

# Comparing Apples and Oranges?

Similarities and differences in the Institutional Set-up and competences of the European Union and Canada

Florian Feege                      S1347144

European Public Administration

University of Twente

Supervisor:                      Dr. V. Junjan

Second Supervisor:          Dr. C. Matera

Date: 02-07-2020

## Abstract

The European Union is often considered a sui generis entity, meaning it is unique, but is it as unique as to be a sui generis entity? Research has already indicated that the European Union is not as unique as to be a sui generis entity. In this research I use a comparative study between the European Union and Canada to provide an overview of the constitutional setup and division of competences. To provide a background for this overview theories of federalism and European integration will be explored and ultimately the aim is to see how different the European Union and Canada fundamentally are.

## Introduction

The European Union (EU) has been a unique actor on a global scale since its inception and has been the subject of many studies. In this research we will use a different perspective on the EU, we will compare the EU as a state. With the size, economic and political power in mind, one can refer to the EU as a big player on the global stage and many researchers have tried to put a label on it. However there are different ways of looking towards the EU. Some see it as a 'kind of its own' actor (Niemann & Bretherton, 2013), others see it as a form of great power (Bengtsson & Elgström, 2012) or even as an empire (Zielonka, 2008). I however will simply be evaluating it as a federal state. Verdun (Verdun, 2016) noted the EU already was on a clear federal path and already has some federal features, so I was intrigued to see how far along it is.

But since the EU, assuming as we do that it is a federal state, would be a special kind of federal state we would like to compare it to a state that is not already located in the Western Europe and part of the EU, as for instance Germany or Belgium. Burgess (1996) analyzed the building of the European Union and stated that with incremental steps it has been building towards a federal state. In his analysis he states that the framework has been laid down but was designed to be fleshed out later. However this framework is also the reason this has not yet happened. Member States are reluctant to transfer their own authorities to the EU and flesh out this framework.

The comparison this research is dedicated to compare the EU with is Canada. There already are articles comparing the two countries or aspects of it (Bakvis, 2013; Fossum, 2009; Verdun, 2016). And Canada with its institutional setup is, relatively seen, an interesting matchup with the EU. This because of the lower number of provinces which makes it easier to compare with the EU. Another interesting similarity between Canada and the EU is that both countries are a multinational federation. A multinational federation acknowledges the existence of various nations within the federation and realizes it needs to accommodate these different minorities (Belgium, Canada) (Verdun, 2016).

Canada has also had some changes in the way its federal system has been operated. Where 'Executive federalism' or 'federal-provincial diplomacy' has been the standard for a long time it now has made a change in the conduct of federalism and intergovernmental relations to a principle of codetermination of broad national policies which has been dubbed 'collaborative federalism' (Cameron & Simeon, 2002).

Verdun looks in her article "the Federal Features of the EU: Lessons from Canada" to what extent the EU already has federal features (Verdun, 2016). She first discusses the concept of federalism which is different from that of federation. A federation refers to institutions and constitutional setup, it seeks to treat all citizens the same and have representation by territory ('territorial' federation) or has different minorities, nations or communities which it needs to accommodate within the federation ('multinational' federation). Federalism is an ideology that seeks the active promotion of support for federation. In this research Verdun notices that although the EU shows federal elements it lacks the ideology. However the comparison with Canada is attractive, Verdun states that nature of the Canadian federal system makes some comparisons striking. She concludes from this research that the EU is on a clear federal path. This path is taken with incremental steps and the EU already has a considerable amount of federal features but lacks the tradition, ideology and advocacy to a federal goal which define federalism.

A long standing form of federalism in Canada has been 'executive federalism' however in his article "intergovernmental relations in Canada: the emergence of collaborative federalism" Cameron and Simeon (2002) discuss that there have been changes in the form of federalism and the intergovernmental relations in Canada. The broad national policies are increasingly characterized by codetermination which leads to a new form they call 'collaborative federalism'. In this form of federalism the federal government does not act alone or exercises power but comes to a policy direction and legislation by acting collectively with all 11 governments and the territories. There are two forms in which the first is among federal, provincial, and territorial governments seeking an appropriate balance. Or as in the second version where Ottawa, as the federal government, stays on the

sidelines and the collaboration is mostly between provincial and territorial governments. The only relative absence in these collaborations is Quebec. While usually its representatives do participate in the meetings it has disassociated itself from some of the agreements. They are of the opinion that fields such as education, welfare and health should be exclusively under provincial jurisdiction.

Fossum also looks in a different article (Fossum & Jachtenfuchs, 2017) at what we may learn if we look at the EU with the use of federal theory. The article states that “the EU has obvious federal traits and yet there is no consensus that the EU is federal, or even has the vocation to become a federation” (Fossum & Jachtenfuchs, 2017, p. 467). Fossum first analyses a few other articles in which comparisons are made and finds two different ways to use the comparison. To understand the nature and distinctness of the EU in federal terms and to understand various aspects of the workings of the EU and of other federations. He sees the fact that many researchers see federalism as a political program or destination as the fact that comparative federalism is not a more often used theory. There are a lot of states that are defined as federations and this leads to the propensity to equate federalism with the (nation) state form, however federalism preceded the sovereign state and Fossum breaks it down to three core concepts: federalism, nationalism, an state sovereignty (Fossum & Jachtenfuchs, 2017).

This research will focus on the European Union, even though it has not yet fully reached this status, as a unitary state with a federal structure. We will look into its structure and the competences that are allocated to the different levels of government.

We will do the same for Canada and look at the constitutional setup and division of competences in this decentralized federal state. To better understand both countries as federations/federal states we will also look into the differences between federations and federal states, and the different forms of federalism which present itself in different unitary states. Since European integration is also an aspect which concerns itself with the setup and competences of the European Union we will also discuss some of these theories since it might provide us with useful insights that are relevant for our research.

Different studies have been dedicated to the comparison between Canada and the EU. Most of these cover only a certain event or aspect of the relationship. Bakvis (2013) looks to the different forms of intergovernmental governance in both the EU and Canada. He uses the four modes of governance that he identified (hierarchy, markets, networks, and persuasion) to determine a configuration and balance between these to determine the character of a system. Csehi (2017) also looks into the comparison of the intergovernmental relations of Canada and the EU with a particular focus on the horizontal coordination between provinces and member states. Hinarejos (2012) compares the different ways that both deal with national barriers to internal trade and how they choose to deal with them and how these choices are influenced and what their consequences are.

Although there are different authors who have already made a comparison between the EU and Canada, most of these have a limited focus of the two states as is shown in the examples above. They will focus only on a certain ability or competence of or between the two states. The goal of this research is to give an overview of institutional design and the different competences of the levels of government to make it easier to understand studies that have a more focussed approach to the comparison.

As for the scientific relevance for this research, there have been some comparisons made about the EU with regards to Canada. However our societies are constantly developing and thus our systems and our approaches in politics and governance are constantly developing. The main focus will also be on not only on the comparison of the federal system but also on the competences that are attributed to the different levels of government in both subjects. Previous comparisons that have been made between the EU and Canada have mainly been focused on a single act, treaty or other action of government. This comparison will try to illustrate the similarities and differences at a more constitutional and institutional setting.

As for our social relevance this research could help citizens from both states understand their own structure and competences of different government layers better and see possible benefits, but also the

shortcomings, from each other's system. For EU citizens it might also provide some insight into a possible future where, with incremental change, the EU might become a fully-fledged federal state with its own constitution and legal procedures which contain the official structure and competences instead of the current treaties and conventions or it might prove that the direction of the EU lies in a complete different direction. It could also expose possible threats or vulnerabilities to either system and the competences that lie within these, which could be either exploited by civilians or lower level governments in their favor or can be solved by central or regional governments.

For this research I want to look into a field that I want to continue my studies in, International Relations. The interaction between countries, but also with regards to the interaction between different levels of government, is something that has always interested me and with the EU as an advanced form of governmental cooperation between nation states it is one of the most interesting subjects to research. There have been many researcher who have attempted to formulate a ideal type to which the EU could belong or who have identified it as an existing one but for this research we will consider it as a federal state (Bengtsson & Elgström, 2012; Howorth, 2010; Zielonka, 2008). For this research I will be asking a descriptive research question on both the EU and Canada as how they are structured as federal states and what competences are allocated to the institutions. The comparison made between the EU and Canada in this research will be guided by the following research question:

“What are similarities and differences between the European Union and to Canada in terms of institutional structure and competence division between the various levels?”

To help answer this question I will first answer the following sub-questions:

- What are key difference/similarities between the EU and Canada with respect to the institutional/constitutional set-up?
- What are key difference/similarities between the EU and Canada be compared with respect to the division of internal competences between the central and decentralised levels?
- What are key difference/similarities between the EU and Canada be compared with respect to the division of external competences between the central and decentralised levels?

With these sub questions I hope to get a clear picture on each of the aspects of government of the EU and Canada. The first question will look into how the state is set up constitutionally and what institutions both states have. This question might also provide us with some insights into the current state of European Integration. The answer to our second sub question will give us an idea how our subjects internal competences are divided and organized and with the third how this division is for interaction with external actors and their possibilities and competences.

The aim of this research is to provide a comparison between the EU and Canada on an institutional level and compare what the different competences are that are attributed to the different levels of government. It provides an overview of the current state of both, for the EU it could shed some light on the current state of European integration and for Canada the current state of its federalism and relation between the central government and its provinces and territories.

In this Thesis I will first summarize and describe relevant theories on federalism and European integration. The third chapter will be used to outline Canada. In this chapter we will give a brief introduction, look into its constitutional setup and look, internal and external separately, how competences are divided between the different layers of government. We will then do the same for the European Union looking at how its institutions are organized and what, once again, the different competences are. Both chapters will end with a small overview of noticeable observations from both states. We will reflect on these again in a separate chapter in which we will draw a comparison and point out striking similarities and differences within the same framework used for the chapters on Canada and the EU. I will then draw a conclusion from this comparison and reflect on what we have learned from this comparison.

## Methodology

This will be a comparative research study. Babbie mentions that it has some overlap with a different research design, namely content analysis (2016). A content analysis is a study of recorded human communications. These communications can take different forms such as websites, books, songs, speeches or magazines but also as laws or treaties. With a comparative study one examines societies or (or other social units) in comparison to each other. Or as Flick (2014, p. 135) states “you will not observe the case as a whole and in its complexity, but rather a multiplicity of cases with regard to particular excerpts”.

This research looks into two cases, Canada and the EU, and makes a comparison on its institutional build and competences of different layers of government as federal states. The EU was chosen because of its unique and interesting nature and presenting many features associated with a federal state however is rarely spoken of or treated as one, nor does it define itself that way. The EU is normally identified as an Intergovernmental Organization, however it also clearly has state-like features. Some consider it a “less than a federation” or that this is its possible destination (Verdun, 2016).

Canada was chosen for this comparison with the EU because of its size which is relatively big and will probably bring similar problems which are also faced by the EU. Its lower number of provinces and territories also makes it more suitable for the timeframe of this research and within these provinces it faces similar problems as the EU in the fact that in its federal system Canada is faced with the difficulties of having multiple ethnic groups and languages in its population. Canada is also a federation that is highly decentralized and as such is comparable with the EU. On a global stage Canada also has similar views and its behavior as a global actor is similar to that of the EU (Fossum, 2009).

The data that will be used in this study will be primarily through primary data collection, meaning that I will use data that was collected specific for this study. The type of data to be used in this research will be of a qualitative nature. The appropriateness of the use of primary qualitative data is because of the nature of this research. It will be a descriptive research in which a comparison is made on a constitutional view and competence division.

The main source of data will come from other relevant scientific literature that either has the EU or Canada as a subject or studies a comparison between them. Next to scientific literature I will look into the Canadian Constitution and law, and similar for the EU into Treaties and other agreements that have been made.

The conclusions for this research will be based on a comparison which was supported by the literature. We will not use a quantitative analysis but instead will look for a qualitative approach to the our study of two specific cases. We will do this with a document and policy analysis. Our data and literature and the analysis of these will give us an insight on the institutional structure and competences of layers of government of both the EU and Canada, which we will then compare and indicate the differences as similarities between the two federal systems within the spectrum of our sub questions. With the help of our knowledge of the federal systems from the literature study and the conclusions of our sub questions will we then formulate a conclusion to our main research question.

## Theory

In this chapter I will provide an overview on the differences between federalism, federation and confederation and European integration. The purpose of this to have some background information and have some tools to analyze both the EU and Canada as states. Canada is of course already

considered a federal state but we also want to see in how far we can describe the EU as one and otherwise in how far it is applicable and the state of the European integration. We will also use literature to make a distinction between federalism, federation and confederation.

There is a lot of different conceptualizations on what the federalism entails and this makes it difficult to create a single conceptualization since there is also an inconsistent use of the conceptual constructs. One of the challenges is that federal systems are also to a degree *sui generis* or unique, the states have been founded and over time developed differently in their federalist conception under the influences of their particular circumstances. However most federal systems tend to be large (in geographic terms if not population) and complex. The ways in which the different systems are characterized with their power allocation, their institutions and their policy making can differ greatly so for us it is important to first have an overview of what we will understand with federalism (Bakvis, 2013).

“Historically, federalism has been associated with the conventional processes of state-building and national integration. It has been construed as a particular way of bringing together previously separate, autonomous, or independent territorial units to constitute a new form of union based upon principles that, broadly speaking, can be summarized in the dictum ‘unity in diversity’. This dictum refers to a union of states and peoples, but it is a particular kind of union. It is a voluntary union whose principal purpose is to recognize, preserve, and formally accommodate distinct interests, identities, and cultures according to the Latin term ‘foedus’ – from which the term federal derives – meaning covenant, compact, bargain, or contract”. (Wiener, Börzel, & Risse, 2018)

According to Wiener et al. (2018) a federation has two purposes or faces. It is both used to mean to have a unifying purpose, bringing multiple groups together in one polity, and it is to preserve the differences and diversities between these groups. Or one could say that it is a theory concerned with the organization of domestic politics and the internal pacification, mainly peace and security (Burgess, 1986). However as already apparent from the use of the words federalism theory and federation there are different concepts that overlap and have similar meanings, also including confederation in our conceptualization. We will try to make a clear distinction in these concepts so that we can understand and use them in our comparison.

Let us first make a distinction between federalism and federation. Federalism is considered by most authors to be an ideology that concerns itself with incorporates patterns of both centralization and decentralization, or as it is more often described as ‘shared-rule and self-rule’. The balancing of the ‘shared- and self-rule’ is done within constitutional constraints and implies not only the existence of institutions but also of processes. One important aspect of federalism is its solidarity, it is not confined to one community or way of life and can include multiple groups or nationalities making it more inclusive than for instance nationalism. This inclusiveness makes federalism particularly relevant for political situations that are marked by diversity and differences (Fossum & Jachtenfuchs, 2017; Wiener et al., 2018).

The basic value about shared and divided sovereignty is mostly balanced with a background of non-centralization. If we look at this from a legal or constitutional perspective this means that this is mostly reflected in a division of competences between the different levels of government and the institutions that are created (or exist). This is one of the more limited perspectives on federalism and while giving us a simple first distinction it is not a well suited approach for determining federalism. If we look at federalism with a more political approach it also uses the defining feature of power diffusion. However it also includes the location of sovereignty, the protection of autonomy, the origin and evolution of the original federal contract and then references to structures and institutions. It looks at both the design and the processes to uncover federal processes (Thorlakson, 2003).

The division of competences is also achieved by a territorial division of power between at least two autonomous levels of government. The division of competences may vary between the levels of government across different states but each level of government is contractually guaranteed in a constitution. This division of competences between two levels of governments has two basic outcomes. First, with the two levels the people are represented by two different levels of governments,

although it may differ in what form, and these levels of government thus derive their political sovereignty from this. Second, the division of competences between two levels of government stipulates that both levels should also have some form of policy-making autonomy. How this is done can differ, one could have shared competences with the central government the legislative part and the constituent government the administrative but the competences can also be appointed exclusively to one of the governments.

The distinction with a federation is that federation is always influenced by federalism. Or as Burgess (1986) puts it: "There may be federalism without federation, but there can be no federation without some matching variety of federalism". Federation can be defined as "an institutional arrangement, taking the form of a sovereign state, and distinguished from other such states solely by the fact that its central government incorporates regional units in its decision procedure on some constitutionally entrenched basis"(Wiener et al., 2018). So a federation is nothing more than a sovereign state that has incorporated some degree of federalism within its state-building process, constitution and institutional setup. It can develop in different ways, it could have both strong or weak centers and could develop in different directions depending on the institutions, constitutional setup and whoever is politically in charge at the moment.

There are two distinctive ideal types of federations that are classified on their principal of power division, a dual and a joint system. The model of 'dual federalism' is mostly found in Anglo-American federations and allocates legislative and administrative powers in a policy field exclusively to one of the levels of government. The two levels of government act autonomously as they have both the legislative and executive power in the policy area. In a 'joint federalism' the central government coordinates, assists, subsidizes, and uses the capabilities of the sub-national governments for purposes defined at a central level. There is a high degree of co-operation between the different levels for policy implementation and there is effective representation of the sub-national government in the federal legislative arenas(Thorlakson, 2003).

One aspect that is often seen in federal states is connected to the notion of 'shared rule', intergovernmental relations. It refers to the cooperation between different levels of government on federal policy-making or an division of administrative labor where federal legislative is implemented by lower levels of government in a coordinated manner. There can also be informal horizontal or vertical coordination between levels of government on policy-making or implementation on a wide range of policy issues. This happens most often when a constitution assigns a function to both levels, fails to clearly allocate a policy area or when governments lack the resources to perform their functions. A federal system based on this type of non-legally regulated corporation between the different levels of government is often referred to as a 'cooperative federalism'(Thorlakson, 2003).

Finally, we should look at confederation as a concept. Confederation is conceptually different from both federalism and federation and can be significant for our understanding of the European Union in this analysis. Where a federation is a political body representing individual citizens, suggesting the creation one people, although there may be different groups represented, a confederation is a political body in which different states are represented.

According to Berdahl (2012) all federal systems have the establishment of an economic union as one of their purposes. This means they are united by a common currency and the free movement of labor, goods and services. These goals are often constitutionally preserved but while they can be one of the central goals of a federation, they can also be hindered by federalism. Since federalism provides for some constitutionally guaranteed autonomy for sub-national governments with respect to the functioning of their own economies, these governments could also implement policies which hinder the functioning of such an economic union.

In this section I want to give an overview of some of the theories on European integration and see how they differ and look at their influences. The two main approaches on European integration theory are the intergovernmentalist approach and the neofunctionalist approach. Both of these approaches have been covered extensively and have their own view on European integration. An important aspect to also consider with European integration is 'state-building'. According to Genschel and Jachtenfuchs

(2016) to become a 'proper state' a state has to nationalize three key action resources: 1) Coercive power; 2) coin money, raise taxes, and issue debt; and 3) the administrative capacity to implement and enforce public laws and policies within national borders. To determine how far along the EU is to being a proper state they used these resources and created the following indicators: the EU's formal authority over core state powers; the EU's material capacity building for the European-level exercise of core state powers; and the EU's regulation of national core state powers. We will use these approaches to European Integration and the reflection on state-building in our analysis of the EU to determine to what extent we can speak of a 'proper state'.

One of the most influential approaches is intergovernmentalism. As with neo-functionalism, intergovernmentalism is refined from the functionalist theory. The functionalist theory on European integration assumed that the mismatch between the territorial scale of human problems and political authority generates pressures for jurisdictional reform, this insight for regional integration as a response to the collective benefits of extending the territorial scope of jurisdictions is an aspect of functionalism that both intergovernmentalism and neofunctionalism have in common. For intergovernmentalism European integration is a result from interstate bargains. It sees national governments as the principal agents pushing for or hindering progress in European co-operation. It conceptualizes European politics as a 'two-level' game where national governments have to serve as a link between the domestic and international levels. In the view of intergovernmentalism European integration does not mean an end to the nation-state but might strengthen the state (Risse-Kappen, 1996). Intergovernmentalism is mainly concerned with international treaties and the creation of an international regime in the first was place. It is seen as a way to reduce transaction costs and facilitating mutually advantageous co-ordination, that in its day-to-day activities has developed further than comparable institutions. The two main assumptions intergovernmentalism follows are firstly as stated before that states are actors and secondly that these states are rational. Rational meaning that actors calculate the utility of multiple courses of action and choose the one that maximizes or satisfies their utility under the circumstances.

Neo-functionalism is the second influential approach. This approach is mostly concerned with day-to-day activities instead of the international treaties. It emphasizes an incremental and gradual process of political change in which governmental functions and issue-areas are increasingly dealt with in an European setting. This happens as a response to external constraints, opportunities, and internal developments which results in a functional and political spillover. The shift of functions from a domestic to a European arena is the measure of European integration for neo-functionalists. They also consider this process to be self-reinforcing, meaning that as integration deepens and supranational actors gained more power, more transnational interest would be drawn to the supranational level and supranational actors would demand more authority. So progress in one area would give opportunities in other areas for integration. It focusses on the process rather than the outcome or (end)-state. Both intergovernmentalism and neo-functionalism share some weaknesses. Both assume that European integration is driven by self-interest of actors mostly on economic interests. Secondly, both views have a traditional distinction between 'high' and 'low' politics according to which it is easier to integrate economic policies than foreign and social policies. And third, both have a conventional Weberian conception of the state (Egeberg, 2001; Jachtenfuchs, 2001; Risse-Kappen, 1996; Wiener et al., 2018).

One of the big misunderstandings with federalism especially when concerned is that it is an end goal for the design of a state. However the theory is for our research better used in understanding the processes and development. A state design is never finished, it will continue to change and evolve and especially the EU with many different actors involved in its processes and design is still subject to changes. The same is applicable for our two main theories of European integration, Intergovernmentalism and neo-functionalism. Both theories could provide us with useful insights on the EU but might also provide useful in analyzing Canada. Especially neo-functionalism will be helpful here with its focus on the day-to-day activities and focus on the incremental and gradual process of change within a political system.



## Canada

In this chapter we will look how the institutional setup of Canada is designed. This to create an overview of its design and division of competences before we do the same for the EU and then we will make a comparison. In this chapter we will try to find answers to our sub questions which we will ultimately use to answer our main research question. We will look to the institutional setup of Canada, the division of internal competences in Canada, and the division of external competences in Canada and conclude with an overview and the most striking points that we discovered.

The federal state of Canada is a country that consists of 10 provinces (Ontario, Quebec, Nova Scotia, New Brunswick, Manitoba, British Columbia, Prince Edward Island, Alberta, Saskatchewan and Newfoundland and Labrador) and 3 territories (Yukon, Nunavut and Northwest Territories) and has its seat of government located in Ottawa. It was founded as a part of the United Kingdom in 1867 as the Dominion of Canada, in 1931 was granted autonomy within the UK and became a fully independent state as of 1982 although the British monarch is still the head of state in Canada. It is considered a parliamentary constitutional monarchy and is based on the British Westminster model and has influences of the American system (Verdun, 2016).

Canada is institutionally designed as a federation. This to deal with the challenge of creating a sense of nationhood while uniting multiple (national) identities (Fossum & Jachtenfuchs, 2017). The accommodation of these different nations and minorities within the federation typifies it as a multinational federation. However several authors use several different characterizations of the Canadian federalism which are all related to slightly different but related topics. Bolleyer and Thorlakson (2012) identify Canada as a dual federation that is decentralized with a high autonomy. This combination makes for powerful and autonomous subnational governments with a high capacity to independently pursue their own policy agenda.

It can also be identified as a jurisdictional federation. This means that the respective powers and responsibilities of different orders of government are outlined in a constitutional document. Canada has in this regard probably the most detailed list of the division of powers, especially those of the provinces. In Canada each order is responsible for their own competences but there is informal coordination between the two orders, on a bilateral or multilateral basis, to ensure some coherence and to manage overlap and externalities (Bakvis, 2013). This intergovernmental bargaining and agreements between the different order of governments for policy making purposes is also noticed by Hueglin but he identifies this as a case of procedural federalism (2013).

Cameron and Simeon (2002) identified 'executive federalism' or 'federal-provincial diplomacy' as having long been considered the defining characteristic of Canadian intergovernmental relations, with its combination of federalism and Westminster-style cabinet government. In recent years, however, there have been some important changes in the conduct of federalism and intergovernmental relations in Canada. Executive federalism has been increasingly informed by a set of practices that we call 'collaborative federalism', characterized more by the principle of co-determination of broad national policies between the federal government and the subnational governments, than by either the Ottawa-led cooperative federalism of the post-World War II period or the more competitive federalism of later periods.

In section 9 of the Constitution Act (1867) the executive power is allocated to the Queen of Canada. As the constitution was written while Canada was still part of the United Kingdom and as a colony of it, when they gained their independence this title was given to Queen Elizabeth II to satisfy this provision of the constitution. As Queen Elizabeth has her permanent residence in the UK her role in government is represented by a Governor General (section 10). In her absence he is the one who acts on behalf and in the name of the crown in Canada. In the provinces there is also a representative of the Queen which acts on behalf of the crown, the Lieutenant General, and he is appointed by the Governor General (section 58). In both the federal government and the provincial governments the head of state (Prime Minister for the federal level and Premier for the Provincial level) have the executive power with a cabinet of ministers.

According to Thorlakson (2003) a level of government enjoys the greatest autonomy when it possesses both legislative and executive powers in a policy field, as Canada can be considered a dual federalism its competences are allocated to either the federal or the provincial level. Thus with these competences attributed to either provincial or federal level they have both the legislative and executive powers.

She also observed that the upper house in Canada, the Senate, is politically weak. The Senate in Canada consists of 105 members that are appointed by the Governor General and represent the different provinces and territories. Although the powers of the Senate are almost equal to those of the lower house, because of appointed status and therefore lacking legitimacy, it rarely rejects or amends legislation keeping itself practically powerless due to the informal institutional rules.

The legislative power in Canada on a federal level is defined in section 17 of the Constitution Act (1867), it is defined as vested in a parliamentary system with the Queen, an upper house called the Senate and a lower house (House of Commons). The House of Commons is the only representative body with democratic legitimacy as the Senate is appointed by the Governor General in the name of the Queen. The House of Commons consists of 308 members and is ruled by a majority vote where the speaker does not have a vote unless there is a split decision. They have a mandate for 5 years but a striking fact here is that per section 50 the Governor General has the power to dissolve the House of Commons earlier.

Constitutionally there are only two orders of government: federal and provincial-territorial. Local or municipal governments are effectively creatures of the provinces. (aboriginal government has some constitutional standing but not of the same order as federal and provincial governments). The province can redefine municipal boundaries, amalgamate municipalities, take away their powers and responsibilities or download new responsibilities (Bakvis, 2013). Originally most of the provinces had a similar institutional setup to the federal government with a two-chamber system, however nowadays all provinces have a unicameral system with elected representatives (Ruff, 2017).

The collaborative model between the federal and provincial-territorial government has had an important impact on the institutions of intergovernmental relations. The Annual Premiers Conference (APC), which has long been overshadowed by the federal-provincial First Ministers Conference (FMC), has become more prominent as the frequency and significance of the FMCs have declined. Another institutional forum that is assuming much greater importance is the ministerial council sometimes federal-provincial, sometimes purely provincial/territorial (Cameron & Simeon, 2002). Even though these intergovernmental relations from the collaborative model are generally used to facilitate federal law-making with the collaboration of the provinces and territories, sometimes more emphasis is given to horizontal coordination where inter-provincial bodies and procedures are used to compensate for the lack of centralized, federal decisions which are more difficult to form with the provinces (especially Quebec) contesting certain of these decisions since they might be of the opinion that they should lie within the provincial competences or just because of a dissatisfaction with the decrees from the federal level (Csehi, 2017).

Treaty making in Canada consist of two different processes. First, the conclusion of a treaty. This entails the negotiation of the treaty, signing and ratification on a federal level. This stage is the exclusive attributed to the executive federal level of government. Secondly, the implementation of the treaty where if necessary legislation that has to be drafted is the prerogative of the legislative branch. This is done according at the appropriate level so this could be either at the federal and/or provincial level and is incorporated into domestic law in this way (Paquin, 2013).

The judiciary power in Canada lies with the Court of Canada. There are just as with the layers of government several layers of judicial powers in Canada. There are courts on a federal level that are responsible for dealings that are primarily concerned with the federal government, and there are courts that for each province/territory which deal with both federal and provincial laws and legislation. It is the role of the judiciary power to interpret the intent and application of statutes, acts and laws of the different layers of government and give rulings using these on civil or criminal matters. In some cases they are also called upon to interpret laws to assess whether a governmental body has the competences in a certain field according to the texts of the law. An important note on this is that judges base their

rulings on Canadian laws which thus entails that treaties do not automatically apply over existing laws but have to be incorporated by the legislative branch into new laws (Paquin, 2013).

Judiciary power has had a major impact on the development of the Canadian federal state. The constitution of Canada was written with competences of both levels of government being exclusively attributed to a level of government, this in the keeping with classic federal notion of single ownership and with the idea of creating a strong federal level (Hinarejos, 2012). Because of this exclusive attribution and developments Courts have been called upon to adjudicate on conflicts of competences between the federal and provincial level.

The most striking case of this involvement of judiciary power on competence attribution has been on the subject of internal trade. This matter of economic union within the country has been a longstanding goal for Canada. The internal trade between the provinces being one of the most important aspects to create a prosperous economic union they tried to prohibit barriers to internal trade in section 121 of the Constitution Act of 1867 which state: *“all articles of the growth, produce, or manufacture of any of the Provinces shall, from and after the Union, be admitted free into each of the other provinces”*. However the courts interpreted this with a narrow and literal view and as such did not prevent the use of nontariff barriers between provinces. This means that instead of the federal government having centralized economic powers, the provincial governments now have the power over many important aspects of the Canadian economy (Berdahl, 2012; Hinarejos, 2012).

Now to look to the different competences which are attributed to the different levels of government in Canada, we will start by looking to the internal competences division between the central government and the provincial government. The division of competences is mostly fixed in the Constitution Act of 1867 and Canada is notable that in this division of powers laid down in the constitution residual powers are assigned to the federal level (Thorlakson, 2003). This means of course that all fields were attributed to either level back in 1867 and although the writers will have tried their best to incorporate everything they will not have been able to imagine the progress we have made and taken this into account. So as stated above the judiciary power has been called upon to make a ruling on whether certain modern/newly developed fields should be attributed to federal or the provincial level of government.

As is the case with most legitimately recognized countries and federal states the central government has been attributed with the power to regulate matters such as national defense, banking, legal tender and trade and commerce (Hinarejos, 2012). Next to this they also have competences in the fields of raising money by any mode or system of taxation, public debt and property, Citizenship, patents and copyrights and marriage and divorce. The federal government also makes substantial grants to the provincial and territorial governments, which represents approximately 23 per cent of the federal budget. A key feature of these grants is that the bulk of these transfers are unconditional (Bakvis, 2013).

There are also competences that are shared between both layers of government. Competences that are shared are agriculture, immigration, pension, language and cultural policy and supplementary benefits. Bakvis (2013) also points to one in what he calls a ‘flaw’ in this arrangement which is criminal justice. The federal government is responsible for the legislation and the establishment, maintenance and management of penitentiaries and the administration (including most policing and the courts) falls within the responsibilities of the provincial government. A prominent feature in Canada that occurs when the constitution assigns a competence to both levels, or whenever it is not clearly allocated or governments lack the resources to perform the assigned functions, is the use of federal-provincial conferences and interprovincial meetings to negotiate a wide range of policy issues (Thorlakson, 2003). However, Bakvis finds that there is an absence of (in)formal decision-rules when there is no consensus between federal and provincial governments in shared jurisdiction and states that the federal government will in these cases often fill the vacuum by imposing a solution (Bakvis, 2013).

Competences that are of an internal nature and that are attributed to the provincial government. Next to the competences that are already mentioned to be shared, the provinces have the authority for direct taxation for provincial purposes, have jurisdiction with regards to hospitals, schoolboards, property

and civil rights and municipal institutions in the provinces. A different important competence they have is that provinces have (or are allowed) their own internal constitutions. Looking at these competences we can see that most programs that affect citizen well-being such as education, health care and income support are under the responsibility of the provinces and territories (Hinarejos, 2012; Verdun & Wood, 2013).

An interesting observation that Bakvis (2013) made on the relationship between the provinces and the municipalities is that tend to keep them as he puts it ‘a short leash’. The provinces favor a centralized control over the matter than fall under their jurisdiction rather than delegating authority to a level closest to where the best decision is made. According to him this comes from the heritage of the Westminster government model on which the Canadian system is based, although the executive dominance is of an even higher level than in the United Kingdom according to him.

The collaborative form of federalism that Cameron and Simeon (2002) observed within Canadian federalism emerged when government came under pressure to make their relationships more open, transparent and participatory. This led to several provinces passing legislation which would require popular approval for future constitutional changes. With this also came a realization that fundamental constitutional changes would probably be not be possible. Berdahl (2012) observed that the path to this form of federalism came because of the constitutional changes that would reduce economic powers for the provinces and since ‘provincial autonomy’ was a driving principle of the Canadian federation the provinces took a hardline stance against this. This led to for instance to the Agreement on Internal Trade (AIT) being an intergovernmental agreement instead of a federal driven policy.

This ‘collaborative federalism’ by which national goals are now achieved means that they are not achieved by the federal government acting alone or by it shaping provincial behavior through the exercise of its spending power, but by a collaboration of some or all of the 11 governments acting collectively (Cameron & Simeon, 2002). Cameron and Simeon recognized two forms this can take. The first form is a collaboration between the federal, provincial and territorial governments (FPT), seeking a balance between federal, provincial and territorial roles and responsibilities. This form is based on the premise that all these governments possess strong fiscal jurisdictional tools and that as a result of their interdependence, effective policy depends on coordination among them. The second form is a collaboration between only the provincial and territorial governments (PT) and the federal governments on the sidelines. This form of collaboration is based on the view that under the constitution areas such as health, welfare and education are provincial jurisdictions and as such ‘national’ policies and standards in these areas are matters for provinces to decide together. This led Verdun and Wood (2013) to conclude that Canada is becoming increasingly decentralized as a nation as the provinces and territories reform its social programs to suit its particular needs.

For the external competences of the central government level of Canada I we first look to the constitution again, more specifically article 132 of the Constitutional Act of 1867 which states: “*The parliament and Government of Canada shall have all powers necessary or proper for performing the obligations of Canada or any Province thereof, as part of the British Empire, towards Foreign countries, arising under Treaties between the Empire and such Foreign countries*”. According to this article the competence of treaties lies with the federal government. Cameron and Simeon (2002) also stated that International commerce is a clear federal jurisdiction. However, the constitution has been interpreted to mean that federal power does not extend to imposing the terms of international agreements on the provinces when they involve provincial jurisdiction (Paquin, 2013). This can also be seen in the fact that treaties are not automatically above Canadian law but have to be incorporated with new legislation. Another observation that has been made is that with international treaties moving to increasingly broader subjects that some provinces have called for direct participation in Canadian negotiating teams.

The external competences of provincial and territorial government are virtually non-existent. There are no external competences attributed to this layer of government in the constitution most of the area’s they do have jurisdiction on, cannot be seen as a competence that has external properties. But as we have already seen, Cameron and Simeon (2002) stated that though the central government has jurisdiction on international commerce the central government cannot just force these agreements and

treaties upon the provinces. However, what we do find is that the provinces get a bigger role within the treaty making process. Paquin (2013) made a comparison in his article “Federalism and the Governance of international trade negotiations in Canada: Comparing CUSFTA with CETA” between the trade agreements that Canada negotiated with the United States and the one with the EU. One of the striking points he found is that the EU insisted that the Canadian negotiating team included provincial representatives where this was not the case with the negotiations with the US.

The reasoning behind the request of the EU to include provincial representatives have two major reasons. The first reason is that the negotiation and implementation of international trade agreements now include the jurisdiction of federated states. The EU insisted on the inclusion because they are particularly interested in accessing Canadian municipal and provincial public procurement contracts. This ‘new generation’ free trade agreement focusses next to the public procurement contracts also on other aspects that fall under the provincial responsibility such as labor. The second reason is constitutional. The EU judged that if the negotiations were to have any chance of success, representatives of the provinces had to be included since the provinces are not obliged to implement accords concluded by the federal government in provincial fields of jurisdiction. These reason led the EU with the desire to ensure that the central government had provincial representatives on the negotiation team (with the premier of Quebec at the time stating that the EU had a better understanding of Canadian federalism than the central government in Ottawa) (Paquin, 2013).

When we look at Canada we find some striking points that are worth noting once more before we look at the EU. The first thing that is noteworthy is that the Senate from the central government is politically relative weak since they are appointed by the Governor-General and do not have a representative legitimacy. This leads to the Senate hardly participating in the policy-making process even though they have nearly identical powers to the House of Commons. The Governor-General has also has another competence that is put down in the constitution and that is the fact that is has the ability to dismiss the House of Commons before its mandate is completed.

It is also worth mentioning the impact that the Canadian Court has had on their political system. The judiciary system in Canada has always taken narrow interpretations on matters that involve competence attribution and policy-making which has led to a clear distinction in powers and also a need to cooperate between the different levels of government. This need to collaborate between the levels of government has become increasingly necessary as provincial governments are pushing for a more direct participation in competences that are shared or will directly affect them. This is seen in the First Minister Conference and also the FPT and PT collaboration forms. More recently however it has also emerged with international treaties and commerce. With the narrow view of the constitution it has been taken that treaties are not above Canadian law and has to be incorporated into Canadian legislation to become in effect. Since provinces will be more and more affected by the broader subjects discussed internationally they now are pushing to also be included into negotiating teams with the EU also insisting they would be included in their negotiations with Canada. The last note I want to make is an observation from Bakvis (2013) that hierarchy plays a critical role in the Canadian federation. Not in direct relations between the governments but rather within governments, with executive dominance being the primary outcome.

## European Union

In this chapter we will look how the institutional setup of the European Union is designed in a similar way as we just did for Canada. This to create an overview of its design and division of competences to make it comparable and then in the next chapter a comparison will be made. In this chapter we will try to find answers to our sub questions which we will ultimately use to answer our main research question. We will look to the institutional setup of the EU, the division of internal competences in the EU, and the division of external competences in EU and conclude with an overview and the most striking points that we discovered.

The European Union finds its origins in the European Coal and Steel Community (ECSC) which was founded in 1952 by the signing of the Treaty of Paris in 1951 by the leaders of six countries (Belgium, Luxembourg, France, Italy, the Netherlands and West-Germany). In 1957 these six member signed two Treaties of Rome which established the European Atomic Energy Community (Euratom) and the European Economic Community (EEC). The EEC created a common market that removed most barriers to the movement of goods, capital, labour and services, and a common external trade strategy. During the 70s and 80s a few other countries joined among which the United Kingdom, Greece and Denmark and in 1993 the European Union was established when the Maastricht Treaty came into effect. With several expansions and with the latest big reform in 2009 being the Lisbon Treaty, the EU now has 28 Member States with the UK (2016) currently negotiating a deal to leave the European Union after a referendum in 2016 acquired a small majority (Cini & Borragán, 2016).

The European Union is often described as a *sui generis* entity. This implies that the EU is an unique and distinct polity. This also implies that for the European Union to be an unique polity it has to be an unique polity in its entirety, this includes the member states. It would be a claim that the EU is a departure from the nation-state and that the regional entity of the EU would supersede the states that are a part of it. However, neither of these points wholly applies (Fossum, 2006).

So the constitutional setup of the EU is not, as is often said, *sui generis*, and even though Wiener et al. (2018) identified an incremental step by step evolution of the European Community into an EU which they state is on “the threshold of a constitutional and political Europe that is a federal Europe”, it is not necessarily there or a federal state as we know it. This evolution of the European Community and the creation of the EU however has been influenced by federal ideas in the legal, political and its ‘constitutional’ evolution (Burgess, 1996).

These federal influences find their origin in the post-war efforts of Jean Monnet and Robert Schuman who sought to build a peaceful, united Europe based on economic integration. Schuman believed that Europe would not be made all at once, or according to a single plan and would be built through concrete achievements that would first create a *de facto* solidarity. With a successful first step and an evolving common interest, a federation would emerge in piecemeal incremental fashion (Burgess, 1996).

The current European governance can according to Hueglin (2013) be understood as council governance with regard to two particular characteristics. First he identifies that within the framework of a bicameral federalism model, the upper or member-state chamber has more weight than the lower or parliamentary chamber. His second observation is that the member state chamber represent the constituent member state populations only indirectly via their governmental representatives and not directly as in a senate. Even though basic constitutional features as this have remained relatively stable, the EU now does possess its own foreign policy representative and European diplomatic service and has a common foreign and security policy (Bickerton, Hodson, & Puetter, 2015).

One of the challenges the EU faces in its governance is a set of challenges which are referred to as coherence problems. To come to prioritize and develop policies EU institutions have to overcome these challenges in order for policy-making to be effective. There are three dimensions of coherence that have been identified by Bretherton & Vogler (2013) being: vertical coherence (between levels of policy-making); horizontal coherence (between policy sectors) and institutional coherence (within and between EU institutions).

The EU can be viewed as closer to the experience of a federal union than as a federal state because its formation through the aggregation of previously independent states. Because of this one can expect the institutionalization of its decision-making system to follow a logic of separation of power, as indeed is the case. This is in the first place observed by a decision system that is based on interaction between intergovernmental (Council of the European Union) bodies and supranational institutions (European Commission, European Parliament). Then there is the more traditional separation of powers (executive, legislative and judiciary) where the supervisory role is played by an influential CJEU (Fabbrini, 2017). We will discuss the other two powers later and focus our attention first to the executive power in the European Union.

The executive power resides with the European Council and the European Commission. The European Commission is a supranational body of the European Union that is comparable to national executives. It is both an intergovernmental and a supranational body as it is comprised of commissioners of one of each of the member states and has its own President of the Commission. The intergovernmental aspect of the Commission comes from the fact that commissioners are nominated by their national governments, however since it is a separate governmental body these commissioners do not represent the national governments that nominate them. The Commission is also involved in the entire policy process. Its functions within the EU system include policy initiation, monitoring of policy implementation, management of European Programmes and an important external relations role (Cini & Borragán, 2016)

The European Council is comprised of the heads of state of member states and elects its own president for the European Council and meetings are also attended by the president of the European Commission and the High Representative for Foreign Affairs & Security Policy. The election of a permanent president for the European Council was institutionalized with the Lisbon Treaty. This was done as part of the strategy to bring a previously informal institution into the formal decision-making process of the EU (Cini & Borragán, 2016; Fabbrini, 2017). The European Council rarely makes decisions but provides political guidance and impetus for European development, this is done by means of conclusions. The collegiality of national governments has become the new centre of politics for the EU (as represented in the Council and the European Council). This constitutional decision has made it possible to advance integration in policy fields which are considered politically important for member states. However, the this process of integration has not led to the a strengthening of the supranational institutions (particularly the European Parliament) (Fabbrini, 2017).

For the legislative power in the European Union we look towards the European Parliament and the Council of the European Union which is also known as the Council of Ministers. The Council of the European Union is regarded as the heart of decision-making in the EU (Cini & Borragán, 2016). All EU proposals must be approved by the Council before becoming EU law. This is also the main function of the Council, to represent their national governments in the decision-making process of the EU. Next to their role in the legislation process the Council is also allowed to conclude international agreements with other states or international organizations, approves the EU budget with the European Parliament and it coordinates the broad economic policies for member states next to a common foreign and security policy (Versluis, Van Keulen, & Stephenson, 2010). The composition of the Council is also variable according to the different policy fields that are being discussed and will comprise of the relevant ministers (or other government officials) from the member states and as an additional important note that it has a rotating presidency. Decision in the Council of the European Union are made either by unanimity or qualified majority with abstentions not counting as 'no' votes.

The European Parliament is the only directly elected body in the European Union and thus represents the interests of the European people. It currently consists of 751 members of Parliament and has the shared functions with the Council of the European Union to legislate and approve the EU's budget, and exercises democratic supervision over all EU institutions. The legislative power of the Parliament is comparable to that of many national parliaments. This entails that they have the right to amend and reject Commission proposals and have the right to scrutinize, appoint and dismiss the Commission. A striking fact when observing the EP is that even though it is unique in the fact that it is a multinational and multilingual composition its behavior is similar to that of an ordinary parliament, it organizes and votes along the classic left-right lines. In contrast to this behavior in parliament the campaigning to get into the European Parliament does happen based on a campaign on national rather than European platforms.

Like any federal type of state the EU is also comprised of a central government, in this case the institutions of the European Union, and regional/provincial type governments with their own competences and responsibilities, which in this case are the member states of which the EU is comprised. Each of these member states will also have their own forms of provincial and municipal governments. The way these different levels interact within the EU and the EU institutions has changed over time and despite these changes the European integration has proceeded. Bickerton et al.

(2015) observed that were after the Maastricht Treaty integration/decision-making has taken on a new form of intergovernmentalism. This new form is defined by an absence of supranational decision-making that was typical for the Community method before the Maastricht Treaty. They observed an expansion in the initiating powers of the Commission, the resort to majority voting to pass legislation binding on member states and the creation of new institutions that have concentrated the powers and activities of national governments and national representatives.

In regards to the influence in the legislative process Fabbrini (2017) observed that even when the European Parliament participates in the co-legislative procedure in the approval of regulations and directives it does not have an equivalent power in the operation of legislative measures. It lacks an independent budget apart from the financial transfers by member states and this results in an absence of the basic resources in order to claim it plays a balancing role in the intergovernmental institutions. This can also be found in the role of national parliaments in the legislative process as observed by Verdun (2013). Although the national parliaments have no formal part in the process, after the Lisbon Treaty, if national parliaments feel that a given legislative proposal be better developed at a lower level the Commission must withdraw the proposal or provide better justification of why it should nevertheless be an EU-level legislative proposal (subsidiarity principle).

In the EU the judiciary power has been attributed to the Court of Justice of the European Union (CJEU) and is sometimes informally also known as the European Court of Justice (ECJ). This is the highest level of the judicial arm of the EU, but it is also comprised of a European General Court (EGC) and specialized courts. Next to this every member state still has their own justice system which is operates mostly independent from the European level of administration of justice. The role of the European courts is to ensure that member states and institutions abide by EU law and that it is interpreted and applied the same in the member states. As the EU courts are only tasked with observing EU law, the role of the EU courts is much more limited than that of national courts. Their jurisdiction has been extended, after the Lisbon Treaty, to cover all actions of all EU institutions except in areas that are excluded by the treaties. This way the courts are legally limited by the treaties and politically by the member states. It is worth pointing out that even though the EU courts only have jurisdiction on cases of EU law, their decisions are binding EU institutions, member states but also individuals (Cini & Borrágán, 2016; Versluis et al., 2010).

During the existence of the European Union and the European Community the European Court of Justice has emerged as significant actor in the European integration, which has been referred to as 'judicial activism'. This judicial self-empowerment by the Court placed the Court's interpretation of economic liberties not only above member state laws and constitutions, but also beyond the political choice of EU legislation (Scharpf, 2017). Even though the 'establishment of a single market' is recognised as a heading of legislative competence within the constitutional framework of the EU the EU legislature's relative inability to perform in this field meant that the Court was better positioned to act, with the result that the Court of Justice claimed a more predominant role in driving the project of market integration (Hinarejos, 2012).

The basis for the judiciary system of the EU also differs from the national constitutions in a few crucial aspects namely that federal constitutions have rules to organize the federal level of government and allocate governing competences to the levels of government, and it will usually stipulate a number of fundamental rights and freedoms. European treaties, which can be seen as the counterpart for the national constitutions, are going far beyond these core aspects by regulating to great detail a wide range of topics that in democratic constitutions would be left to be determined by political legislation. This leaves Scharpf (2017) with the conclusion that EU features more constitutional law than constitutional federal states.

The competence division of the European Union is specified in articles 2 through 6 in the Treaty on Functioning of the European Union (TFEU). In article 2 the different forms of competences are defined that exist between the EU and its member states. There are competences that are exclusively attributed to the EU alone called the exclusive competences, there are competences that are shared between the EU and its member states and competences that are exclusively attributed to the member states alone. In the case of a shared competence the member state may legislate to the extent that the



EU has decided to cease legislating. With the shared competences the member states are allowed to continue composing this legislation. Its only restrictions are that it has to meet the minimum requirements set by the EU and it is not allowed to interfere with the functioning of the internal market of the EU.

First, let us take a look at what internal competences are solely attributed to the EU in article 3 TFEU. It provides the EU with sovereignty in the areas of the customs union, the establishment of the competition rules for the internal market, a common commercial policy, the conservation of marine biology resources and the monetary policy for those member states who are a part of the Euro. From these attributed competences we can see that only in monetary affairs does the EU enjoy quasi state-like powers, even though these are restricted by treaty provisions. However, EU capacities have expanded more than appears in this treaty. The euro crisis has led to the creation of a permanent European emergency fund, the European Stability Mechanism (ESM) (Genschel & Jachtenfuchs, 2016). Although this gives some more capacities to the EU, it still lacks some key action resources of the modern state. Its administrative capacity is tiny, and while the EU does have some competences in monetary affairs, it has no taxing power and cannot issue debt.

One important aspect to note however is that even though the European Union may not have any competences or mandates in a certain area, should action be required by the EU within the framework of policies defined in the treaties, to attain the objectives or goals set out in treaties, and the necessary powers have not been attributed, the EU is allowed to take action according to article 352 (TFEU). The requirements which have to be satisfied however have a relatively high threshold. The envisioned action, for instance, may not lead to EU competences being extended beyond those provided for the treaty. And if applied a proposal from the Commission has to be adopted unanimously by the Council after gaining consent from the Parliament.

There is however an important lack of resources that are evident in EU. The European Union itself has no army or police force, which entails that should a national government brake its treaty commitments, the EU has no armed forces with which to contest that decision (Marks, Hooghe, & Blank, 1996). The administrative capacity of the EU is also small, as is its budget for which it depends on the contribution of member states. It also has no taxing power and cannot issue debt. That is not to say that it does not have any influence with these resources. In monetary affairs the EU enjoys quasi state-like powers for purposes of macroeconomic steering and fiscal stabilization and, despite the absence of a common army, the EU has staged military missions and also commands a 'quasi-supranational diplomatic corps', the European External Action Service (EEAS) (Genschel & Jachtenfuchs, 2016).

As we already established in our overview of the internal competences of the EU the competence to impose taxes is solely attributed to the member states of the EU. This is a clear state-like resource and one that has a big impact on the EU since this means they are dependent on the contributions of the member states which will typically be about 1 percent of the total GDP of the European Union (Verdun & Wood, 2013). Next to having a relatively small budget, the EU also doesn't have its own police force but Member states employ their own police force to maintain law and order within their borders.

The EU has some competences that are shared with its member states, meaning that in these areas both the EU and its member states have the ability to create legislation. For member states this is however only allowed where the EU does not exercised its competence or has decided to not exercise its competence. Policy fields that are included as shared competences between EU and its member states are the internal market, social policy, environment agriculture and fishing, economic and social territorial cohesion and energy to name a few (article 4 TFEU).

Next to shared competences there are also the supportive competences in which the member states make the legislation and the EU can only intervene to support, coordinate or supplement the legislation that is made by the member states. So these fields lie within the jurisdiction of the member states and the EU can only provide a supportive role from the side lines. These fields are Education, industry, culture, civil protection, administrative cooperation and public health (article 6 TFEU). Important to note with these competencies is that should the EU choose to play a role within these

competences, the EU's legally binding acts may not require the harmonisation of EU countries law and regulations. Meaning the EU does not have the power to create a more similar form of education throughout the Union for instance.

Puetter (2012) also made a paradoxical observation with the coordination initiatives after the Lisbon process. He observed that instead of new transfers of formal-decision making competences to a community level, they remained at the intergovernmental level. But at the same time the interest in pursuing European strategies for common policy challenges has not declined. Instead there is a greater interest in intergovernmental policy co-ordination between member states but without the transfer of sovereignty.

Now let us look at the external competence division starting with those attributed to the EU. In their article Genschel and Jachtenfuchs (2016) surmise the European Union is integrating more core state powers. They argue this because of increasing involvement of EU institutions in key functions of sovereign governments such as money and fiscal affairs, defense and foreign policy, migration, citizenship and internal security. According to Bretherton and Vogler (2013) the instruments that are traditionally employed in pursuit of external policy objectives would include political (diplomacy/negotiation), economic (incentives/sanctions) or military means. The EU has, to varying degrees, access to all three of these types of instruments. For instance with the introduction of the Lisbon Treaty a new institution was created for a clearer external representation, called the High Representative of the European Union for Foreign Affairs and Security Policy (Verdun, 2013). This external representation and competence has begun to be of a bigger relevance since the EU has started negotiating trade deals for the entire EU as a whole with other sovereign states such as the US and Canada. The big advantage this brings for the EU as an organization itself is that it has a better negotiating position because it represents more citizens than the member states themselves do and provide a bigger market as well for possible trade partners. This advantage can also be seen in the way EU for instance negotiated with Canada in CETA negotiations where they insisted on having representatives of the Provinces since they realized that like the member states for the EU, the provinces for Canada also carry a lot of influence on the outcome of the negotiations (Paquin, 2013).

On the subject matter of external competences that member states possess. If we look to the key functions again, we can see observe that all the competences are attributed to the member states and any form of external competence of the EU exists only because of the willingness of the members states to cooperate together and relinquish some of their sovereignty to the entity of the EU. So while the EU is able to conclude (trade) agreements or treaties with other countries or organizations, member states of the EU are just as free and qualified to do this and enter into agreements of their own. The same goes for any economic sanctions, border issues or military means. Member states all create and enforce their own policies that have been created and approved by their own legislatures and executives although they are expected to do this within the framework the EU has set (if this is applicable). This does mean however that in practice cooperation between member states (or at least neighbouring countries) is common and similar actions are normally taken. And with crises there is often a individual approach to damage control and first response but for a more long term recovery a common European solution is often negotiated and implemented.

So looking back on the above, we can see that the EU does have a design that is similar to that of a sovereign state. It has a constitutional design , although not an official constitution, in the Lisbon Treaty and a division of powers with a legislative, executive and judiciary power. The legislative consisting of the European Parliament and the Council of the European Union (ministers), the executive of the European Council and the European Commission. The Judiciary power lies with the European Court of Justice the European General Court and the specialized courts. So its design is organized as a state and with the Lisbon Treaty as a 'constitution' Scharpf (2017) actually argued that the EU has more constitutional law than most other states.

One of the striking aspects within the EU is that the Judiciary power has played a big role in the development of the its form. The Treaties that have been signed give the EU frameworks most of the time and member states can implement this European law into its own law within this framework.

However the ECJ has taken an active role in using these treaties and laws to create for instance a single market since it was better positioned and more effective to drive this project.

The division of competences is also an interesting point within the EU, since all of the EU's competences are a result of member states relinquishing them to the EU in full or to a certain degree. This shows for instance in the fact that the EU does not have its own military and police force, cannot levy taxes or issue debt or citizenship. However, although they do not have any official competences in these fields the EU does have some degree of influence and power into these matters.

## Comparison

Now that we have created an overview of both Canada and the European Union on how they are institutionally constructed and have divided their competences, we can use these overviews to compare them and answer our sub questions which will be used to answer our main research question. My sub questions focussed on three aspects which we are going to compare, that is, the institutional/constitutional setup and the division of internal and external competences between the central and decentralized levels of government. I will use the same structure as used in the descriptive chapters so will first discuss the design of the governments, then the internal competences and finally the external competences.

Our first sub question was how the EU and Canada compare on an constitutional/institutional setup. And as Hueglin (2013) noted, both the EU and Canada were created as coming-together federations. Both were formed from with multiple actors/states coming together and have developed since then into what can be seen more as holding-together federations. Both the institutions have a focus on developing the institution further but with a strong emphasis on also maintaining the union since both consist of members with strong identities and groups.

Drawing a comparison on the executive level an interesting differentiation I observed between both of the executive levels was that where in the Canadian system the Upper House (or Senate) in the system is weak due to a lack of legitimacy since their appointment is not by election, The European Union's executive level, consisting of the European Commission and European Council, is actually quite influential despite it also not being representative by elections.

Another important aspect that is comparable is the fact that both cannot unilaterally set the agenda or policies for some of the most important policy fields and have to take provincial and member state agendas and wishes into consideration. An important difference here however as noted by Hueglin (2013) is that while this intergovernmental form of cooperation between levels exists with both, in Canada it has a predominantly vertical dimension between levels of government as where the EU's has more of a horizontal dimension between member states.

In the constitution-making efforts of the EU and Canada, according to Fossum and Jachtenfuchs (2017), both executive levels also take a central role in the constitution-making/changing process and have some parallels despite the differences in their systems and procedures to create or change these.

On the legislative level both the EU and Canada depend on an intergovernmental cooperation to successfully legislate. For the EU this mostly comes in the form of the Council of Ministers in which representatives of the member states on the relevant topic come together to form a proposal which then has to be approved by the European Parliament. In Canada it happens in the form of a ministerial council that can consist of the federal, provincial and territorial representatives or purely a cooperation between the provinces and territories. This focus on horizontal coordination on decisions comes from the fact that federal decrees might be opposed by the provinces because of a dissatisfaction or desire to legislate at a provincial level.

A noteworthy difference is that where in the EU the subsidiarity principle gives member states the ability to provide certain legislation at a lower level because of a possible better execution of it, in Canada policy fields are clearly attributed to a level or otherwise when they are shared or unclearly

defined the use of intergovernmental negotiations are used. However if there is no consensus to be found the federal government will often impose a solution.

One major difference that has to be highlighted between the EU and Canada on the judiciary power in the respective systems is the big difference in approach both courts have taken on the point of the task of market-making. In Canada courts have shied away from this task and left this task to the political process and taken a narrow and literal view on law, considering it not their place to make jurisdiction or explaining the law. To the contrary however, in the EU, the judiciary has taken up this task at various degrees at different moments and thus effectively help build the single market we know today (Hinarejos, 2012).

Looking at making rulings by courts the two judiciary powers operate somewhat similar. In the EU the treaties are incorporated into the law of the member states and courts make rulings on the basis of EU law. Next to this every member state still has its own judiciary system. For Canada also has federal courts and provincial courts and makes rulings on the basis of Canadian law. The federal court mainly focuses on the dealings that are concerned with the federal level, and provincial with federal and provincial laws and legislation. An important aspect however of the Canadian system is that treaties do not automatically apply over existing laws but have to first be incorporated into new legislation.

The next sub question was on the division of internal competences between the governmental levels in Canada and the EU. On a basis on Internal competences the EU claim quasi-state like powers in monetary affairs. They have solely been attributed the competences on the areas of the customs union, the establishment of the competition rules for the internal market, a common commercial policy the monetary policy for those member states who are a part of the Euro, however the EU does not have the competence to raise taxes or issue debt and is dependent on the contributions of its member states for its funds which means it has a relatively small budget of about 1% of the GDP of the EU. Most state-like competences thus still lie with its member states although the EU might have some influence on them if they are shared competences or supportive competences. Next to the lack of taxing power another important missing competence is the lack of a police force or army.

Canada has a similar arrangement where competences are either attributed to a level of government or shared. The federal government here does have the power to raise taxes, issue debt and also citizenship, property and marriage for instance. An important difference here is that the federal government also makes substantial grants to the provincial/territorial governments which make up about 23% of their budget. Some competences that are shared in Canada consists of education, agriculture and immigration. And an important feature is that when a competence is assigned to both levels or not clearly assigned they use an intergovernmental form of federal-provincial meetings and interprovincial meetings.

Having looked at the internal competences, we now look to our sub question on the external competences. For Canada the external competences are exclusively attributed to the federal government. There is however an important side note to make with this observation and that is that the judiciary power has interpreted the law to mean that federal power does not extend to imposing the terms of international agreements on the provinces when they involve provincial jurisdiction (Paquin, 2013).

In the EU the situation is the other way around, all competences lie with the member states and any form of external competence of the EU exists only because of the willingness of the member states to cooperate together and relinquish some of their sovereignty to the entity of the EU. So while the EU is able to conclude (trade) agreements or treaties with other countries or organizations, member states of the EU are just as free and qualified to do this and enter into agreements of their own. However, the EU is integrating more core state powers. The EU has an external political representation, called the High Representative of the European Union for Foreign Affairs and Security Policy, and possesses the ability to use economic means (incentives/sanctions) to a certain degree and even though the EU does not formally have a military force the EU has staged military missions.

An interesting observation that can also be made here is on the negotiations between the EU and Canada on a trade deal. Namely that the EU insisted that the Canadian negotiating team included provincial representatives where this was not the case with the negotiations with the US. Although normally not having any external competences to formally have a role in these negotiations, the EU insisted on the inclusion because of the possibility of blocking any agreements because of the judiciary interpretation stated before.

## Conclusion

Now that we know the differences and similarities of the constitutional/institutional setup and the internal and the external competences divisions of Canada and Europe these can be used to return to our main research question and answer it. The goal of this research was identify similarities and differences between the EU and Canada and how both operated between different levels of government. Our assumption here was to view the EU as a state already, to give us some idea on the state of European integration and to give us an idea what the current state of federalism is in relation to the interactions between the different levels of government.

Upon researching some of the similarities can be found among other things in the design of both the EU and Canada. Both countries have a similar approach to dividing the executive, legislative and judiciary powers in their systems. One notable difference in their designs however is that in Canada the Upper Chamber or Senate is relatively weak because of lack of direct representation, whereas in the EU the Council of Ministers, even though it also lacks direct representation, has comparably quite a bit of influence.

One of the biggest differences however that has shown up is the difference in the judiciary power and how they behave and interpret their mandate. In the EU 'judicial activism' has been an important aspect in the creation of the internal market. They have used their powers to interpret treaties in a way that has led to more European integration. In Canada the courts however have used narrow interpretations which has led to a less effective federal policy towards an internal market and has created a need for the federal government to collaborate with provinces and territories to come to effective policies.

Both systems rely on intergovernmental approaches to effectively govern although there is a difference in the form. For the European Union the intergovernmental form of cooperation is horizontal, between the member states, as where in Canada it has a vertical dimension between the level of governments. Also important to note is that the EU lacks certain core state powers although they have some influence on them, the Canadian federal government has these core powers which gives them a bigger influence over the provinces and territories. The EU for instance depends on the contributions for its member states and thus has a relatively small budget in contrast Canada contributes about 23% of the budgets of the provinces and although this is unconditional it does give some influence and there is also the possibility of additional grants which could have conditions.

Looking at our comparison from a federalism standpoint we can observe that both systems have the basic goal of creating an economic union behind as their starting point and from here have developed under different influences. Federalism incorporates patterns of both centralization and decentralization and the balancing between these is done within constitutional constraints or in the case of the European Union treaties. This balance between the centralization and decentralization can be seen in the attributions of the competences but also in the cooperation between the different levels of government within both systems.

Understanding all the differences and similarities between Canada and the EU based on this small study is difficult. To fully understand them one would need to research behaviours of the different levels of government, how the different institutions cooperate together and the effect that for instance member states and provinces have. Economic distributions between regions will probably be an important factor that was not taken into account in this study.

To understand these type of implications better and explore them further a more in dept case study might be better suited to give more of a nuance to the general and surface level understanding that we were able to achieve with this research. Alternatively to understand either system better one could also make a comparison to federal system that is not considered as part of the Western world such as for instance Brazil.

## References

- Babbie, E. R. (2016). *The practice of social research* (Fourteenth edition. ed.). Boston, MA :: Cengage Learning.
- Bakvis, H. (2013). “In the shadows of hierarchy”: Intergovernmental governance in C anada and the E uropean U nion. *Canadian Public Administration*, 56(2), 203-218.
- Bengtsson, R., & Elgström, O. (2012). Conflicting Role Conceptions? The European Union in Global Politics 1. *Foreign Policy Analysis*, 8(1), 93-108.
- Berdahl, L. (2012). (Sub) national Economic Union: Institutions, Ideas, and Internal Trade Policy in Canada. *Publius: The Journal of Federalism*, 43(2), 275-296.
- Bickerton, C. J., Hodson, D., & Puetter, U. (2015). The New Intergovernmentalism: E uropean Integration in the Post-Maastricht Era. *JCMS: Journal of Common Market Studies*, 53(4), 703-722.
- Bolleyer, N., & Thorlakson, L. (2012). Beyond decentralization—the comparative study of interdependence in federal systems. *Publius: The Journal of Federalism*, 42(4), 566-591.
- Bretherton, C., & Vogler, J. (2013). A global actor past its peak? *International relations*, 27(3), 375-390.
- Burgess, M. (1986). *Federalism and federation in Western Europe*: Routledge.
- Burgess, M. (1996). Introduction: federalism and building the European Union. *Publius: The Journal of Federalism*, 26(4), 1-16.
- Cameron, D., & Simeon, R. (2002). Intergovernmental relations in Canada: The emergence of collaborative federalism. *Publius: The Journal of Federalism*, 32(2), 49-72.
- Cini, M., & Borragán, N. P.-S. (2016). *European union politics*: Oxford University Press.
- Csehi, R. (2017). Horizontal coordination in federal political systems—non-centralization in the European Union and Canada compared. *Journal of European Public Policy*, 24(4), 562-579.
- Egeberg, M. (2001). How federal? The organizational dimension of integration in the EU (and elsewhere). *Journal of European Public Policy*, 8(5), 728-746.
- Fabbrini, S. (2017). Intergovernmentalism in the European Union. A comparative federalism perspective. *Journal of European Public Policy*, 24(4), 580-597.  
doi:10.1080/13501763.2016.1273375
- Flick, U. (2014). *An introduction to qualitative research*: Sage.
- Fossum, J. E. (2006). Conceptualizing the European Union through four strategies of comparison. *Comparative European Politics*, 4(1), 94-123.
- Fossum, J. E. (2009). Europe’s ‘American Dream’. *European Journal of Social Theory*, 12(4), 483-504.
- Fossum, J. E., & Jachtenfuchs, M. (2017). Federal challenges and challenges to federalism. Insights from the EU and federal states. *Journal of European Public Policy*, 24(4), 467-485.
- Genschel, P., & Jachtenfuchs, M. (2016). More integration, less federation: the European integration of core state powers. *Journal of European Public Policy*, 23(1), 42-59.
- Hinarejos, A. (2012). Free Movement, Federalism and Institutional Choice: A Canada-EU Comparison. *The Cambridge Law Journal*, 71(3), 537-566.
- Howorth, J. (2010). The EU as a global actor: grand strategy for a global grand bargain? *JCMS: Journal of Common Market Studies*, 48(3), 455-474.
- Hueglin, T. (2013). Treaty federalism as a model of policy making: Comparing C anada and the E uropean U nion. *Canadian Public Administration*, 56(2), 185-202.

- Jachtenfuchs, M. (2001). The governance approach to European integration. *JCMS: Journal of Common Market Studies*, 39(2), 245-264.
- Marks, G., Hooghe, L., & Blank, K. (1996). European integration from the 1980s: state-centric v. multi-level governance. *JCMS: Journal of Common Market Studies*, 34(3), 341-378.
- Niemann, A., & Bretherton, C. (2013). EU external policy at the crossroads: the challenge of actorness and effectiveness. *International relations*, 27(3), 261-275.
- Paquin, S. (2013). Federalism and the governance of international trade negotiations in Canada: Comparing CUSFTA with CETA. *International Journal*, 68(4), 545-552.
- Puetter, U. (2012). Europe's deliberative intergovernmentalism: the role of the Council and European Council in EU economic governance. *Journal of European Public Policy*, 19(2), 161-178. doi:10.1080/13501763.2011.609743
- Risse-Kappen, T. (1996). Exploring the nature of the beast: international relations theory and comparative policy analysis meet the European Union. *JCMS: Journal of Common Market Studies*, 34(1), 53-80.
- Ruff, N. J. (2017). "Provincial Government". Retrieved from <https://www.thecanadianencyclopedia.ca/en/article/provincial-government>
- Scharpf, F. W. (2017). De-constitutionalisation and majority rule: A democratic vision for Europe. *European Law Journal*, 23(5), 315-334.
- Thorlakson, L. (2003). Comparing federal institutions: Power and representation in six federations. *West European Politics*, 26(2), 1-22.
- Verdun, A. (2013). Decision-making before and after Lisbon: The impact of changes in decision-making rules. *West European Politics*, 36(6), 1128-1142.
- Verdun, A. (2016). The federal features of the EU: Lessons from Canada. *Politics and Governance*, 4(3), 100-110.
- Verdun, A., & Wood, D. E. (2013). Governing the social dimension in Canadian federalism and European integration. *Canadian Public Administration*, 56(2), 173-184.
- Versluis, E., Van Keulen, M., & Stephenson, P. (2010). *Analyzing the European Union policy process*: Macmillan International Higher Education.
- Wiener, A., Börzel, T. A., & Risse, T. (2018). *European integration theory*: Oxford University Press, USA.
- Zielonka, J. (2008). Europe as a global actor: empire by example? *International affairs*, 84(3), 471-484.