).

(b) Division of powers/competencies

The European Union represents the following division of powers: (a) between the EU institutions and the member states and (b) between the institutions at the EU level. These divisions can be classified as vertical and horizontal divisions of power. The division of competencies at the EU level is divided between legislative, executive and judicial branches. The EU has a bicameral legislature with a strong upper chamber, namely the Council of Ministers, which is composed of direct representatives of member state governments. The weaker lower house, the European Parliament (EP), is composed of directly elected representatives. The EU also possesses the Commission which constitutes the collegial executive which is led by the president of the Commission and the commissioners who are appointed by the upper chamber on a proportional basis. These appointments are subject to a vote of approval by the European Parliament. (Kelemen, 2003:193-203; Moussis, 2003: 27-60).

Furthermore, the EU’s judicial branch is represented by a supreme court, the European Court of Justice (ECJ). It is composed of judges selected by the member state governments. In addition, the EU has started to establish a system of lower federal courts, namely the Court of First Instance (CFI), as well as creating specialized judicial panels in accordance to the Treaty of Nice (Article 225a). The member state courts form an integral part of the EU’s judicial system.
and contribute to the legality of the EU legal system which takes precedence over national law (Kelemen, 2003: 193-203; Moussis, 2003:27-60).

The current division of powers can be sometimes characterized as a dynamic confusion of powers. The directly elected legislature (European Parliament) is mostly consultative and the indirectly elected executive which is made up of the member state representatives plays, in effect, a legislative role. This situation puts great emphasis on the EU bureaucracy in exercising most executive functions. The EU does not have a government in the true sense of the term. This function is in the hands of the Council of Ministers of the European Union (CEU) and the European Council (EC) which consists of the heads of member states’ governments. Neither the CEU nor the EC have a president or prime minister in charge, forcing both councils to be governed by a rotating (every six months) collegium comprised of the twenty-five member states. The European Parliament is a legislative body but it does not have powers typical for federal legislatures. Its primary role is consultative. The Council of the European Union plays the role of the second chamber which is not existant at present (Verney, 2002: 18-20).

(c) Political representation and democratic deficit

The EU does not have a vertically integrated party system. The political parties which are represented in the European Parliament do not represent a pan-European party system as they operate only in the context of their national territories and not in the context of the EU as a whole. The party systems across the EU and the European Parliament present a high degree of incongruence which is visible in terms of the number of parties and the level of their electoral support.
The absence of genuinely pan-European parties limits the legitimacy of EU government when measured in terms of its scope or moral authority. As a consequence the composition of the Council and the Commission is primarily determined by the national parties. This re-enforces to a degree the democratic deficit as the EU citizens tend to identify with national or regional parties. Last year’s elections to the European Parliament, with the lowest ever percentage of the voter participation are a case in point (Thorlakson, 2005: 483-485; Moussis, 2003: 148-149, McKay, 2001: 134-136).

Because of the relative weakness of the EU institutions, the European integration decision-making procedures rely heavily on intergovernmental dealings. This immense emphasis on intergovernmentalism allows, in fact, the member states to possess full control over the EU. This highly practiced trend contributes to the democratic deficit and, will not be changed even by the Constitutional Treaty which implies an even greater role in the future for intergovernmental dealings (Baier 2005; Hable 2005). This process which made the EU what it is today, is highly controversial because it increases the level of democratic deficit reducing the EU’s own legitimacy. As pointed out by Eriksen and Fossum:

it has become a received wisdom that the EU suffers from a ‘democratic deficit’. It suffers from deficiencies in representation, representativeness, accountability and support. The problem is not merely that of the establishment of an additional layer of governance, further removed from the peoples of Europe. It is also that this process contributes to the transformation of the Member States, so that each Member State can no longer claim to be the source of its own legitimacy (Chryssochoou, 2003: 366).
(d) Cultural integration

Cultural and ethnic assimilation from the perspective of the legislative does not represent a problem in the EU which possesses official multilingualism policies respecting and using all the languages of all EU members. The EU recognizes, protects and promotes all national cultures creating its own ethos of 'unity in diversity'. This language of success in terms of cultural and ethnic assimilation coming from Brussels does not, however, fare well when confronted with reality. EU cultural integration is certainly a significant social problem which, in the context of the 2004 enlargement, one cannot expect to be reduced significantly in the near future. One of the biggest challenges is the rather substantial lack of European identity. Citizens identify themselves with their own national member states, and not necessarily with the European Union as a whole. Moreover, the growing separation between the large numbers of non-Europeans and Europeans living in the EU member states, caused by decades of neglect in social and economic terms, will exacerbate current EU problems (Moussis, 2003: 147-148).

(e) Fiscal arrangements

The European Union pursues already many federal-like common policies which require fiscal transfers from the national to the supranational EU level. These transfers from the member states contribute toward the EU's budget which finances, for example, the common regional and educational aid policies, and common agricultural and fisheries policies. The biggest share of the EU budget comes from a percentage of national VAT revenues for which collection is done at the member state level. The EU's overall expenditures constitute about 2.4% of all public expenditures within the member states. This, however, represents a
mere one percent of the member states’ cumulative Gross Domestic Product. The EU redistributes more than 90% of these funds in the form of various common EU policies (the so called redistributive function of the EU budget) back to the member states. The management of the EU budget is entrusted to the Commission and its financial operations comply with a Financial Regulation providing accounting information with respect to the EU’s budget establishment and implementation. Financial management of the EU’s budget is performance oriented and it is fully entrusted to the Commission (Moussis, 2003: 35-37).

Having examined the European Union through the lens of the federal test we can arrive at certain conclusions. According to the test, the EU in many ways is already at least quasi-federal. It represents a model of multi-level governance like no other in the world. The EU’s achievements over the last six decades are gargantuan considering European history with its vicious circles of intrigue and self-destruction. The EU’s integration is in a sense a blueprint for how to pool sovereignty in creating a Kantian-like ‘perpetual peace’. Having said this, we have to keep in mind that the EU is an ongoing project whose final destination is not yet accomplished. For many this destination seems federal. The European system of multi-level governance appears to correspond more closely to the model of cooperative federalism than to dual federalism. The EU does not have an autonomous sphere of competencies in the sense of holding both legislative and executive responsibilities in selected policy sectors. The test reveals that despite enormous achievements there are significant elements which suggest that the EU misses on key points which form federal models. The first is in the sphere of
finance. The EU does not have any financial autonomy. This does create a problem in any federal model where a center or a sub-unit despite its jurisdiction does not have commensurate financial autonomy (Watts, 1999: 43-45). In the case of the EU, Brussels is not in a position to determine its revenues and subsequently it is completely dependent on member states. The second deficient element refers to the legal framework. Despite the strong treaty based legal character of the Union, the EU does not have a constitution (unless the present Constitutional Treaty is approved). Thirdly, final decision-making which, regardless of all appearances, is still strongly attached to the member states and their psyche of national sovereignty (Abromeit, 2002: 8-9).

Lessons for the EU from the Swiss and Canadian federal experience

In drawing implications from this comparative analysis it is important to remember that any lessons derived from other federal arrangements have their limits. No federal model is ideal. The examination of the Swiss and Canadian federal models presented in this thesis along with the inquiry of the quasi-federal EU does not provide an instant magic formula for the federal destination of the EU. This has not been the objective of this thesis. The findings do illustrate possible alternatives and lessons (both positive and negative) from the Swiss and Canadian federal experiences which, can indicate if and to what degree federalism can be an appealing proposition for the EU's finalité politique. They are as follows:

(a) Reduction of conflict through consensus - the examples of the federal principles in Swiss and Canadian federalism make it possible to avoid the numerous conflicts which are due to constitutionally assigned powers where the
center and the sub-units must look for compromise through consensus in their decision-making. It is important to add that the balance between the center and the sub-units should be viewed through the lens of constitutionally designed federal arrangement where reduction of the stresses caused by multi-level governance is achieved in combination with intergovernmental dealings and a constitution (Abromeit, 2002: 4; Sidjanski, 2000: 212 - 215).

(b) Flexibility, tolerance and the principle of subsidiarity – Swiss federalism is well equipped with constitutionally assigned tools which allow the center, the sub and the sub-sub-units to participate in the federal arrangement involving all levels of the federal model to participate in legislative and executive powers. Moreover, it seems that the Swiss federal model can offer more in the sphere of the principle of subsidiary – an idea very similar to the idea of federalism where "actions are taken as close as possible to the citizens on the level of government most appropriate to the task" (Delaney and Smith, 2005: 133; Abromeit, 2002: 4).

(c) Decentralization – the Canadian and Swiss high level of decentralization (the latter to much higher degree) should be viewed not as 'mere decentralization' which serves as an administrative optimization device but it should also be considered as federal decentralization which forms a principle of governmental organization as well as the object of federalist arrangements. Consequently, these arrangements become effective guarantors of functionality for federal models. They also reassure the equal and fair participation in power sharing between the center and the sub-units making sure that even weaker sub-units are not left in a disadvantaged position. Moreover, federalism can restrain power with its constitutional arrangement preventing the future possibility of the center
encroaching on the domain of the EU member states as well as allowing the member states to rationally anticipate this encroachment (Abromeit, 2002: 4; Sidjanski, 2000: 212-215; Bednar, Ferejohn and Garret, 1996: 280).

(d) **Reduction of intergovernmental decision-making** – one of the biggest threats to the EU’s operational functioning and future policy implementation is similar to the Canadian ‘unfinished federal bargain’. The reliance on intergovernmental dealings based on consensus building is too fragile and unpredictable, particularly with a twenty-five member Union (Burgess, 2004: 38-42).

(e) **Federal constitution** – both Swiss and Canadian federalism prove the necessity for strong constitutional arrangements which create a foundation for how to deal with any possible malfunctions of a federation. The EU’s Constitutional Treaty gives this opportunity to the present EU by reducing dependency on intergovernmental dealings in the case of the EU’s decision-making dilemmas. As suggested by Gerald Baier “the wiser choice...would be to have faith in the institutions of federation, particularly in an independent judicial empire, rather than leave competence questions to political institutions” (Baier, 2005: 215). The Canadian experience, with growing dependence on intergovernmental dealings and using these as tools of ‘non-constitutional’ adjustment creates a threat to the legitimacy from which federalism derives its appeal, namely its legal order and its legal enforceability (Baier, 2005: 217). Taking this into consideration, the EU’s Constitutional Treaty would provide true political substance which the EU is missing at this moment, lacking answers to the issues of the political and territorial boundaries of the EU (Habermas, 2001: 23).
(f) *Accountability and reduction of democratic deficit* – both Canadian and Swiss models suggest that accountability in a federal multi-level government requires strong institutional and political structures. In the case of Switzerland democratic participation became a strong pillar of the Swiss system and its democracy. Direct democracy with its accountability plays a substantial role in constraining the centralizing tendencies in the Swiss model which ultimately makes it an extremely interesting example. Surely, this is a trait from which any democracy could benefit. In the case of the EU this would mean transparency, debate and public involvement. As a result, the pan-European referenda would give citizens’ wide-ranging opportunity in effective participation in the shaping of the EU’s policies. Having said this, one can argue the practicality of such a political exercise on the scale of the EU polity where, as we saw in May/June 2005, the rejection of the Constitutional Treaty by two member states in national referenda has stalled the whole ratification process. It is important to remember also that Switzerland has had a long tradition of direct democracy. This cannot be said about the EU. Moreover, Swiss direct democracy, at times, reveals its conservative bias as it empowers large numbers of the rural and mostly conservative cantons leading to the blocking of progressive legislations and re-enforcing social inequality. Judging by these complexities of the Canadian and Swiss federal models in the area of the reduction of the democratic deficit neither represents an ideal for the EU. Canada, particularly, suffers from a chronic democratic deficit, as there is a strong aversion to the back door dealings among the political elites over last three decades during the constitutional mega-debates (Habermas, 2001: 23-24, Church and Dardanelli, 2005: 169-172).
(g) National identity and federal solidarity – in this point the Swiss model represents a great sense of national identity which is interwoven with the federal Swiss identity based on so called 'constitutional patriotism' rather on shared identity or culture. The Canadian federal model, despite its neo-liberal tendencies puts a strong emphasis on social solidarity. This emphasis is represented in significant presence of the federal government and its institutions in promoting a welfare state with elements of social equality and justice. (Fossum, 2004: 12-15; Church and Dardanelli, 169-172).

In sum, the lessons learned from Swiss and Canadian federalism are valuable. They provide insight into what is ahead for the EU. Both countries are fairly decentralized with a significant dose of constitutional restraints. The Canadian example would suggest that the 'unresolved constitutional bargain' (McKay, 2001: 45) can create potential discrepancies between the theory and practice of constitutional arrangements (Delaney and Smith, 2005: 138). Overall the Swiss model seems to be more suited to the present EU though this claim is highly speculative due to the nature, historical background and political character of the present EU as well as the Swiss federal experience. The Swiss federal appeal to the EU is based on a high level of institutional decentralization which is particularly designed to limit the accumulation of centralized power. This is a lesson which might be useful for the European Union.
Conclusion

The examination of the European Union in the comparative context proves that federalism's appeal to the present multi-level EU governance remains very pertinent. Considering that the EU's institutions have always entailed federal elements, the debate should not revolve around whether the European Union should evolve into a federal model. The EU with its multi-level governance already demonstrates clearly that it is an emerging federation. Bearing this assumption in mind, this thesis examined the extent of the federal appeal to the EU with reference to two relatively successful models and the possibility for the EU to achieve a federal bargain. Such a bargain would require a clearer division of powers assigned by a constitution. Because of the EU's federal leanings, during the course of this thesis I have emphasized comparative model of two of the oldest and most successful federations: Canada and Switzerland. In addition, I addressed the present EU with particular attention to the EU's proposed Constitutional Treaty. Judging the achievements of the European project from the perspective of the last sixty years, the EU seems likely to continue its gradual centralization as there is a growing trend by the EU member states to allocate greater powers to Brussels. This means a necessity for the EU to construct and implement, in the true sense of the federal principle, a second part of federal equilibrium, namely a more robust center. This would fulfill, together with the sub-units' equal participation, a constitutional division of powers and competencies providing the EU with a more efficient and more transparent decision-making process. Such a constitutional arrangement would also provide safeguards for the EU member states (possibly in the future) to counter balance
the possible growth of competencies assigned to Brussels. Federalism can provide such equilibrium because its theories, experience and practice provide a formula which can give to the presently unfinished, diverse, multi-linguistic and multi-level governance of the EU its own political form based on a constitutionally designed federal model. The opportunity for federalism in the form of the EU’s Constitutional Treaty should not be squandered. As noted by Kalypso Nicolaidis in *We, the people of Europe* "the glue that binds the EU together is not shared identity but shared projects...ratifying the constitution is a great chance for Europeans to renew the contract that binds them" (Nicolaidis, 2004: 103-110).

Post-enlargement EU is being confronted with a choice. The present ratification process of the Constitutional Treaty and greater moves toward a federal-constitutional approach presents a formidable opportunity to the EU project. Traditional notions of federalism and its constitutional arrangement are appealing because they can be applied more openly and thoroughly than has been witnessed in the past in the EU. As such, federalism would create a just balance. The Europeans should recognize and engage with this emerging federal opportunity.
References


Nicolaidis, Kalypso (2004) We, the People of Europe..., Foreign Affairs, 83 (6), pp. 97-110.


