



ISSN: 2036-5438

How Can We Define Federalism?

by

John Law*

Perspectives on Federalism, Vol. 5, issue 3, 2013





Abstract

While the study of federalism has in many respects reached an advanced stage today, there nevertheless remains a troubling absence of agreement as to the precise meaning of the concept. It is subject to multiple definitions, which overlap with one another in various ways and sometimes conflict. This leads to material negative consequences for both academic research and public policy, which can no longer be overlooked. The article confronts the problem by reviewing what the social science theory of concepts teaches for the construction of methodologically sound definitions of concepts. It employs the insights gained in the elaboration of a valid taxonomy of political systems, from which the definition of a federal political system can be inferred, and hence that of federalism. Rethinking the concept in this way points to the need to reject the currently fashionable ‘broad’ definition (following Elazar) in favour of a return to a ‘narrow’ differentiated definition (following Wheare). Further, it illuminates the existence of two distinct federal structures – the federal state and the federal union of states – where before only the former was known. It thus leads to identification of the presently unidentified or ‘*sui generis*’ European Union as an instance of the latter form.

Key-words

Federalism, definition, meaning, concept, sovereignty, federal union



1. Introduction

The political science literature on federalism seems today to have reached a mature state of development. Sophisticated comparative analyses, global in scope, now yield a wealth of fruitful insights into the nature and functioning of federal systems of government.^I Close inspection, however, reveals a concerning underlying theoretical fragility. Attempts over many decades at establishing a consensus on the exact meaning of the concept have thus far proved in vain. As Sbragia points out: ‘... scholars of federalism find it impossible to agree on a common definition’ (1992: 259).^{II} They instead by default acknowledge the existence of ‘numerous overlapping definitions’ (Pollack 2010: 28), and in their analyses either adopt coping strategies for working within these constraints or skirt quickly around the matter, viewing the concept as unamenable to precise specification.^{III} I contend that the limits of possible progress in the field have now been reached without addressing this critical foundational issue more effectively.

At the frontier of research today, the scholarship is attempting to come to terms with a broader variety of intermediate political systems now occurring than the single traditionally-known mixed structure of the federation (or federal state). Such forms, sometimes seemingly entirely novel in character, appear to lie along the integratory pathway on the margins of the central ‘compound’ space either side. Here, at the interface where federalism meets other types of political order, definitional and conceptual ambiguity poses significant intellectual difficulties. There is particular uncertainty concerning how to characterize the modern European Union, which is from the less integrated end of the spectrum progressively moving in towards the middle zone. Is this multi-level polity already a federal system? The literature currently provides no clear answer to this question. Whilst some authors consider it to meet the requirements of federalism^{IV}, an equal number do not.^V If not yet federal, furthermore, it is not plain for the analyst exactly what additional step (or steps) would make it such. Against this murky backdrop, it is common to find the polity described in somewhat obscure (and possibly even conflicting) terms in scholarly writings: as ‘quasi-federal’ (Hueglin and Fenna 2006: 13; McCormick 2011: 34; McKay 2001: 9), as a ‘weak federation’ (Moravcsik 2001: 186) or ‘loose federation’ (Wallace 1996: 439), as an instance of ‘partial federalism’ (Piris 2006: 86) and as an instance of



‘federalism without a federation’ (Bomberg *et al.* 2008: 232). The root of the problem here would seem to lie in the lack of well-established contours to the federal concept at the present time.

Other cases of uncertain characterization, approaching the compound space from the opposite (more integrated) end of the integratory pathway, are seen in the arrangements of extensive devolution of powers of the United Kingdom and Spain. Both polities are today similarly described as ‘quasi-federal’ (Gamble 2006: 22; Hueglin and Fenna 2006: 138). They are also termed ‘*de facto* federations’ (Hueglin and Fenna 2006: 19; King 2012: 120). The former is considered an instance of ‘federal devolution’ (Bogdanor 2001: 287) and the latter a ‘federation in practice’ (Watts 2008: 13) and a case of ‘non-institutional federalism’ (Colomer 1998).

The lack of clear contours to the concept leads on to an awkward inconsistency of treatment among the basic taxonomies of political science. For example, despite a broadly shared analysis of its principal features, the EU is classed by Burgess (2006) and Elazar (1998) as a confederation, by Hueglin and Fenna (2006) as a federation, and by Watts (2008) as a member of a separate hybrid category combining elements of both forms. Similarly, while Keating (2009) considers Spain to be a system of devolved government within a unitary state, Anderson (2008) and Hueglin and Fenna (2006) class this polity as a federation. The deficiency further manifests itself in confusion of terminology in scholarly writings, which inevitably causes misunderstandings. Wallace, for example, appears to contradict his own characterization of the EU as a ‘loose federation’ (as just noted) when he emphatically asserts subsequently: ‘The EU is *not* a federation’ (1999: 518).^{VI} The literature thus, overall, seems not yet sufficiently rigorous and systematic in its nomenclature and its treatment of intermediate forms of political system.

In particular, the terms federation and confederation do not appear to have attained precise and determinate meanings. These terms are often used interchangeably today by non-specialists, notably in relation to Switzerland and Canada, which (unhelpfully) due to historical legacy remain formally styled confederations while actually now both federations (Watts 1996: 20). Among specialist scholars who do make a differentiation, it is still unclear whether confederalism is to be considered part of federalism (as in the perspective of Elazar and Watts), or to be contrasted against it, its ‘antithesis’ (as in the interpretation of O’Neill, McCormick and Rosamond). Both problems have origins in the fact that



confederalism and federalism share the same root, their common early meaning being a simple league among states. The terms were, indeed, used synonymously in this sense right up to the late nineteenth century. Establishing the appropriate relation between the associated concepts remains a key outstanding challenge for political science today.^{vii}

Though at source this is an intellectual problem, its effects are far from confined to the realm of the ivory tower. It has significant ‘real world’ consequences, with harmful repercussions for the clarity of communication in public debate concerning processes of regional integration and disintegration currently underway and for the development of public policy in relation to them. It impacts particularly strongly upon the European integration process, as this is the most advanced instance of regional integration occurring in the world today and thus the first to run into such difficulties. Here, it is seen to hinder both the identification of distinct possible models for future attainment and – equally if not more importantly – the clear determination of the construction’s present nature, the point of departure.^{viii}

The lack of a complete appreciation of the meaning and definition of federalism thus represents a serious weakness that now requires urgent attention. In this article, I outline a path for tackling the problem, building upon my earlier research into the historical evolution of the concept and terminology of federalism (see Law 2012). This concluded by positing a suggestion for a revised understanding of the federal concept. I develop this proposal more formally here, showing how the definition of federalism can be derived from first principles within the context of a methodological and conceptual analysis. In so doing, I aim to demonstrate that the amended concept put forward has firm foundations from a theoretical perspective, complementing the historical rationale that led towards it. My approach comprises seven sections. Following this introduction, section two lays foundations by establishing what are the various alternative and competing definitions of federalism commonly seen in the literature today. Section three then turns to reflect upon what the theory of concepts tells us as to how sound definitions of concepts can be composed in the social sciences. Section four combines the insights acquired in this analysis with location of the key attributes of federalism to construct a valid definition of the concept. Section five critically appraises the several existing definitions in the light of this new thinking. Section six considers how it can assist the empirical analysis of political systems. Section seven concludes.



2. The several definitions of federalism in current use

The seminal attempt at defining federalism was made by Wheare in his 1946 work *Federal Government*. This forms the bedrock of the modern literature on the concept and remains today the most common point of departure for scholars working in the field (Bogdanor 2003; Burgess 2006; Galligan 2006; Laursen 2011; Vile 1961). Wheare based his ‘federal principle’ explicitly upon the pioneering example of what he termed ‘modern’ federalism seen in the United States of America: a compound polity in which two ‘co-equally supreme’ levels of government both acted directly on the citizen through their own law, under a written constitution. He was thus led to define it as follows:

‘By the federal principle I mean the method of dividing powers so that the general and regional governments are each, within a sphere, co-ordinate and independent’ (1946: 11).

It was this formulation that constituted the main focus of scholarly criticism in the debate on the definition of the concept that followed in the 1950s and 60s (from the authors Livingston, Davis, Birch, Vile, Riker and Friedrich successively).^{IX} Challenges to its validity were centred around two points. First, a growing overlap and mutual interdependence was observed between the levels of government of federal systems in the twentieth century in a constantly moving equilibrium (termed ‘cooperative federalism’), supplanting the firm separation of the nineteenth century (‘dual federalism’). This made the premise of independence appear no longer sustainable. Second, the premise of coordinacy likewise seemed untenable, since in many of the areas of now common concern the ultimate solution to conflicting policy approaches was in practice the ‘defeat’ of one level by the other (Vile 1961: 196; see also King 1982; Riker 1975). Wheare’s detractors, however, were themselves unable in these circumstances to come up with an alternative suggestion capable of withstanding close scrutiny (Vile 1977: 1).

Subsequent contributions to the literature reflected the need, in this situation of apparent blockage, to think laterally. Friedrich put forward a theory of ‘federalism as process’, in which he argued that it was possible to define federalism and federal relations ‘in dynamic terms’. In this approach, the concept would not be seen ‘... only as a static pattern or design, characterized by a particular and precisely fixed division of powers



between governmental levels'; instead it would be conceived as '... also and perhaps primarily the process of federalizing a political community' (1968: 7). Duchacek, on a second tack, retained the institutional focus but simply offered ten 'yardsticks of federalism' against which to assess by degrees the presence or absence of the concept (1970: 201-8). On a third path, Vile proposed the construction of a set of 'developmental models' against which to interpret the stage a particular federal system had reached at a certain moment in time. In this perspective, federalism was distinctive merely as a '... cluster of different techniques ... used to try to establish and maintain a particular kind of balance or equilibrium between two levels of government, albeit a moving, changing equilibrium' (1977: 2, 6).

Since this low-point of seeming despair in the 1970s, when the attempt at defining the concept in precise terms was more or less abandoned, scholars of federalism have gradually recovered their composure and have at various times and in various ways posited statements pointing to the essential distinguishing elements of the concept (or of its institutional manifestation, federation) as a political form – that is, they have posited potential definitions. Set out below in chronological order, for the purpose of comparison, is a selection of seven of the ones more commonly found in the literature today. It will be seen that they overlap and intersect with one another at a number of different points. It will also be noted that certain authors have drawn a distinction between 'federalism' as a normative ideology and 'federation' as a political institution, which some consider a helpful dichotomy but others, such as Forsyth, regard as simply 'pretentious' and a 'red herring' (Burgess 2000: 24; 2006: 47).

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

'... a federation may be conveniently defined as a constitutional system which instances a division between central and regional governments and where special or entrenched representation is accorded to the regions in the decision-making procedures of the central government' (King 1982: 140-1).

'Federal principles are concerned with the combination of self-rule and shared rule. In the broadest sense, federalism involves the linking of individuals, groups, and polities in lasting but limited union in such a



way as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all parties' (Elazar 1987: 5).

'... federation ... is a distinctive organizational form or institutional fact which exists to accommodate the constituent units of a union in the decision-making procedure of the central government by means of constitutional entrenchment. ... let us ... take federalism to mean the recommendation and (sometimes) the active promotion of support for federation' (Burgess and Gagnon 1993: 7-8).

'Federalism ... refers to the advocacy of multi-tiered government combining elements of shared-rule and regional self-rule. ... Within the genus of federal political systems, federations represent a particular species in which neither the federal nor the constituent units of government are constitutionally subordinate to the other, i.e. each has sovereign powers derived from the constitution rather than another level government, each is empowered to deal directly with its citizens in the exercise of its legislative, executive and taxing powers and each is directly elected by its citizens' (Watts 1996: 6-7).

'Federalism is an institutional arrangement in which (a) public authority is divided between state governments and a central government, (b) each level of government has some issues on which it makes final decisions, and (c) a high federal court adjudicates disputes concerning federalism' (Kelemen 2003: 185).

'In a federal system of government, sovereignty is shared and powers divided between two or more levels of government each of which enjoys a direct relationship with the people' (Hueglin and Fenna 2006: 32-3).

The last of these definitions points towards what might in fact be considered a further shorthand definition that seems to operate currently in mainstream academic exchange as common currency. This is that federalism means simply 'a division of sovereignty between two levels of government'. Scholars seem to have taken this meaning as implicit in the idea of a formal allocation of competences among two governing levels on a permanent basis by a common basic code. Each level is thought to be 'sovereign' within its allocated sphere, with the final say (Diamond 1961). Sovereignty is thus generally believed today to inhere in neither level exclusively under federalism, but to be the property – in part – of both. Bogdanor exemplifies this view when he states that federalism '... implies a constitutionally guaranteed division of legal sovereignty between two layers of government divided territorially. Sovereignty is thus not confined to one government, but divided or shared between two' (2003: 49). In similar vein, Heywood says: 'As a political form ... federalism



requires the existence of two distinct levels of government, neither of which is legally or politically subordinate to the other. Its central feature is therefore the notion of shared sovereignty' (2000: 240). It seems to be this essential conception of the nature of federalism, as reflecting 'divided' or 'shared' sovereignty, that represents the most common ground among authors at the present time (Burgess 2000; Dosenrode 2007; Downs 2011; Laursen 2011; Marquand 2006; Nicolaidis and Howse 2001; Piris 2006; Wallace 1999).

3. The theory of concepts

I follow here the classical approach to the theory of concepts, which might be considered a 'traditional' view of the subject (Margolis and Laurence 1999). It stems from the classical approach to logic, with roots in Plato's *Statesman* dialogue and Aristotle's *Categories* treatise. It received its fullest exposition in Mill's 1843 work *A System of Logic*. Despite somewhat falling out of fashion in the post-war period within the social sciences, it has been partially resurrected over more recent decades, principally in the writings of the political scientist Sartori.

This scholar's 'Concept Misformation in Comparative Politics' (1970) stands as a key formative article in its attempt to confront the issue of conceptual confusion within the literature (Collier and Gerring 2009; Goertz 2006). His focus is on re-establishing an understanding of the central importance of methodology to the conduct of valid social science, which he interprets as of essence concerning the logical structure and procedure of scientific enquiry. In a very crucial sense, he emphasizes, there is '... no methodology without *logos*, without thinking about thinking'. The tendency to neglect – even in some quarters disown – the classical approach to logic, therefore, together with its associated taxonomical framework of classification, is badly misguided. He states firmly: '... when we dismiss the so-called "old fashioned logic" we are plain wrong, and indeed the victims of poor logic' (1970: 1033-6). I share this perspective. For, as Sartori observes, we dispose of no other unfolding technique that 'unpacks' concepts, and as such it plays a '... non-replaceable role in the process of thinking in that it decomposes mental compounds into orderly and manageable sets of component units' (1970: 1038).

How, then, is the classical approach structured? The basic building block is the proposition, in which 'attributes' (or 'properties' or 'features') are either affirmed or denied



of a subject (Mill 1843). For example, in the proposition 'lead is heavy', the attribute 'heavy' is affirmed of the substance 'lead'. Through testing against successive propositions, a record of the properties of a 'thing' (or 'phenomenon') can be established. To then say that this thing is an instance of a class of objects going under a certain general name, let us say 'X', is to observe that it shares certain key attributes with all other members of that class that are each necessary and together sufficient to bring an object within the scope of the class. These 'necessary and sufficient conditions' are the defining characteristics of the concept of 'X' and collectively go to constitute its definition.

We can visually represent this mental process of framing classes – and the associated process of concept formation which is implicit in it – through the use of a block diagram. This shows how a broad class of objects, or 'genus', can be divided into two 'species' through the application of a single further differentiating attribute, known as the specific difference. This is the taxonomical *'per genus et differentiam'* or 'by genus and difference' treatment. As the relationship between genus and species is relative, the resulting species then become the genera of the next division, and so on (Copi and Cohen 1994; Mill 1843). In Figure 1 below, for example, the genus 'human' is first divided through application of the attribute of being male into two species, 'male' and 'female'. These, in turn, are further sub-divided through application of the attribute of being mature to produce four species, 'man', 'boy', 'woman' and 'girl'. When this approach is applied to a group of practical examples (in this case comprising a limited set of four instances: Hansel, Thatcher, Gretel and Mandela), the entire unorganized realm is sorted into an organized classification.



		Human			
		<i>Hansel, Thatcher, Gretel, Mandela</i>			
<i>Proposition 1: It is male</i>	Male		Female		
	TRUE <i>Hansel, Mandela</i>		FALSE <i>Thatcher, Gretel</i>		
<i>Proposition 2: It is mature</i>	Man	Boy	Woman	Girl	
	TRUE <i>Mandela</i>	FALSE <i>Hansel</i>	TRUE <i>Thatcher</i>	FALSE <i>Gretel</i>	

Figure 1: The classical approach to concept formation

Each specific instance of a human here is placed in its appropriate conceptual category or class by testing for the presence or absence of the two stated attributes. Hansel, for example, does exhibit the first attribute but does not the second, and thus falls into the ‘boy’ category. Correspondingly, the definition of the concept ‘boy’ would be: a boy is a human that is male and not mature.^x

A firm grasp of the method of construction and operation of the classical taxonomical framework leads on to seven important insights, which follow logically and serve to sharpen our understanding of the nature of concepts. First, we see that concepts are really no more and no less than aggregated sets of attributes. Second, we observe that concept forming activity is also definition forming activity, since the two necessarily occur at the same time. Indeed, they are two sides of the same coin: for developing a concept of a thing depends on identifying that thing’s salient attributes, which then collectively go to comprise its definition. Third, in the vertical hierarchical or ‘tree structure’ of concepts we identify what Sartori termed the ‘ladder of abstraction’. This is either descended or ascended by, respectively, adding or subtracting attributes. As the ‘intension’ (or ‘connotation’) of a concept, which is its meaning, is increased by adding new attributes^{x1} and the ladder



descended, the ‘extension’ (or ‘denotation’), which is its capture, is progressively narrowed and the number of instances caught accordingly reduced. Fourth, an infinite variety of concepts can be hypothesized, from high-level general ones to low-level highly specified ones. Fifth, each of these concepts can be assigned a name and it is the job of the social scientist to do so, wherever this is necessary. Mill tells us that we need a name for every ‘thing’ we wish to describe (1843: vol. II, 236). Sixth, we observe that the classical framework elaborates a contiguous series of ‘well-sharpened’ categories that are ‘mutually exclusive’ and ‘jointly exhaustive’. This has the strong virtue of allowing neither zones of overlap nor gaps to develop: any one practical instance thus falls into one, and only one, class. As Sartori points out, it is this feature that gives the mental system its powerful discriminating capacity and thereby provides the basis for collecting ‘... adequately precise information’ (1970: 1039). Seventh, it follows that concepts are discrete categories with clear and definite boundaries. This, therefore, disposes of the crucial misconception – in fact still widely held today – that concepts are somehow ‘fuzzy’, have ‘blurred’ boundaries or ‘shade off’ into one another.^{xii} Sartori is firmly dismissive of this view, saying: ‘If our data containers are blurred, we never know to what extent and on what grounds the “unlike” is made “alike”’ (1970: 1039). The key to achieving and maintaining conceptual clarity, it would seem, is to ensure that our concepts and their constituent elements are at all times appropriately and fully specified.

We have now formed a clear perspective as to how methodologically sound definitions of concepts can be constructed in the social sciences. A valid definition of a concept, we have established, is a proposition that declares its meaning, that is, states its attributes or intension. With reference to the exemplar definition given above, the concept boy’s meaning is seen to be specified by the attributes of being (i) human, (ii) male and (iii) not mature. These are observed to represent boy’s *salient* characteristics, those that are necessary and sufficient to bring a thing within its denotation. Until we have a clear definition, we have seen, we cannot be said to have a clear concept; nor can we be said to have a true understanding of the latter’s meaning.



4. Constructing a valid definition of federalism

I briefly summarize in what follows the principal findings of my earlier research. I then take forward their logical implications in the elaboration of a taxonomical unfolding of political systems following the classical method. From this a methodologically sound set of definitions of political systems can be established, which in turn allows inference of the definitions of a federal political system and of federalism.

The dominant view presently is that the modern concept of federalism implies divided sovereignty; and, further, that the United States, being the first ‘mixed’ or ‘compound’ construction in which two co-equal levels of government were established, represents the founding instance of this phenomenon. This is as reflected in the arguments advanced at the time of Philadelphia by James Wilson, James Madison and *The Federalist* (Law 2012: 544-6). McDonald captures the mainstream thinking in this regard: ‘Divided sovereignty was generally regarded as impossible, until Americans devised a way of doing it’ (McDonald 2000: viii). My prior investigation concluded that this is, in fact, not the right lesson to draw from history. Rather, its exact opposite is the case. For the Civil War some seventy years later did in the end show the division of sovereignty to be a misplaced notion. What Americans can be said to have achieved, I put forward, was the first constitutional division of powers (the powers flowing from sovereignty) between two levels of government – not the division of sovereignty itself. Sovereignty is an indivisible concept. It refers – in its core sense^{XIII} – to the *final* and *absolute* source of political authority underlying a society, which alone is capable of arbitrating and giving definitive resolution to all internal disputes. As such, it can only be thought to lie in *one* place.^{XIV}

A written constitution, I perceived, cannot be thought to divide sovereignty, in assigning separate spheres of competence to two levels of government (as has been generally believed to date), because of the unavoidable existence of gaps and zones of overlap creating grey areas requiring adjudication by a third party. The truth of this claim was found demonstrated by the events leading up to the Civil War, President Lincoln even pointing to the dilemma directly in his first inaugural address of 1861:

‘... no organic law can ever be framed with a provision specifically applicable to every question which may occur in practical administration. No foresight can anticipate, nor any document of reasonable length



contain express provisions for all possible questions. Shall fugitives from labour be surrendered by national or by State authority? The Constitution does not expressly say. *May* Congress prohibit slavery in the territories? The Constitution does not expressly say. *Must* Congress protect slavery in the territories? The Constitution does not expressly say. ... From questions of this class spring all our constitutional controversies’.

Since the body charged with arbitration, the federal supreme court, is an organ of the general level of government, and thus cannot claim to be wholly independent of both levels, resort to the originating source of sovereignty underlying the political order, thought to be the ‘true’ source, is likely to occur in cases of severe dispute.^{XV} This may result in conflict if the latter’s location has become obscured – as in fact happened in the American case, in the concurrently-held but ultimately irreconcilable beliefs in the existence of both one people (of the American nation) and many peoples (of the separate states), the former conception having been overlaid upon the pre-existing latter one.

In this light, we may with good reason, I suggested, locate sovereignty in modern democratic societies in the body of the people, the ‘political community’ or ‘body politic’ – but with this sharply defined as one distinct entity. Sovereignty is not found in governments, nor in the constitutions lying behind governments, but in the peoples lying behind constitutions (Merriam 1900: 179-80). There can be no ulterior source of political authority lying behind the people.

The touchstone of final authority, and hence sovereignty and statehood, for any political community embedded in a wider political order must be the formal legal right to reassert independence unilaterally, and thus to stand as a distinct political unit once again with a single shared destiny among its populus. This is found in the right of secession. From the other perspective, it is the absence of this right that in the final analysis establishes the territorial integrity of the wider order, the existence of a single political community and thus the presence of sovereignty and statehood in the wider entity. On this understanding – which was missing from the US Constitution (where the existence or not of a right of secession for the parts was, and remains to this day, unmentioned) – sovereignty and statehood are acknowledged to be unitary and tightly-related concepts. The latter, indeed, we may appropriately conceive as the institutional means for expression of the former.^{XVI}



Our persistent failing to date, it seems, has been to not distinguish between sovereignty and the powers flowing from sovereignty; between centralisation of the final power and centralisation of all powers, both final and derived. Whilst the former must remain a unity, the latter can be dispersed according to a written constitution to higher and lower levels of government without problem. Indeed, the ‘federal revolution’ arguably underway since the end of World War II, as identified by scholars such as Elazar (1998) and Hueglin (1999), may be said to represent the belated realisation that just such decentralised systems of government can be achieved by constitutional means, after the over-centralisation of the ‘modern’ era. What still remains missing presently from this understanding, however, is the vital essence of sovereignty: the acknowledgement of the need to clearly maintain in parallel known sites of final authority within federal systems, for them to remain ordered peaceful and stable on a permanent basis. To equate sovereignty with centralisation and to reject them both, is to throw out the baby with the bath-water. Sovereignty has an important core of meaning that it is critical to retain. It is in this relation that I have argued that federalism and sovereignty, far from being incompatible notions, are in fact more properly understood as entirely complementary (Law 2012: 550). Statehood and sovereignty, understood in this light, may be ‘hollowed out’ concepts, wholly transformed from previous incarnations, but they are far from redundant. They remain central organising principles of modern political life.

We now turn to integrating these insights with those gained from review of the theory of concepts in the preceding section. We are concerned to identify the salient attribute that marks off the federal form from other political forms along the integratory pathway. In view of the above findings, this evidently can no longer be located in the idea of ‘a division of sovereignty’. So just what is the distinguishing characteristic of the federal form?

I propose that we locate this critical feature in the idea of ‘equality of status’, reflecting the key characteristic of the compound model of government first established in America in 1788. This is not intended to mean a perfect and permanent equality between the general and regional levels of government in all their dealings (as had previously been taken to be implied in Wheare’s concept of ‘coordinacy’). Rather, it refers to a more general underlying equality of rank, standing or constitutional status, viewed in terms of the essential structure of the political system.

It serves well to note that Wheare also perceived his coordinacy notion to imply



‘equality of status’ (1946: 260) and considered this idea central to the nature of federalism (he in fact mixed the two conceptions). In the respect that this remains a key characteristic of federalism, therefore, his approach seems to have been somewhat prematurely rejected. He says of his ‘federal principle’: ‘... the important point is whether the powers of government are divided between co-ordinate, independent authorities or not’. Of the contrast between such a balanced relationship and one involving the subordination of either one or other level, he emphasizes: ‘... This difference is what is fundamental, and this is the difference that provides the real distinction’ (1946: 13-5)^{XVII}.

The framework of basic categories that he is led to develop from this understanding is a tripartite schema, in which two forms of association involving the ‘dependence’ or ‘subordination’ of one level are conceived as symmetrically surrounding the central zone of federalism. These structures he identifies as ‘confederation’ and ‘devolution’ respectively:

“That form of association between states in which the general government is dependent upon the regional governments has often been described as a “confederation” and the principle of its organization “the confederate principle”. ... The other form of association - that in which the regional governments are subordinate to the general government - is often described as “devolution” and the principle of its organization as “the devolutionary principle” (1946: 31-2).

This is similar to the ‘confederal/federal/unitary’ typology commonly expounded in the literature today (as, for example, in Anderson 2008; Diamond 1961; Downs 2011; Hueglin and Fenna 2006; King 1982), if the unitary category is taken to involve some degree of decentralisation of powers to local or regional authorities – as is normally the case. It should thus be acceptable to most scholars. We may represent it here by means of a taxonomy of political systems, as set out in Figure 2 below. Three propositions are applied in this unfolding. The first of these, testing for the presence of one or many states, is seen now to introduce the discrete quality of sovereignty and statehood.^{XVIII}



Political system						
<i>US, UK, EU, UN</i>						
<i>Proposition 1: It is composed of many states</i>	Multi-state political system			Single state political system		
	TRUE <i>EU, UN</i>			FALSE <i>US, UK</i>		
<i>Proposition 2: It exhibits a division of powers</i>	FALSE	Multi-level political system		TRUE <i>US, UK</i>	FALSE	
		TRUE <i>EU, UN</i>				
<i>Proposition 3: It exhibits equality of status</i>	Many small states	Confederation of states	Federal union of states	Federal state	Devolved government	One large state
	N/A	FALSE <i>UN</i>	TRUE <i>EU</i>	TRUE <i>US</i>	FALSE <i>UK</i>	N/A

Figure 2: A taxonomy of political systems

The framework is argued to be adequate in the respect that it furnishes a set of precise and sharply-bounded categories that are mutually exclusive and jointly exhaustive. It thus appears appropriate to the task of classifying political systems.

It will be noted that a key novel feature here is the illumination of *two* distinct federal models – rather than just one. These forms, multi-state and single state, in which sovereignty is understood to reside in either the parts or the whole, in several peoples or in one people, may be termed respectively the ‘federal union of states’ and the ‘federal state’.^{xix} Until now, it seems, we have by default assumed that the constitutional division of powers (wrongly framed a division of sovereignty) thought to lie at the heart of federalism must occur within the context of a single state, a federation or federal state – because this is the only model we have known and the idea of dividing sovereignty yields only one federal form. We see here, however, that there is no theoretical reason why this should be the case;



that federalism can equally well exist within a multi-state setting and the idea of dividing the powers flowing from sovereignty more properly yields two federal forms.

The diagrammatic representation of Figure 2 can be usefully compared with the illustration ‘A pathway of regional integration’, reproduced in the Appendix below, where the same six structures are elaborated (in fact five distinct forms). The heights of the pyramids in this illustration indicate the relative standing of the respective levels of government.^{xx}

We may now establish definitions of the four intermediate political structures identified by abstracting the relevant attributes of each form, as follows:

A confederation of states is a multi-state political system in which there is a division of powers between two levels of government and the general government is subordinate to the regional governments.

A federal union of states is a multi-state political system in which there is a division of powers between two levels of government of equal status.

A federal state is a single state political system in which there is a division of powers between two levels of government of equal status.

A system of devolved government is a single state political system in which there is a division of powers between two levels of government and the regional governments are subordinate to the general government.

What does this analysis imply, then, for the definition of federalism? We observe that the concept of a federal political system encompasses the whole middle span of the integratory spectrum, embracing its two structural manifestations, the federal union of states and the federal state. It is thus seen to represent the higher level generic concept. In order to obtain its definition we therefore need to ascend the ladder of abstraction one level by omitting the number of states criterion from the definitions of the two federal forms, as this is no longer a distinguishing attribute. On this basis, we may define it as follows:

A federal political system is a political system in which there is a division of powers between two levels of government of equal status.

Since federalism refers more specifically to a form of government, we may define this concept, correspondingly, as follows:

Federalism is a form of government in which there is a division of powers between two



levels of government of equal status.

This definition seems technically accurate and complete. It does not require any further elaboration, I suggest. For the essential meaning of the concept is captured by the definition, through a statement of its salient attributes or intension.^{XXI}

We noted earlier, however, that in order to achieve full clarity on the nature of a concept, both it and its constituent elements must be appropriately and fully specified. A key matter of further concern to us is therefore the exact meaning connoted by equality of status. I propose that we define this critical sub-concept through reference to three attributes: (i) constitutional protection of the regional governments, (ii) the direct effect of law of the general government, and (iii) majority-voting in the decision making process of the general government. Taken together, these seem to represent the necessary and sufficient conditions for a relationship of parity among the levels of government of an intermediate political system. The first attribute determines the *constitutional independence* of the regional governments. The second and third determine the *effectiveness* of the general government. Whilst these ideas appear on the surface to exhibit a certain asymmetry, an underlying symmetry is seen to exist in their common employment to test whether genuine second tiers of government are established at either level, possessing the characteristic of ‘autonomy’ (Burgess 2000; Laursen 2011).

The first attribute firmly distinguishes the realm of equality of status from the more integrated side. It refers to constitutional entrenchment of the prerogatives of the regional governments; that is, to the absence of a right for the general government unilaterally either to abolish them or to reduce their powers. Such a right exists in a system of devolved government within a unitary state, but does not in a federal state. This feature is well established in the literature (Anderson 2008; Bednar 2009; Burgess 2000; Downs 2011; Hueglin and Fenna 2006; Wheare 1946)^{XXII}. The second and third attributes mark out the zone of equality of status from the less integrated side. These two criteria would seem to be the requisite ones, from reference to the American and European cases of regional integration. The former instance, in the genesis of modern federalism under the move from the Articles of Confederation to the US Constitution in 1789, and in the corresponding creation of the first compound polity, established the direct application of the law of the general government as a critical feature (Hueglin and Fenna 2006; Wheare 1946).^{XXIII} This element was achieved in Europe by the mid-1960s through the judicial activism of the



European Court of Justice, which established via its case law the principles of direct effect and primacy (the *Van Gend en Loos* and *Costa vs. ENEL* rulings, respectively). It has now been shown, however, to be a necessary but insufficient condition for equality of status. For the European example has demonstrated the existence of a further requirement: the use of majority-voting in the process of legislation itself, attained with the Single European Act of 1987. This is needed in order to make the upper tier fully operative as a second level of government. In acquiring this element, the blocking or ‘veto’ power of individual regional governments is ended within the common sphere of action and a significant measure of regional autonomy is sacrificed for gains in the efficiency of the general government. It thus represents the point when the general government ceases to be a dependent or subordinate entity, an agent of the regional governments, and comes into an equal relationship with them; and when the territory of confederalism is exited and that of federalism is entered.

5. Appraisal of the existing definitions

At this point in the analysis, we may usefully review with a critical eye the definitions of federalism in current circulation identified at the start.

Application of the second attribute in the unfolding of Figure 2, the existence of a division of powers, was seen to specify the realm of the multi-level political system. The relationship of this concept to federalism can now be fully appreciated. The latter is identified to be a species of the former. The two are not the same and should not be conflated – the latter being also defined by the additional attribute of equality of status. We in fact see emerge into daylight here a major source of the confusion dogging the literature presently, in the problem of ‘conceptual stretching’ (Sartori 1970: 1034). For Elazar’s definition of federalism as ‘self-rule and shared rule’ appears to fall into exactly this trap, by reflecting only the division of powers criterion. Burgess confirms this impression, observing that over the past half century ‘... Daniel Elazar has been the most vociferous advocate of widening both the scope and meaning of federalism’ (2006: 286). He notes that it seems to have been this author’s influence that also led Watts to construe ‘federal political systems’ as ‘... a broad umbrella concept’ (2006: 48).^{xxiv} Elazar’s federal concept (in common with that of Watts) explicitly covers not only the central realm of the



compound polity, but also those of confederation and devolved government (1987: 33-79). In arguing that ‘... a wide variety of political structures can be developed that are consistent with federal principles’ (1987: 12), he has therefore gone too far and robbed the concept of its essential core of meaning, its differentiating capacity (Forsyth 1981: 6-7). So in order to return clarity and sense to the field of federal studies today, we need to reinstate the attribute of equality of status in the definition of federalism – and, in so doing, get back to Wheare’s narrower focus on the central zone along the integratory pathway.^{xxv}

Hueglin and Fenna’s definition at first glance appears intuitively attractive, if the idea of sharing sovereignty is discounted. However, its salient attribute of each level of government enjoying a direct relationship with the people is not sufficiently discriminating. For whilst this correctly excludes the realm of confederation, it incorrectly includes that of devolved government. In the case of the UK, for example, the devolved Scottish, Welsh and Northern Irish administrations are directly elected by the people of Scotland, Wales and Northern Ireland and legislate directly for them. The UK thus would fall within the scope of Hueglin and Fenna’s federal concept when it should properly fall outside.

King’s and Burgess and Gagnon’s definitions suffer from the mirror image of this defect at the opposite end of the spectrum. Their common distinguishing attribute is entrenched representation for the regions in the decision-making procedure of the central government.^{xxvi} This correctly excludes the realm of devolved government, but incorrectly includes that of confederation. In the latter type of political system, a central government decision-rule of unanimity among the representatives of the regional governments in council typically applies, and certainly for constitutional change, affording the constituent units a very high degree of protection from emasculation by the centre.

The solution, it would seem clear, is to combine the two approaches to demarcate the central zone of federalism from either side by applying both criteria.

Riker’s definition, also taken up by Kelemen, incorporates the attribute that ‘each kind of government has some activities on which it makes final decisions’. This seems initially promising – like Wheare’s earlier definition – in reflecting the idea of a constitutional division of powers inherent in federalism, under which each level of government has its own sphere of competence. In contrast with Wheare’s, Riker’s is intended to cope with overlapping and hence shared jurisdictions, a phenomenon which he observes in ‘function after function’ (1975: 104), by placing emphasis on the existence of remaining exclusive



jurisdictions. However, it does not appear precise enough on the size and scope of such competences required to merit the label ‘federal’, allowing ambiguity to enter. Although he states that one competence for the general government would be sufficient (“The minimum is one category of action ... The maximum number of categories is all but one’ – 1975: 102), would a single exclusive power in, for example, issuing postage stamps really be enough for inclusion? It seems to have been Riker’s intention here to mark out the central zone of the compound polity through his selected criterion, and thus to target an equality of status implicitly. If this is the case, it would be better to do so directly as there is then no uncertainty present in the definition.

6. Implications for empirical analysis

We are now in a suitable position to assess the implications of this improved understanding of the nature of the federal concept for the empirical analysis of political systems.

The EU has for over two decades represented the leading instance of a perplexing ‘federal non-state paradox’: it looks in many respects federal, but is not a state – so it cannot be considered a ‘federation’ in the traditional sense (Burgess 2000; Nicolaidis and Howse 2001; Piris 2006). In this context, scholars have attempted to confront the dilemma of the uncertain relevance of the federal concept through generating modified or enlarged categories, such as ‘treaty federalism’ (Hueglin and Fenna 2006: 13), ‘compact federalism’ (Majone 2005: 209) and ‘partial federalism’ (Piris 2006: 86). We now see that in the light of the proper definition of federalism actually no such qualifications are necessary, as all of these terms are intended specifically to refer to one part of the realm of the compound polity: the more decentralized part, where sovereignty resides in several peoples (and thus may loosely be considered to flow from the ‘bottom up’). The federal non-state paradox in fact reveals itself to be no paradox at all once the concept of federalism is correctly understood. Some scholars appear to be on the right track here, Kelemen and Nicolaidis stating that the EU today inhabits the area of ‘multi-state federalism’ and will continue to do so (Kelemen and Nicolaidis 2007: 306). Indeed, federalism by treaty or compact (the ‘federal union’ or ‘federal union of states’) and federalism by constitution (the ‘federation’ or ‘federal state’) would seem to be the two halves of federalism.^{xxvii} On this view, the



emerging trend of the scholarship over the past decade to employ the approach of comparative federalism to analyse together the EU and US (Fabbrini 2005; Menon and Schain 2006; Nicolaidis and Howse 2001) is seen to be a valid one – however, not on the basis that a broad all-encompassing definition of federalism is employed synonymous with the multi-level political system, but because both are federal forms in the narrow (and hence genuine) sense.

Scholars are in wide agreement that the EU represents a form ‘... less than a federation, but more than a confederation’ (Marquand 2006: 175; see also Laffan 2002: 10). It has on this basis up to the present day generally been considered a ‘*sui generis*’ political system falling into no known category, a characterization that most see inaugurated by the passage of the Single European Act to create the single market (Delors 1987; Fischer 2010; Magnette 2005).^{xxviii} It has thus been understood to reside in a conceptual void, an unidentified and unnamed ‘black hole’, as illustrated in Figure 3 below. Appreciating the prior misformation of the concept of federalism allows us now to make sense of this formerly puzzling phenomenon.



Figure 3: The present incomplete framework of concepts

Nugent sees Magnette making the case for moving beyond this conventional thinking in which only two forms of general union between states are possible, confederation and federation, the *Staatenbund* and the *Bundesstaat*. ‘There is, he argues, something between these organizational forms, as the EU demonstrates’ (foreword to Magnette 2005: x). Magnette himself observes that scholars have endeavoured to forge new concepts in order to make sense of the EU, among which he highlights Beaud’s ‘federation of states’, Quermonne’s ‘intergovernmental federalism’ and Menon’s ‘institutionalised intergovernmentalism’ (2005: 192). Laffan also points to the German Constitutional Court’s novel employment of the term ‘*Staatenverbund*’ in attempting to capture an intermediate political form, ‘... a compound or dual system of nation states and a collective polity’ (2002: 27). Beaud’s formulation, taken up by successive Presidents of the European



Commission from Jacques Delors to José-Manuel Barroso as a ‘federation of nation states’, appears close to being valid; but it is handicapped by use of the word ‘federation’ which gives the strong impression of creating a state. For the word is in fact generally used as a synonym for ‘federal state’ in political science today.^{xxix} Thus, the formulation plainly risks conflation with this latter political structure. Another term is evidently needed. Magette says: ‘... nothing in principle prevents us from ... creating a new concept ... a third term’ (2005: 5); and, as Mill was seen to highlight above, we need a name for every ‘thing’ we wish to describe – in other words, we should not hesitate to assign names wherever distinct conceptual categories are observed requiring identification. The term ‘federal union of nation states’ seems apt. What has been missing to date is the theoretical underpinning required for such a change, which I suggest the approach of rethinking the nature of the federal concept now provides.

The EU is widely conceived as having some of the characteristics of a confederation and some of a federation – whilst being itself neither (Magette 2005; Weiler 2001).^{xxx} The use by some of the idea of a ‘hybrid’ concept to attempt to capture its elusive quality in this respect is understandable (McCormick 2011; Watts 2008), an approach taken to its logical limit in Kincaid’s fusion of the two terms in the concept of ‘confederal federalism’ (1999: 34). The methodological validity of such a path is doubtful, however, in view of the requirement established earlier that properly constructed concepts should have clear and sharp boundaries. Its deployment may seem a sensible route to take in the circumstance of an existing gap which requires bridging – but it is plainly a second best option compared to having a distinct category and term.

Bogdanor’s hybrid ‘federal devolution’ (2001: 287) at the other end of the integratory spectrum appears misconceived for similar reasons. For federalism supposes equality of status between the two levels of government of a political system, whilst devolution supposes that the regional governments are subordinate to the general government. Clearly, both characteristics cannot pertain simultaneously. In the case in question, the arrangements of devolved government now in place in the UK, Bogdanor observes a deep entrenchment of these structures such that in fact ‘... power devolved ... will be power transferred’ (2001: 291). However, he acknowledges that under ‘pathological circumstances’ devolved powers could be revoked unilaterally by the UK government at Westminster. A right of revocation, then, exists – and as long as it exists, the regional



governments must be considered subordinate to the general government, and the framework one of devolved government rather than federalism.

A similar analysis applies in the case of Spain. Anderson and Hueglin and Fenna therefore appear to be over-reaching in going even further and classing this country as a federation at this moment in time (Anderson 2008: 2; Hueglin and Fenna 2006: 56). As the former acknowledges, concerning the process of constitutional amendment there is ‘... no role for the autonomous communities’ (2008: 60).^{XXXI} The powers of the regions could thus be withdrawn by the centre without their consent.

In both cases, the critic may claim that such revocation would be impossible to effect in practice; but this is to enter into the realm of speculation about what is or is not politically feasible at any one instant. This is vulnerable to the changing winds of political opinion, events and the passage of time.^{XXXII} It is safer for the political analyst to stand on the firmer ground of constitutional exposition and give expression to the formal legal position in each political system in clear terms through employing appropriate concepts and terminology. Qualifications to reflect the practical realities prevailing at any given moment in time can then be made as a subsequent supplementary step. Any other path is liable to lead to confusion.

7. Conclusion

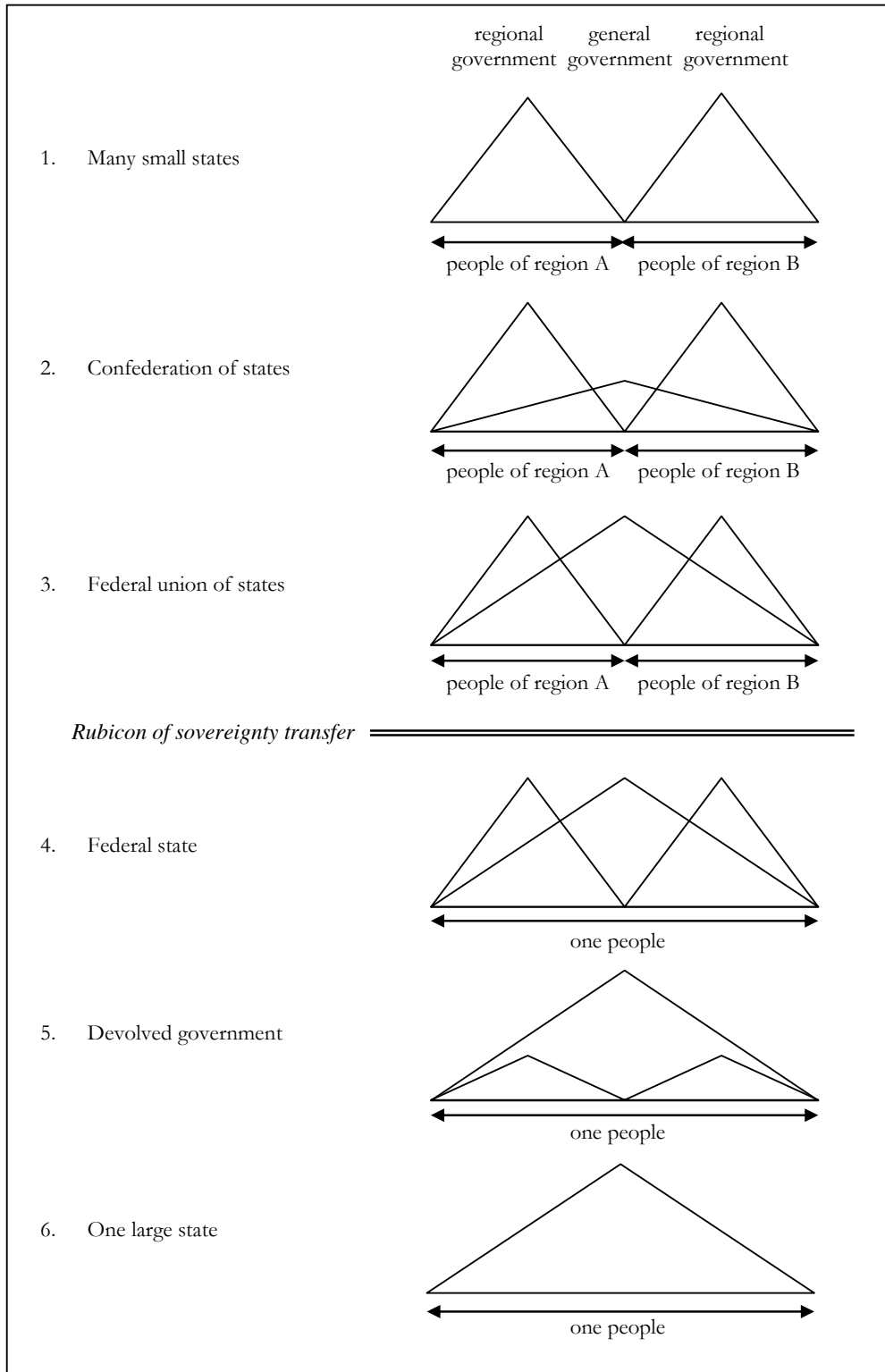
In this article, we have established the definition – and hence meaning – of the concept of federalism in clear and precise terms. The approach adopted is argued to be methodologically sound on the basis that the classical theory of concepts has been employed in a rigorous way in the construction of the concept. A federal political system, we may conclude, is a political system in which there is equality of status between its constituent levels of government. Where this characteristic is present, we observe an instance of federalism. Where it is absent, we do not. In the end, it seems, the matter of distinguishing the federal form from other intermediate political systems comes down straightforwardly to determination of the existence or otherwise of this critical attribute. In the UK and Spain, it has not yet been attained; and so reference to federalism concerning these two polities should be avoided at this stage in their development. In the EU, it has been attained for over two decades now; and so reference should be made to the concept



here. Arguably, in the latter case, it is inadequately formed concepts and terminology that prevents the establishment of a common appreciation of the ‘nature of the beast’ as already federal, and thus more coherent and rational discussion about possible future trajectories for the polity. A clear choice between two options would seem to present itself for the near to medium-term development of the EU, in the context of proposals for economic, fiscal and political union to buttress the already existing monetary union in the aftermath of the Euro-crisis: making the move to a federal state or strengthening the existing federal union of states.

Appendix

The illustration below is drawn from Law 2012: 548, reproduced here with kind permission of *Political Quarterly* and Wiley-Blackwell.



A pathway of regional integration



* Dr. John Law holds a BA from the University of Exeter, an MA from the College of Europe, Bruges, and a DPhil from the University of Oxford (email address: johnlaw2@yahoo.com). His doctoral thesis *Rethinking Federalism* is available online at the Oxford University Research Archive (<http://ora.ox.ac.uk/objects/uuid:a3357b7c-7f08-4074-b914-6f06ce6ce01d>). Support for this research was provided by the Economic and Social Research Council (grant number PTA-030-2003-00241). I would like to thank Kalypso Nicolaidis and John Pinder for their helpful guidance and consistent encouragement over many years.

^I See, for example, Anderson 2008; Burgess 2006; Hueglin and Fenna 2006; Watts 2008.

^{II} For further recognition of this point see Burgess 2006; Kincaid 2011; Laursen 2011; McKay 2001; Menon and Schain 2006; Morelli and Castaldi 2009; Rosamond 2000.

^{III} Approaches of the former type are: tolerating alternative definitions in collaborative comparative work (Menon and Schain 2006; Nicolaidis and Howse 2001); adopting an editorial preference for a broad definition (Menon and Schain 2006); using the concept more as a metaphor, rather than predicating any distinct political structure (Nicolaidis and Howse 2001); and employing a minimalist definition (Kelemen 2003). Scholars following the latter path include: Filippov, Ordeshook and Shvetsova 2004; Trechsel 2006.

^{IV} For example, Burgess 2000; Kelemen 2003; Laursen 2011.

^V For example, Milward 1992; Moravcsik 2001; Schmitter 1996. Nicolaidis and Howse note that in relation to the EU, '... the language of federalism, the very term, continues to be highly contested' (2001: 8). The contentiousness of applying the concept in this context is confirmed by Trechsel, who says: '... the literature does not universally describe the EU as a federation or as constituting a federal arrangement' (2006: 3).

^{VI} The latter statement is consistent with his earlier well-known designation of this political system as 'less than a federation, more than a régime' (1983: 403).

^{VII} Elazar 1998; McCormick 2011; O'Neill 1996: 70; Rosamond 2000; Watts 2008.

^{VIII} Corbett observes multiple conflicting understandings of federalism in use in political discourse on the EU. Fischer and Magnette identify the absence of a clear conception of the EU's nature, in terms of a concrete political form, as a key reason for the difficulty Europeans have visualising and understanding the political architecture that has been built around them, and hence as a main source of the perceived lack of public engagement, trust and legitimacy. The former calls the EU 'one giant, incomprehensible question mark'. In his Humboldt University speech of 2000 when German Foreign Minister, he acknowledged having beforehand attempted to find a novel formulation of federalism appropriate to the EU in order to help clarify matters – but having admitted defeat and resigned himself to 'federation' as the term that best suited. Further reflecting this dilemma, Laursen sees a disjunct between widespread scholarly acknowledgement of clear federal traits in the EU's character and the fact that the word remains 'banned' from the formal treaties. Scholars, he says, are allowed to call a spade a spade. Corbett 2009; Fischer, 2000; 2010: 2; Laursen 2011: 17; Magnette 2005.

^{IX} For a comprehensive review of the debate see Burgess 2006, chapter 1.

^X I acknowledge the intersex problem in this illustration, where a human has some characteristics typical of both genders. However, I argue that this does not invalidate my approach, which follows the consensus among the scientific community in recognizing only two sexes in the human animal species. There is no third sex. In the human embryo, the organs that produce gametes are initially capable of being either ovaries or testes. Thus, a suitable test for the attribute of being male is whether or not the human concerned has testes. I should also make plain that, in general, application of an attribute to a genus establishes positive and negative species: one with and one without the attribute concerned. Thus, in applying the first attribute of being male to the genus human, the second category specified is more strictly 'not male'. Since gender is a binary phenomenon in humans, however, this category can be labelled 'female' without problem. I do not intend to privilege one gender over the other. One could just as easily have begun by applying the attribute of being female to develop 'female' and 'not female' categories.

^{XI} To form a new and different concept.

^{XII} As, for example, is seen in the writings of Burgess 2006: 24-6; Goertz 2006: 29; Watts 2008: 8.

^{XIII} For elaboration on the distinction between core (authority) and peripheral (power or effectiveness) meanings of sovereignty, see Malcolm 1991.

^{XIV} I understand authority to be a legal notion: the right to command obedience in a political community. Of sovereignty as the idea of *final* right, John Calhoun argued powerfully and persuasively: 'There is no difficulty in understanding how powers appertaining to sovereignty may be divided; and the exercise of one portion delegated to one set of agents, and another portion to another ... But how sovereignty itself - the supreme power - can be divided ... is impossible to conceive. Sovereignty is an entire thing; - to divide, is, - to destroy



it'. Crallé 1851, vol. I, 146.

^{xv} See Merriam 1903, chapter 7.

^{xvi} This was the firm conclusion of the early American founders of political science in the late nineteenth century (scholars such as Lieber, Burgess and Woolsey - see Merriam 1903, chapters 7 and 8). Woodrow Wilson, then a professor of law at Princeton University, drew the same conclusion. There had clearly been, in the Civil War, he said, the '... virtual creation of a central sovereignty'. The states were no longer sovereign: they were '... unquestionably subject to a political superior, ... fused, subordinated, dominated'. The idea of dividing sovereignty he considered muddle-headed. Yet this understanding seems now to have been forgotten, perhaps due partly to the tenacious holding of the Supreme Court to the pre-war notion of a constitutional division of sovereignty that it considered implicit in the idea of 'dualism' between the federal and state governments - rather than, more accurately and to the same effect, a constitutional division of powers. As Bennett brings out, the further we have moved from these turbulent events, the more their clear lessons have tended to recede from view. Bennett 1964; Wilson 1893: 64, 91-4.

^{xvii} Beaud, despite going down a misconceived path, in attempting to banish completely the idea of sovereignty in developing his notion of 'federation' as a wholly 'autonomous theory' distinct from the theory of the state, nevertheless correctly identifies 'federal parity' as a key animating principle of the form, alongside 'federal duality' and 'federal plurality' (2007: 13, 423).

^{xviii} The taxonomy is, more specifically, a taxonomy of 'political systems founded on the state'. That is, the universe of political systems specified includes only those that incorporate a notion of statehood and sovereignty as described (ie. they have a known site of final authority). Thus, the response to the question *How many states are present?* can be either one or many - but not none. On this basis, a polity in which the location of final authority is ambiguous would not be encompassed; for example, the US in the period from Philadelphia to the Civil War. Arguably, what was intended to be built here initially was a federal union of states, Madison's 'compact theory' of the origins of the US governmental system supporting Calhoun's account. In the end, however, it was forged by force into a federal state (or in this way shown beyond doubt to have become such).

^{xix} I follow here the nomenclature offered by Forsyth. It should be noted, however, that this author does not differentiate between the terms 'federal union' and 'confederation', instead considering them to be synonyms (1981: 2). I suggest that we should distinguish two concepts.

^{xx} To be of practical use, the taxonomical framework should probably be further refined by extension of the block diagram to lower levels of abstraction through the application of additional propositions. For example, an 'extent' criterion could be applied to the division of powers of the second and fifth categories, 'confederation' and 'devolved government' respectively, to indicate the comprehensiveness of the delegation - either narrow or broad in scope. In this way, the former realm would be sub-divided into 'international organisation' and 'confederation' categories; and the latter into 'devolved government' and 'decentralisation' categories. In order of increasing integration, the eight classes would then be: (1) many small states, (2) international organisation, (3) confederation of states, (4) federal union of states, (5) federal state, (6) system of devolved government within a unitary state, (7) system of decentralisation within a unitary state, (8) one large unitary state.

^{xxi} I resist adding the words 'or more' after 'two' for reasons of simplicity. I feel the definition as stated does not exclude the possibility of a third or further levels also of equal status. There exist presently no such examples. As Anderson notes, where a third level of government (the municipal or local level) has been 'constitutionalized', to date it has only ever been accorded a status subordinate to the regional level (2008: 17).

^{xxii} It is general acknowledgement of this element as inherent in federalism, establishing 'own' spheres of powers, that seems to prompt use of the word sovereignty, as in 'sovereign' powers; but sovereign is not a synonym for proprietary. As argued above, two sovereign governments cannot co-exist for reasons of uncertainty in the grey zone between jurisdictions. Sovereignty is thus more properly understood as the single final authority alone capable of giving definitive resolution to any dispute arising: if one people, through majoritarian political action to alter the balance of institutions, in particular the supreme court, or to amend the constitution; if many peoples, through the last resort action of secession, if all other means of seeking fair treatment fail.

^{xxiii} *The Federalist* was clear that the key 'defect' in the design of the Articles lay in the absence of federal law directly effective upon individuals, calling it the 'great and radical vice' in the system (Madison *et al.* 1788: no. XV, vol. I, 86-92).

^{xxiv} See Watts' definition of federalism presented in section two.



^{xxv} On this understanding, confederalism is seen to be properly conceived as a distinct political form from federalism, not part of it.

The rationale also has implications for the appropriate scope of *Publius: The Journal of Federalism*, the leading journal in the field of federal studies (started by Elazar). This currently appears too wide in its coverage, in incorporating studies of both confederalism and devolved government. Two options would seem to present themselves: (i) broadening the title of the journal, or (ii) narrowing its conceptual focus.

^{xxvi} By this they intend the constitutional protection of the powers of the regional governments from being over-ridden or withdrawn by the centre, as their writing makes clear.

^{xxvii} Seen in these terms, the attempt to give the EU its own ‘Constitution’ – failing in referenda in France and the Netherlands in 2005 – appears ‘jumping the gun’ and thus rightly rejected. Such a step would be more appropriate to the transition to a federal state. The original styling of the text ‘Constitutional Treaty’ was more fitting – but this was altered prior to acceptance of the final draft in the European Convention that prepared it.

^{xxviii} Valéry Giscard d’Estaing, President of the European Convention, observed near the start of this body’s proceedings: ‘Europe’s answer to the question “federation or confederation?” is the acknowledgement that the Union is a unique construct which borrows from both models. The Convention will not change that answer: rather, it will formalise it in Constitutional provisions’. Giscard d’Estaing, Henry Kissinger Lecture, Washington, DC, 11 February 2003, cited in Kiljunen 2004: 20.

^{xxix} For example, among others, in the usages of Bomberg *et al.* 2008; Burgess 2000; Heywood 2000; Laursen 2011; McCormick 2011.

^{xxx} It has become something of a standard path in the literature to compare and contrast the models of confederation and federation, and to conclude by pointing to the EU’s intermediate qualities (see, for example, Dosenrode 2007; Kiljunen 2004; McCormick 2011). Burgess, likewise, observes a mixture of ‘federal and confederal elements’ in the EU’s nature. In responding to the identification problem highlighted, both he and Elazar adopt the strategy of explicitly strengthening the concept of confederalism, in the terms ‘new confederation’ and ‘postmodern confederation’ respectively. This seems similar to the concept I establish here of ‘federal union’, whilst leaving confederalism to refer to the inter-governmental model of a league of states. A key reason I prefer this option for nomenclature is that the term confederation appears to have strong historic associations with the latter form from the American experience under the Articles of Confederation – but more particularly from the European case, where political leaders such as de Gaulle, Mitterrand, Fischer and Verhofstadt have consistently linked the confederal option explicitly to full autonomy for the member states and the unanimous mode of decision-making among them (ie. only weak integration). It is thus regarded as a step backwards, a stage that has already been passed through. Breaking such entrenched mental associations would seem an impossible task, explaining Majone’s lament that the confederal option remains excluded from European discourse. Burgess 2000: 260, 269; Elazar 1998: 3-5, 50; Majone 2006.

^{xxxi} The procedure requires simply special majorities of both houses of the Spanish parliament. The governments of the autonomous communities are only weakly represented in the upper house, the Senate, with about one fifth of the delegates. The remaining four fifths are directly-elected on a regional basis.

^{xxxii} Colomer suggests that without the development of federal institutions fostering more stable relationships between the centre and the autonomous communities in Spain, decentralisation and territorial pluralism may be subject to reversals under a disciplined central political party with an absolute majority (1998: 51-2).

References

- Anderson George, 2008, *Federalism: An Introduction*, Oxford University Press, Oxford.
- Beaud Olivier, 2007, *Théorie de la Fédération*, Presses Universitaires de France, Paris.
- Bednar Jenna, 2009, *The Robust Federation: Principles of Design*, Cambridge University Press, Cambridge.
- Bennett Walter, 1964, *American Theories of Federalism*, University of Alabama Press, Tuscaloosa.
- Bogdanor Vernon, 2001, *Devolution in the United Kingdom*, Oxford University Press, Oxford.
- Bogdanor Vernon, 2003, ‘Federalism and the Nature of the European Union’, in Nicolaidis Kalypso and Weatherill Stephen (eds), *Whose Europe? National Models and the Constitution of the European Union*, Oxford University



Press, Oxford, 49-61.

- Bomberg Elizabeth, Peterson John and Stubb Alexander (eds), 2008, *The European Union: How Does It Work?*, Oxford University Press, Oxford.
- Burgess Michael, 2000, *Federalism and European Union: The Building of Europe, 1950–2000*, Routledge, London.
- Burgess Michael, 2006, *Comparative Federalism: Theory and Practice*, Routledge, London.
- Burgess Michael and Gagnon Alain-G. (eds), 1993, *Comparative Federalism and Federation: Competing Traditions and Future Directions*, Harvester Wheatsheaf, London.
- Collier David and Gerring John (eds), 2009, *Concepts and Method in Social Science: The Tradition of Giovanni Sartori*, Routledge, London.
- Colomer Josep, 1998, 'The Spanish "State of Autonomies": Non-institutional Federalism', in *West European Politics*, XXI(4): 40-52.
- Copi Irving and Cohen Carl, 1994, *Introduction to Logic*, Macmillan, New York.
- Corbett Richard, 2009, *Who's Afraid of the F'-word?* (available at http://www.richardcorbett.org.uk/briefing/bri_federalism.htm) (accessed on 12th June 2014).
- Crallé Richard (ed), 1851, *The Works of John C. Calhoun*, Appleton, New York.
- Delors Jacques, 1987, 'Europe, Thirty Years After the Signature of the Treaty of Rome', speech given at the Popular University, Lille, 8th March.
- Diamond Martin, 1961, 'The Federalist's View of Federalism', in Benson George (ed), *Essays in Federalism*, Institute for Studies in Federalism, Claremont, 21-64.
- Dosenrode Soren (ed), 2007, *Approaching the European Federation?*, Ashgate, Aldershot.
- Downs William, 2011, 'Comparative Federalism, Confederalism, Unitary Systems', in Ishiyama John and Breuning Marijke (eds), *Twenty-first Century Political Science: A Reference Handbook*, Sage, Los Angeles, vol. I, 168-76.
- Duchacek Ivo, 1970, *Comparative Federalism: The Territorial Dimension of Politics*, Holt, Rinehart and Winston, London.
- Elazar Daniel, 1987, *Exploring Federalism*, University of Alabama Press, Tuscaloosa.
- Elazar Daniel, 1998, *Constitutionalizing Globalization: The Postmodern Revival of Confederal Arrangements*, Rowman and Littlefield, Lanham.
- Fabbrini Sergio (ed), 2005, *Democracy and Federalism in the European Union and the United States: Exploring Post-national Governance*, Routledge, London.
- Filippov Mikhail, Ordeshook Peter and Shvetsova Olga, 2004, *Designing Federalism: A Theory of Self-sustainable Federal Institutions*, Cambridge University Press, Cambridge.
- Fischer Joschka, 2000, 'From Confederacy to Federation: Thoughts on the Finality of European Integration', speech given at the Humboldt University, Berlin, 12th May, reproduced in Joerges Christian, Mény Yves and Weiler Joseph (eds), *What Kind of Constitution for What Kind of Polity? Responses to Joschka Fischer*, European University Institute, Florence, 19-30.
- Fischer Joschka, 2010, 'Europe 2030: Global Power or Hamster on a Wheel?', in Benjamin Daniel (ed), *Europe 2030*, Brookings Institution, Washington, 1-10.
- Forsyth Murray, 1981, *Unions of States: The Theory and Practice of Confederation*, Leicester University Press, Leicester.
- Friedrich Carl, 1968, *Trends of Federalism in Theory and Practice*, Pall Mall, London.
- Galligan Brian, 2006, 'Comparative Federalism', in Rhodes Roderick, Binder Sarah and Rockman Bert (eds), *The Oxford Handbook of Political Institutions*, Oxford University Press, Oxford, 261-80.
- Gamble Andrew, 2006, 'The Constitutional Revolution in the United Kingdom', in *Publius: The Journal of Federalism*, XXXVI(1): 19-35.
- Goertz Gary (ed), 2006, *Social Science Concepts: A User's Guide*, Princeton University Press, Princeton.
- Heywood Andrew, 2000, *Key Concepts in Politics*, Palgrave, Basingstoke.
- Hueglin Thomas, 1999, *Early Modern Concepts for a Late Modern World: Althusius on Community and Federalism*, Wilfrid Laurier University Press, Waterloo.
- Hueglin Thomas and Fenna Alain, 2006, *Comparative Federalism: A Systematic Inquiry*, Broadview Press, Peterborough.
- Keating Michael, 2009, 'Second Round Reform: Devolution and Constitutional Reform in the United Kingdom, Spain and Italy', LSE 'Europe in Question' Discussion Paper No. 15 (available at <http://www.lse.ac.uk/europeaninstitute/leqs/leqspaper15.pdf>) (access on 12th June 2014).



- Kelemen R. Daniel, 2003, 'The Structure and Dynamics of EU Federalism', in *Comparative Political Studies*, XXXVI(1-2): 184-208.
- Kelemen R. Daniel and Nicolaidis Kalypso, 2007, 'Bringing Federalism Back In', in Jorgensen Knud Erik, Pollack Mark and Rosamond Ben (eds), *Handbook of European Union Politics*, Sage, London, 301-16.
- Kiljunen Kimmo, 2004, *The European Constitution in the Making*, Centre for European Policy Studies, Brussels.
- Kincaid John, 1999, 'Confederal Federalism and Citizen Representation in the European Union', in *West European Politics*, XXII(2): 34-58.
- Kincaid John (ed), 2011, *Federalism*, Sage, Los Angeles.
- King Charles, 2012, 'The Scottish Play: Edinburgh's Quest for Independence and the Future of Separatism', in *Foreign Affairs*, XCI(5): 113-24.
- King Preston, 1982, *Federalism and Federation*, Croom Helm, London.
- Laffan Brigid, 2002, *The Future of Europe Debate*, Institute of European Affairs, Dublin.
- Laursen Finn (ed), 2011, *The EU and Federalism: Politics and Policies Compared*, Ashgate, Farnham.
- Law John, 2012, 'Sense on Federalism', in *Political Quarterly*, LXXXIII(3): 541-50.
- Madison James, Hamilton Alexander and Jay John, 1788, *The Federalist*, McLean, New York.
- Magnette Paul, 2005, *What Is the European Union? Nature and Prospects*, Palgrave, Basingstoke.
- Majone Giandomenico, 2005, *Dilemmas of European Integration: The Ambiguities and Pitfalls of Integration by Stealth*, Oxford University Press, Oxford.
- Majone Giandomenico, 2006, 'Federation, Confederation, and Mixed Government: A EU-US Comparison', in Menon Anand and Schain Martin (eds), *Comparative Federalism: The European Union and the United States in Comparative Perspective*, Oxford University Press, Oxford, 121-48.
- Malcolm Noel, 1991, *Sense on Sovereignty*, Centre for Policy Studies, London.
- Margolis Eric and Laurence Stephen (eds), 1999, *Concepts: Core Readings*, MIT Press, Cambridge.
- Marquand David, 2006, 'Federalism and the British: Anatomy of a Neurosis', in *Political Quarterly*, LXXVII(2): 175-83.
- McCormick John, 2011, *European Union Politics*, Palgrave, Basingstoke.
- McDonald Forrest, 2000, *States' Rights and the Union: Imperium in Imperio, 1776 – 1876*, University Press of Kansas, Lawrence.
- McKay David, 2001, *Designing Europe: Comparative Lessons from the Federal Experience*, Oxford University Press, Oxford.
- Menon Anand and Schain Martin (eds), 2006, *Comparative Federalism: The European Union and the United States in Comparative Perspective*, Oxford University Press, Oxford.
- Merriam Charles, 1900, *History of the Theory of Sovereignty Since Rousseau*, Columbia University Press, New York.
- Merriam Charles, 1903, *A History of American Political Theories*, Macmillan, New York.
- Mill John Stuart, 1843, *A System of Logic*, Parker, London.
- Milward Alan, 1992, *The European Rescue of the Nation-State*, Routledge, London.
- Moravcsik Andrew, 2001, 'European Federalism: Rhetoric and Reality', in Nicolaidis Kalypso and Howse Robert (eds), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford University Press, Oxford, 161-87.
- Morelli Umberto and Castaldi Roberto, 2009, 'Perspectives on Federalism: Why a New Journal?', in *Perspectives on Federalism*, I: 1-6 (available at http://www.on-federalism.eu/attachments/004_Volume-1_single-Issue-2009.pdf) (accessed on 12th June 2014).
- Nicolaidis Kalypso and Howse Robert (eds), 2001, *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford University Press, Oxford.
- O'Neill Michael (ed), 1996, *The Politics of European Integration: A Reader*, Routledge, London.
- Piris Jean-Claude, 2006, 'The European Union: Towards a New Form of Federalism?', in Fedtke Jörg and Markesinis Basil (eds), *Patterns of Regionalism and Federalism: Lessons for the UK*, Hart, Oxford, 69-87.
- Pollack Mark, 2010, 'Theorizing EU Policy-making', in Wallace Helen, Pollack Mark and Young Alasdair (eds), *Policy-making in the European Union*, Oxford University Press, Oxford, 15-44.
- Riker William, 1975, 'Federalism', in Greenstein Fred and Polsby Nelson (eds), *Handbook of Political Science*, Addison-Wesley, Reading, vol. V, 93-172.



-
- Rosamond Ben, 2000, *Theories of European Integration*, Palgrave, Basingstoke.
 - Sabine George, 1937, *A History of Political Theory*, Harrap, London.
 - Sartori Giovanni, 1970, 'Concept Misformation in Comparative Politics', in *American Political Science Review*, LXIV(4): 1033-53.
 - Sbragia Alberta, 1992, 'Thinking About the European Future: The Uses of Comparison', in Sbragia Alberta (ed), *Euro-politics: Institutions and Policymaking in the 'New' European Community*, Brookings Institution, Washington, 257-91.
 - Schmitter Philippe, 1996, 'Some Alternative Futures for the European Polity and Their Implications for European Public Policy', in Mény Yves, Muller Pierre and Quermonne Jean-Louis (eds), *Adjusting to Europe: the Impact of the European Union on National Institutions and Policies*, Routledge, London, 25-40.
 - Sidjanski Dusan, 2000, *The Federal Future of Europe: From the European Community to the European Union*, University of Michigan Press, Ann Arbor.
 - Sidjanski Dusan, 2001, *The Federal Approach to the European Union or The Quest for an Unprecedented European Federalism*, Notre Europe, Paris.
 - Trechsel Alexander (ed), 2006, *Towards a Federal Europe?*, Routledge, London.
 - Vile Maurice, 1961, *The Structure of American Federalism*, Oxford University Press, Oxford.
 - Vile Maurice, 1977, 'Federal Theory and the "New Federalism"', in Jaensch Dean (ed), *The Politics of New Federalism*, Australian Political Studies Association, Adelaide, 1-14.
 - Wallace William, 1983, 'Less Than a Federation, More Than a Régime: The Community as a Political System', in Wallace Helen, Wallace William and Webb Carol (eds), *Policy-making in the European Community*, Wiley, Chichester, 403-36.
 - Wallace William, 1996, 'Government Without Statehood: The Unstable Equilibrium', in Wallace Helen and Wallace William (eds), *Policy-making in the European Union*, Oxford University Press, Oxford, 439-60.
 - Wallace William, 1999, 'The Sharing of Sovereignty: The European Paradox', in *Political Studies*, XLVII(3): 503-21.
 - Watts Ronald, 1996, *Comparing Federal Systems in the 1990s*, McGill-Queen's University Press, Montreal.
 - Watts Ronald, 2008, *Comparing Federal Systems*, McGill-Queen's University Press, Montreal.
 - Weiler Joseph, 2001, 'Federalism Without Constitutionalism: Europe's Sonderweg', in Nicolaidis Kalypso and Howse Robert (eds), *The Federal Vision: Legitimacy and Levels of Governance in the United States and the European Union*, Oxford University Press, Oxford, 54-70.
 - Wheare Kenneth, 1946, *Federal Government*, Oxford University Press, London.
 - Wilson Woodrow, 1893, *An Old Master and Other Political Essays*, Scribner, New York.