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# **A COMPARITIVE STUDY OF FEDERATION AND CONFEDERATION: STRUCTURAL DIFFERENCES, FUNCTIONS AND POLITICAL IMPLICATIONS**

AUTHORED BY - KAVIYA KANNAN K<sup>1</sup>

## **ABSTRACT**

A federation is defined by the federal government and the federative units sharing sovereign authority together. A federal government and what are variously referred to as regions, provinces, states, länder, cantons, republics, or entities share sovereignty within federations in accordance with their respective constitutions. The term "confédération" or to be more precise, "confédération d'Etats" (confederation of States), does not appear to pose any significant challenges to dictionary writers. With a few minor exceptions, all dictionaries of common French provide a definition that at the very least helps one focus their thoughts: they define it as an association or union of States that have granted joint authority specific powers. The United States was the first modern federation in which the federal government had the theoretical ability to exercise its authority within the borders of the member states when dealing with issues that fell under its purview. In the present period, it is incredibly unclear whether federations will have a wonderful future or a magnificent past. Each level of government in a federation is given different specific authorities depending on the constitution. The decision is influenced, for instance, by the regional environment, regional preferences, the federation's general design, and the goal of the state's federation-like structure. For instance, general criminal law is a state power in Australia, whereas it is a union power in Malaysia and Canada. The core accessible to the states and regions, however, decreases if the union exerts concurrent powers. "There should be a yearning for togetherness rather than unity," Albert Venn Dicey once said. It means that the states that are attempting to form a federation must preserve their own identities. Federation is a challenging idea that requires the federating states to act efficiently, intelligently, and morally. This also holds true for the people. People should uphold the law, be intelligent, and have political education in a federation. The majority of authors concur that a confederation is a union or alliance of governments established to advance or accomplish particular goals, particularly the protection of their shared external security.

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*Key words: Federation, Confederation, Federal government, Unity, Alliance, State, Union*

## **1. INTRODUCTION:-**

Alternatively put, neither the federal government nor the relevant federative entities may unilaterally alter one another's powers without a process of constitutional amendment in which both levels of government participate. In a federation, at least two territorial levels of government share sovereign constitutional authority over their respective division and joint share of lawmaking powers. Therefore, a confederation that allows member states to unilaterally revoke the authority of Confederal organs is not a federation. A unitary state that allows the central government to legitimately revoke delegated rights or reform local or regional administrations without receiving their express permission is also not a federation. A federation is defined by the federal government and the federative units sharing sovereign authority together. A federal government (which typically has federation-wide jurisdiction over some functions) and what are variously referred to as regions, provinces, states, länder, cantons, republics, or entities share sovereignty within federations in accordance with their respective constitutions. Below, the federative entities are referred to as regions. In a federation, the central government and the regions each have exclusive authority over particular tasks, while some authority may be delegated to both. A constitution, which requires the permission of the regions for amendments though not always their unanimous consent establishes the division and distribution of powers. Federation and the devolution or transfer of authority are categorically distinguished by the term "non-centralization". Within federations, the federation and its regions are each legally entitled to certain powers. In contrast, under devolved systems, provinces are granted authority, which the federal government may, in theory, revoke. India, Spain, and the UK cannot be recognised as federations due to this and other factors. The constitutions of Spain, India, and the United Kingdom explicitly reserve the Westminster Parliament's unconditional legal primacy over the devolved Scottish government and Welsh assembly and highlight the indivisibility of their respective states' sovereignty. A qualified majority of the federative institutions may be required to support, for instance, a constitutional amendment. In federations, constitutional disagreements are typically resolved by an impartial judicial tribunal, however purely political measures, such as an interstate conference of ministers, may also be utilises. Bicameral legislatures are the norm for federations' federal legislatures. Usually in proportion to population, one chamber represents the demos of the federation. In contrast, the smallest component units are typically overrepresented in the chamber of the regions. A double majority consent from the regions as well as the entire

populace is required for laws to be passed by both chambers. In federations, regions often encompass the entire state's area, with capital cities occasionally being an exception. Regions within federations have varying degrees of self-government; some federations are less "non-centralized" than others. The federal government has numerous opportunities to extend and even usurp powers it has been granted within the constitution in other federations; this is especially true if it is assisted by a compliant supreme or constitutional court.

The term "confédération" (confederation), or to be more precise, "confédération d'Etats" (confederation of States), does not appear to pose any significant challenges to dictionary writers. With a few minor exceptions, all dictionaries of common French provide a definition that at the very least helps one focus their thoughts: they define it as an association or union of States that have granted joint authority specific powers. Lawyers are more challenged by the concept since they must make the difficult distinction between confederations of States and the various "international organisations" that the definition in common parlance may very well also apply to. Therefore, in order to define a confederation of States, we must look at groups of States that have actually existed and whose contemporaries, particularly in the member States of these groupings, judged them to be neither an original combination nor an original pattern. To put it simply, this means that the idea of the first confederation in history could not have been developed from a confederation. A type was created by these groupings as a form of organisation. Politicians and lawyers gave this form of organisation a name once it had a specific enough content. They stole the name from Latin, which had already already been used or would be used for many other things. They named it a "confederation." In some federations, the regions enjoy very extensive powers of self-government. A form of government where the country's major geographical divisions each have their own governmental organisations with a number of independent rights of policy-making and decision-making that cannot be overridden by the national government and where the national government's rights are severely constrained. It can be difficult to tell the difference between a federation and a confederation, but generally speaking, confederations give the central government significantly fewer powers than federations do, usually just those related to foreign policy and national security. The fact that confederations do not have direct taxation by the central government is one practical criterion frequently used to distinguish them from federations.

## 2. HISTORY OF FEDERATION:-

Territorial plurality was prevalent in "pre-industrial cultures" (Crone: 1989), "agro-literate polities," and "composite monarchy" (Gellner: 1983 9 ff). (Elliott: 1992). National, ethnic, linguistic, and even religious homogeneity were uncommon in these dynastically controlled governmental institutions. Examples include the Ottoman and Habsburg Empires. Before the contemporary era of nationalism, indirect governance (or what we may call undemocratic autonomy) was common (Hechter: 2000 Ch. 3; Mann: 1984). Therefore, territorial plurality is not modern; territorial monism is. The goal of territorial monism is to make all of the people living within a large territory culturally similar in terms of language, religion, and presumed ethnicity, and to subordinate them to a single supreme sovereign centre. Although many have attempted to emulate the Jacobin ideal of the unitary, centralised state in which sovereignty is "indivisible," territorial monism has never triumphed over all opposition. The world's leading empires at the start of the 20th century were neither territorially monolithic nor contiguous. As a result, neither in the democratic capitalist nor the communist regimes were federal, confederal, or union-in-diversity configurations ever completely banished from the repertoire of institutional design. The United States was the first modern federation in which the federal government had the theoretical ability to exercise its authority within the borders of the member states when dealing with issues that fell under its purview. The federal government's President and Congress exercised its executive and legislative branches' respective duties, while the Supreme Court eventually oversaw the division of powers between the federal government's branches and between the federal government and the states. Despite its influence, the US model is no longer the norm when creating federations. Midway through the nineteenth century, federations were established in Switzerland and Canada (in 1848 and 1867, respectively), and Austria and Hungary were remade under the dual monarchy in 1867. These events marked the beginning of parliamentary federalism as a conflict-resolution strategy to handle potential self-determination disputes. Since the 1970s, a number of democratic governments—including the formerly unitary or union states Belgium, the United Kingdom, Italy, and Spain have rebuilt themselves. Some of its constituent nations or populations now have some degree of territorial autonomy or self-government. The powers held by different regions frequently vary (or exhibit asymmetries), with Belgium now being a federation while the others are more decentralised than they once were. Territorial plurality gives all nations large or small some autonomy and, in some cases, makes it easier to share power within the federal or central government. A sizable constituency for "territorial pluralism" has emerged in the western academic, primarily in law schools and political science departments. It should

come as no surprise that political parties from minority communities find it appealing<sup>2</sup>.

### 3. TYPES OF FEDERATION:-

First, determine whether they are national or global. A national federation may only recognise one country as a member and maintain that the right of secession is not applicable because there is only one country or demos. After its civil war, that is how the United States of America is perceived as a national federation. As opposed to the bi-national federation, which only recognises two nations, the multi-national federation recognises a number of countries. These federations are more inclined to provide the right to secede.

The second factor is the methods of decision-making used by the federal government. A majority of the entire federation is given extensive authority to enact new laws and policies under the majoritarian federation. In contrast, the consensual federation needs qualified or super-majorities for laws and policies to be passed.

Third, because of the federal government's legal authority. The centralised federation gives the federal government significant power, giving it sole control over the armed forces, foreign relations, fiscal and monetary policy, as well as specific emergency and residual authorities. Either the federal government has express legal supremacy if there is a conflict of competences, or the courts rule in its favour. Contrarily, the decentralised federation gives the regions substantial power to restrain the federal government or to take part in the formulation of important federal policies. These regions also retain residual powers, and in conflicts over competencies they may be able to outweigh the federal government.

The national, majoritarian, and centralised federation is what we might refer to as an integrated federation. The multi-national, consensual, and decentralised federation, often known as a pluralist federation, is its polar opposite. A national federation resembles a unitary state at its extremes, but a pluralist federation resembles a confederation. Some academics and decision-makers strongly favour the integration or assimilation of national, ethnic, religious, and linguistic minorities over pluralist federations. They worry that the pluralist approach encourages discrimination against minorities in autonomous territories and ethnocentrism within "titular nationalities." They argue that these federations compromise individual liberties

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<sup>2</sup> Federalism & Federation <https://pesd.princeton.edu/> ( Last Seen on 16 Dec 2022)

in favour of group demands (e.g. Brubaker: 2006; Wimmer: 2002; Wimmer: 2003-4). Pluralist federations, according to traditional socialists and social democrats, erode solidarity and obstruct redistributive transfers. Conservatives, political unionists, and analysts who favour integration and the separation of powers over power-sharing think pluralist federations which they invariably refer to as "ethno-federations" are unstable and will encourage secessionist breaks up and who favour integration and the separation of powers over power-sharing (e.g. Bunce: 1999; Nordlinger: 1972; Snyder: 2000). Certainly, pluralist federations have a chequered history. There are at least as many Austria-Hungary, the Soviet Union, and Yugoslavia as there are Switzerland, Canada, and Belgium. Therefore, determining whether pluralist federations can function and assessing their benefits and drawbacks are crucial topics for the political and legal sciences as well as for the resolution of self-determination conflicts.

#### **4. FUTURE OF FEDERATION:-**

In the present period, it is incredibly unclear whether federations will have a wonderful future or a magnificent past. In the European Union, nations are moving toward creating a degree of federal organisation from what is currently mostly a confederal position, but with some reluctance. There is a discernible trend in some states, like Britain, towards a future federation made up of England, Scotland, and Wales. Even while it must be acknowledged that these systems have noticeable unitary aspects, several well-established federations, such as Switzerland, Germany, and the United States, appear to be reasonably stable. If Quebec ultimately votes to leave and Belgium becomes a federation, there is a good chance that Canada will see significant upheaval. It is rare that the former Czechoslovakia gave up its federation in exchange for Slovakia's and the Czech Republic's entire independence. The Yugoslav federation has been, and continues to be, in serious peril, as is widely known. When a unitary state is perceived to be too repressive for the cultural and political aspirations of ethnic or other types of groups, federation, we can say, is undoubtedly a safety valve. A federation does not, however, always fulfil the needs it sets out to fill. It might be argued as a generalisation for discussion that federations created from the bottom up, when there is a move from a unitary state, are more stable than those created from the top down, as there is likely to be greater excitement for the new structure in the latter scenario. However, there are a lot of things to consider. There are a few elements that seem essential for success regardless of how a federation is formed. The first must undoubtedly be a widespread belief in federalism itself across all communities or states, or, to put it another way, a genuine desire to establish a federal body as a good in and of itself.

This is somewhat true of the European Union, whose original motivation was to establish a global organisation that would prevent future European wars. Second, we draw on the ideas of John Stuart Mill, who thought that a successful federation requires mutual understanding amongst the populations involved, a shared need, and the certainty that one unit won't dominate the others (as observed by Reed Coughlan). Third, the level of consociationalism is crucial, as Reed Coughlan previously mentioned. Consociationalism is a term used to describe political structures that have "a grand coalition of the political leaders of all key parts of the plural society," as seen, for instance, in the Swiss federal executive council, which is made up of seven members. It calls on political elites to reach consensus on choices; the veto power is still retained but is not particularly emphasised. Consociationalism's effectiveness depends on its leaders having enough authority in their communities to guide their followers without being controlled by ferociously nationalist forces. Minorities must be overrepresented in such systems and given government positions that are at least proportional to their numbers<sup>3</sup>.

This brings up political issues in federations of democratic governments. Saying that power is split in democratic societies and that pressures for decision-making emanating from many sources must be reconciled and turned, where necessary, into new legislation or decisions is undoubtedly accurate in some ways. These pressures mostly come from the electoral system, elected parliaments, influential groups, the judicial institutions that uphold the law and may attempt to change it, and the central bureaucracy, even if it operates in the shadows. However, an unique role has been attributed to the electorate, or more precisely, to the people, whose will is frequently claimed to be the source of all things because sovereignty resides in the last resort to them. Even if the media has sometimes manipulated it, it still plays a significant role in legitimising the government. A federation is ultimately supported by this political backing, which highlights the significance of political sovereignty (often neglected). A federation may have started as a union of states, but as the federal government typically performs substantial and significant duties, such as those related to defence, economic growth, and health, it quickly garners widespread and long-lasting interest from the populace across the federation. As a result, federal institutions frequently foster the growth of sizable pressure and interest groups and, more importantly, use the democratic process to put pressure on central institutions.

The fact that the federal centre must have the resources to carry out its wide range of vital

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<sup>3</sup> Confederation, Federation & Sovereignty clement H. DODD. Prof. Dr. Clement H. Dodd <http://www.sam.gov.tr/> (Last Visited 16 Dec 2022)

duties also contributes to its increased importance. Federal resources and federal taxation become crucial. They can be used and frequently are by federal authorities to persuade state or regional governments to adopt federally recommended policies in exchange for financial assistance. In short, federal states are strongly disposed to influence, and even erode, state and provincial regions of autonomy as their central institutions depend more and more on popular support. Even in a nation as generally homogeneous as the United States, this is a cause for concern. There may be a strong desire to secede in some federations, like Canada, particularly when a province or state has extremely diverse cultural or ethnic characteristics. The former Czechoslovakia did experience this, as has been reported. In conclusion, while a federal state's tendency to curtail state or provincial autonomy is frequently welcomed overall, it can exacerbate intercommunal tensions, and it can be difficult to accept significant regional independence once the federal authorities win the support of the federation as a whole. This issue can get really bad in a bicomunal federation.

## **5. DIVISION OF POWERS IN FEDERATION:-**

Each level of government in a federation is given different specific authorities depending on the constitution. The decision is influenced, for instance, by the regional environment, regional preferences, the federation's general design, and the goal of the state's federation-like structure. For instance, general criminal law is a state power in Australia, whereas it is a union power in Malaysia and Canada. Marriage and divorce are state-level issues in the United States whereas they are union-level issues in Australia. Although the federation in Germany is structured such that the states and regions can exercise union power during the legislative process, the union retains the majority of the country's legislative authority. In Germany, the states are also granted the constitutional authority to carry out the majority of federal laws. Since civil law is governed by the regions in Canada, Quebec is able to maintain its civil law legal system in a common law nation. The division of legislative authority in a federation is generally governed by the idea of subsidiarity (Fabbrini 2016). This principle states that in order to ensure responsive and efficient decision-making, authorities should be delegated to the lowest level of government at which they may be used successfully. This will ensure that the process of governing occurs as close to the people affected by it as feasible. Effective and timely decisions promote democracy and gain the support of the general people.

However, in practise, there is room for disagreement over how the subsidiarity principle should be applied in specific circumstances. Also helpful are other, more detailed guiding concepts.

A power is typically delegated to the union level if it:

1. Relates to the exercise of the nation's external sovereignty (for example, international relations, defence, foreign investment, and international trade);
2. Spills over state and region borders and cannot be effectively managed by states and regions acting alone (for example, trade between states and regions, interstate river systems, and aviation).
3. Requires the union level to act as a unit.

If a power may be handled within the boundaries of a state or region (for example, school education, local roads, abattoirs) is one factor that often guides the distribution of powers to the state and region level.

- involves issues where diversity, innovation, or healthy rivalry between states and regions would be helpful (such as waste reduction, tourism)
- Deals with issues of local importance (such as culture, local infrastructure).

Two things need to be kept in mind when applying these ideas. First of all, these rules do not specify whether a power should be concurrent or exclusive. According to the aforementioned ideas, either level of government might, and typically would, be granted broad authority over the "environment." Second, when exercising their authority, the governments of a federation frequently work together. Allocating legislative authority may take into account a variety of factors, including the likelihood of cooperation. For instance, in Australia, the responsibility to provide and administer hospitals lies with the states and regions, whilst the power to control medical insurance lies with the union. The distribution of authority in both instances is in accordance with the predetermined principles, but in order to effectively wield these powers, some coordination between the two tiers of government has been required. This topic is covered in further detail in Section 7.

The constitution's power structure is codified using a variety of methods. One way to categorise powers is as exclusive (accessible to only one level of government), concurrent (able to be used by either level of government), or residual (not specifically listed in the constitution). Other variations include whether the functions of both levels of government are listed, how specifically they are listed, how conflicts between the laws of the two levels of government are settled, and whether there is room for flexibility in the way the powers are divided. The decisions that need to be made in this regard are explored in the next section. Many constitutions, including those of Canada and India, list or enumerate the authority of two levels

of government. Some constitutions, such as those of Germany and the United States, list only one level of government's authority, typically the union. In these situations, all discretionary authority not expressly delegated to one level of government is transferred to the other level as residual authority. The level of specificity used by federal countries to characterise the separation of legislative authority varies significantly. The functions of the union are simply listed in Article 1, section 8 of the US Constitution, however the powers of both levels of government in India are extensively listed in the Seventh Schedule. The degree of specificity of the union's specified powers in Germany is somewhere in the middle (articles 72–74). In general, a constitution's body may have a less comprehensive list of powers (as in Germany or the United States), although more comprehensive lists are typically appended at the end, for example in a schedule (India). It is possible to categorise any authority as exclusive or concurrent depending on whether it is given to the union, the states, or the regions. As demonstrated by Canadian experience (Brouillet and Ryder 2017: 420), exclusive powers can only be used by the level of government to whom they are assigned, whereas concurrent powers can be used by either level of government (Dziedzic and Saunders 2017). Although the former are very rigid, they do ensure that each level of government has a minimum set of powers. These latter ones are flexible in that the union can cede control of them to the states and regions by choosing not to exercise the relevant authority.

The core accessible to the states and regions, however, decreases if the union exerts concurrent powers. These disparities are also likely to alter a court's interpretation and application of the division of powers. It is typical to have three lists of powers where the powers of both levels of government are listed and both exclusive and concurrent powers are used; India is an example. There is obviously a chance that a power could be used in a way that creates "inconsistency" or "repugnancy" across laws if it is concurrent, which means that it (or portions of it) can be used by any level of government. Therefore, a rule must be established to prevent or settle these contradictions or disputes. As under section 109 of the Australian Constitution, such rules typically permit union law to take precedence. However, there are several sectors where state or region predominates under German Constitution article 72(3). Subject to a provision to the contrary by the union parliament, India's repugnancy rule allows the state or region law to prevail within the state if it was reserved for the president's assent. Comparative experience demonstrates that, even in cases when authorities are exclusive, there may be inconsistencies between the application or impact of legislation at different levels of government. Union legislation is typically regarded as important to resolving this issue

(Brouillet and Ryder 2017). Even if the enumerated powers are understood broadly, there will always be powers for which no provisions are made, regardless of how intricately the division of legislative power may be. Therefore, the level of government to which residual power is assigned must always be chosen. There are big differences in practise. As in Australia, Malaysia, and the USA, some federations grant residual power to the states and regions.

The distribution of residual authority, whether it be exclusive or concurrent, is likely to be less significant in practise where each level of government has enumerated powers. To plan and build expertise in their areas of responsibility, governments need a stable allocation of legislative authority among the various levels of government. To adapt to evolving circumstances over time, however, a certain amount of flexibility is also helpful. Some of the methods mentioned above can be useful in this situation. The ability for either level of government to exercise those functions, subject to the inconsistency restrictions, is clearly enabled by designating those authorities as exclusive rather than concurrent. Even when powers are mutually incompatible, some federations have discovered methods to incorporate some flexibility into the way the distribution of powers actually functions. For instance, in Germany, the union may permit the states and regions to enact laws in a field where it has exclusive jurisdiction (article 71). On the other hand, India's article 252 allows the legislatures of two or more states and territories to "agree" to the union legislature exercising their exclusive state powers. Article 76(1)(c) in Malaysia provides a similar process. In Australia, if it appears improbable that a "issue" already falls inside the union's enumerated powers, one or more states and regions may "refer" the matter to the union (section 51(xxxvii))<sup>4</sup>.

## **5. ESSENTIAL CONDITIONS FOR THE FORMATION OF A FEDERATION:-**

Eager to Join Union:

A necessary precondition for creating a federation is the desire for union, not unity. "There should be a yearning for togetherness rather than unity," Albert Venn Dicey once said. It means that the states that are attempting to form a federation must preserve their own identities. If the states become one, they will completely lose their individual identities and be assimilated into the federation. A union is an organisation of various states with some degree of autonomy, but with the sovereign power ceded to a central authority.

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<sup>4</sup>Divisions of Powers In Federations <https://www.idea.int/> (Last Visited 15 Dec 2022)

#### Geographical Proximity:

The states that want to form a union must be ones that are close together in space. Therefore, a high mountain range like the Himalayas or a large body of water like the Bay of Bengal dividing the states are obstacles to the creation of a federation. A federation is not possible because of these inherent limitations, which unquestionably hinder the political administration and economic behaviour of the states. Although the barriers to the formation of a federation have been significantly reduced by current transportation and communication technologies, they remain significant barriers.

#### Affinity in Language, Religion, Culture, and Economic Interests:

The states that make up the federation are held together by their shared language, religion, culture, and economic interests. These foster a certain level of emotional integration and encourage the units to coexist. However, the lack of language and theological affinities is an impassable barrier to union. Despite their linguistic and religious differences, India and Canada have created a strong union.

#### Equal Political and Cultural Strength of the Federating Entities:

It is well known that federations are composed of political and culturally equal units. In other words, the federation will not function effectively if the units are not of equal strength. Thus, we learn that East Bengal and West Punjab were included in the creation of Pakistan as a federation. East Bengal was significantly eclipsed by West Punjab since the former was far stronger than the latter. The burden of West Punjab's colonialism finally got intolerable for East Bengal. As a result, East Bengal declared its independence and was added to the map of independent countries as Bangladesh.

#### Political skill:

Federation is a challenging idea that requires the federating states to act efficiently, intelligently, and morally. This also holds true for the people. People should uphold the law, be intelligent, and have political education in a federation.<sup>5</sup>

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<sup>5</sup> Essay On Federation & Political Science <https://www.politicalsciencenotes.com/> (Last Visited 16 Dec 2022)

## 6. HISTORY OF CONFEDERATION:-

We need to go all the way back to the 16th and 17th centuries, when colonisation first started, to comprehend. The king or queen issued a charter to each colony. Since every colony—from Virginia to Massachusetts—was founded independently, each had its own system of governance until joining forces for the Revolutionary War. The Articles of Confederation maintained the distinction between the colonies as distinct nations rather than a single country. A common adversary in England, rather than a shared identity, brought the colonies together for the Revolutionary War. All of the states desired to maintain their current level of authority and sovereignty when it came time to discuss founding a new nation. Additionally, because they connected a powerful central government with the English monarchy and the oppressive taxes that had sparked the American Revolution, colonists were particularly wary of it. They no longer wanted to be compelled to pay taxes to an inaccessible central authority. All of these factors combined to persuade the nascent nation to federate under the Articles of Confederation. Each state would be able to keep its independence while also establishing a centralised administration that would aid in winning the struggle for independence. The tendency of surrounding governments to link themselves together for security and to advance their shared interests has proven to be almost as powerful as the social instinct among individuals, and history is rife with examples of confederations. The Boeotian, Delian, Lycian, Achaean, and Italian leagues were among the more significant confederations among the ancient Greeks.

The component members were federated considerably more closely in certain instances than in others. For instance, the Achaean League's constitution included provisions for a basic judicial system, a legislative body, and a common executive magistrature. In fact, its structure was so well-developed that some authors thought it was more like a federal union than a confederation. Early Italian cities frequently formed leagues and confederations, albeit they were never as flawless or as significant as Greece. The Rhenish Confederation (1254–1350), which eventually included over 70 members, is one of the significant federations that were established during the mediaeval era. Then came the Hanseatic League (1367–1669), which was founded to advance and safeguard trade but gradually evolved into a major political force that fought wars, negotiated treaties, and ultimately came to have a significant impact on the affairs of international Europe.

## 7. CHARACTER OF CONFEDERATION:-

The majority of authors concur that a confederation is a union or alliance of governments established to advance or accomplish particular goals, particularly the protection of their shared external security. The individual states maintain their own sovereignty and governmental autonomy insofar as these are not expressly ceded and delegated to the confederate organs constituted by the act of union, unlike those who join forces to form a federal union or a unitary state. A confederation varies from an alliance in that it has a definite central organ or organs, which is what sets it apart. The more diverse items created to achieve an element of purposeful perpetuity can be used to convey the wills of the member nations. It differs from a personal union in that there is more than a shared titular sovereign to bind the members together. It results from a formal agreement or contract that is incorporated in an international convention or the "articles" of confederation rather than the unintentional operation of succession laws. It is. A fully contractual establishment that is based on an international treaty rather than on constitutional law is therefore more political than legal. It also isn't ended in the same way as personal unions are; instead, it typically disintegrates and is replaced by either a federal union or a unitary state. Contrary to a federal union, a confederation has as many sovereignties as there are member states, meaning that it does not have a single source of authority. Normally, each member state continues to be an international person; it is permitted to sign treaties with other nations and even wage war against them without consulting any of their allies. If a conflict arises between two or more of them, it will be an international conflict rather than a civil one. However, the union's agreement in a specific situation may provide the Confederation's organs the powers of legation, war, and peace. Because of this, it's possible that not all confederations have the same general member-confederation ties. In each specific scenario, it all hinges on the pact's conditions.

Finally, the goals and character of a confederation are different from those of a true union. It lacks the common organs that characterise a true union and is mostly developed for defence. Confederations don't have any people or subjects that they can command directly or who they could expect to perform responsibilities or duties from. Because they are made up of independent states, their governmental institutions hardly ever deal with people directly; instead, they only communicate with them through the channels of the various state organisations. The combined will of the member states makes up the confederation's will. It is expressed through ordinances or resolutions created by quasi-diplomatic bodies, such as a diet, conference, or congress made up of plenipotentiaries or delegates who represent the

governments of the various states that make up the confederation, rather than through statutes created by a real legislative body. These delegates often cast their votes per state and in accordance with the directives of the administration they represent. Their decisions don't actually have any legal force on people. Nevertheless, they are directed against the confederated states' organs, as was already stated. They typically aren't in effect until their governments embrace them and give them legal status inside their respective regions.

A confederation's congress or diet has no power to implement its decisions other than through federal execution, which entails deploying force against a disobedient member. In reality, the majority of confederations in the past lacked an executive or judicial branch and were forced to rely on the willingness of their constituent states to carry out their directives. A Confederation's component members are free to leave at any time, dissolving the confederation as a result. This is implied by the nature of confederations. The constitution of the confederacy forbids the confederate government from holding a disgruntled member against their will and forcing them to stay in the confederation<sup>6</sup>.

## **8. WHETHER CONFEDERATION IS A STATE:-**

The authorities disagree in terms of a confederation's legal status. A particular group, which includes Bore Carre de Malberg, Fauchille, Jellinek, Laband, Von Mohl, and Oppenheim, disputes the idea that it is a state or, to use the French term, a moral person. Instead, it is essentially a *vinculum juris* between sovereign nations, a straightforward association without a legal identity of its own, and it has no authority other than that which the confederated states have expressly delegated. While acknowledging that it is not a state, another group of authors, which includes four, DeLouter, and Schulze, contends that it does have an international personality, much like the component nations. The truth is that no confederation that has come to light has ever truly resembled a state. It is still possible for it to have at least a small worldwide personality. Depending on the specifics of the agreement upon which it is based, it either does or does not. The United States of America from 1781 to 1789 and the German Confederation from 1815 to 1867 are the two most well-known examples of confederations in contemporary history. The former was little more than what the articles of union called it—a strong league of goodwill among the states that made up the union. Each member of the confederation was explicitly stated to preserve their sovereignty, freedom, and independence

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<sup>6</sup> Confederations <https://www.politicalscienceview.com/> (Last Visited 16 Dec 2022)

as well as any other powers, jurisdictions, and rights that were not expressly given to the confederation in the articles of agreement. Its stated goal was to offer collective defence against an attack on one or more states. With no consideration of the component nations' wills, a congress of delegates was formed to determine and express the confederation's collective will. The enforcement of the congress's resolutions fell under the purview of the individual states; no common administrative or judicial bodies were established. According to De Tocqueville, the general congress perished due to the overwhelming weakness of its authority since the authorities granted to it were so minimal and the tools for carrying out its agenda were so insufficient. The European Union has some of the traits of a confederation (EU). As members of the European Union, each nation has its own distinct government, but they also collaborate to reach key decisions. France, for instance, sends members to the European Union in addition to having its own president and parliament. Following World War II, the EU was founded to promote greater peace among the European nations. For topics like interstate trade, the European economy, and political stability today, the European Union serves as a centralised authority<sup>7</sup>.

## **9. CONFEDARATE COUNTRIES:-**

1. The United States of America (1776 - 1777 – 1788 - 1789)
2. The German Confederation (1815 - 1866 -1867)
3. The Swiss Confederation (1815 - 1848)

### **9.1 The United States of America (1776 - 1777 – 1788 - 1789):-**

In the middle of the 18th century, the United Kingdom had thirteen colonies in America that had some degree of self-government. We will not go into detail the conditions under which these colonies' representatives established a congress and declared their independence in July 1776. We will not go into detail about the conflict that proceeded and ended in 1783 with the loss of the mother country. Our topic will be the mutual relationships developed by the colonies and the states that they eventually became. Long before independence, the colonies began to march together. In reality, it was this reconciliation that allowed the break to be made after a series of setbacks. We could note the first Congress in Albany (1754), the second in New York (1765), and the founding of a "Continental Congress" in Philadelphia, which met for the first time in 1774 and the second in 1775, generating the famous Declaration of Independence on

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<sup>7</sup> Foundations of American Democracy Confederation <https://www.studysmarter.co.uk/> (Last Visited 16 Dec 2022)

July 4, 1776. Following their independence, the thirteen states had to try to construct something lasting. They did not want to merge into a huge American State because they were extremely jealous of their new-found freedom, so they settled for a purely contractual agreement. The pact they concluded was termed "Articles of Confederation". It was written by a committee established by the Second Continental Congress on June 11, 1776, therefore before the Declaration of Independence.

On November 15, 1777, the Congress adopted the final wording. The "Articles" were then made available for ratification by the states. Between 1778 and 1781, all thirteen ratified them. The Articles, which officially establish a "Perpetual Union," begin by proclaiming that the Confederation's official name will be "United States of America" (Article I). They go on to say that the states must maintain their independence and sovereignty, as well as any powers not specifically granted to the United States (Article II). The association's goal is to defend its members collectively, to protect their freedom and mutual prosperity (Article III). Each state's inhabitants have the right to move freely (Article IV). States' ability to conclude treaties is limited (Article VI). On the other hand, the United States' is generally recognised, and the Union is given broad powers in areas of war and peace (the country was at war at the time), as well as in arbitrating any conflicts between members (Article IX). The powers of the United States are exercised by a Congress that meets every November and has one vote for each state (Article V). Ordinary decisions are made with a simple majority of all votes, i.e. seven votes; more important decisions are made with a qualified two-thirds majority, i.e. nine votes (Articles IX and X; the texts are not very explicit, but this is how they have been understood and used). American politicians and lawyers have consistently emphasised that the Congress lacked direct legislative authority over individuals: its decisions were only binding on states, not their citizens. As a result, the confederal government could not adopt true laws; it could not raise taxes or armies; it could only have the money and troops that the states agreed to provide it. If the states failed to meet their obligations, the Congress would soon be bankrupt, and without credit, it would be unable to borrow. The state legislatures, which possessed complete legislative powers, could utilise those powers however they saw fit because they were not bound by confederal law or fundamental rights. The Constitution was promulgated by Congress on September 13, 1788, and the date for the first federal elections, including the election of presidential electors, in those states that had ratified the Constitution was set for 7 January 1789: 4 February was to be the date for the election of the President of the United States, and 4 March was to be the date for the inauguration of the new federal authorities. As a

result, on March 4, 1789, the Articles of Confederation were completely superseded in eleven states by the Constitution. We will not attempt to analyse the legal status in North Carolina before to November 1789 or in Rhode Island prior to May of the following year.

## **9.2 The German Confederation (1815 - 1866 -1867):-**

Unlike the American states, most of the German states had a long history before joining a confederation following the Napoleonic Wars. They were during their decades as part of the Holy Roman Empire, they were even involved in a pre-confederal sort of union. The "First Reich," on the other hand, had been a relatively insignificant relationship. Following the ordeals endured at the hands of the French soldiers in 1815, the German populace yearned to a stronger sort of unification. However, the goal of union was still hampered by two insurmountable obstacles. First, there was the nearly absolute monarchic regime in most of the states (save for a few Free Cities), which gave the rulers powers they were hesitant to give up; and second, there was Austrian opposition, which feared that the German national spirit would break up its empire. As a result, the German states agreed on a confederal model. On June 8, 1815, as the Vienna Congress was coming to an end, they signed a pact that was given the official title of "German Federal Act" (Deutsche Bundesakte). The treaty was supplemented five years later, on 15 May 1820, following an intergovernmental conference also held in Vienna, with the "Vienna Final Act" (Wiener Schlußakte). The German Confederation was founded on the two treaties of 1815 and 1820. (Deutscher Bund). The treaties established a true "confederation of States," which experts referred to as a Staatenbund at the time. Staatenbund and Bundesstaat (ie "Federal State") are two notions developed by German historians at the beginning of the nineteenth century while researching the history of the United States in particular. The Staatenbund is founded on an international treaty, but the Bundesstaat, while historically founded on a treaty, is founded legally on a national constitution. The organisation established by the treaties of 1815 and 1820 clearly belongs to the former category; certain phrases appear to have been directly copied from a public law handbook.

There were 41 members in the German Confederation. I should mention here that several smaller principalities that existed separately during the First Reich were absorbed into larger states under French control (1803). The size of the forty-one states that emerged from the Napoleonic Era still varied greatly. The Austrian Empire and the Kingdom of Prussia, both of which were solely included in the Confederation in terms of their German domains, controlled the others. The kingdoms of Bavaria, Saxony, Württemberg, and Hanover followed, as did the

Grand Duchies of Baden and Hessen, as did a number of principalities and duchies, some of which were quite tiny, and four cities: Lübeck, Frankfurt, Bremen, and Hamburg. Metternich's Confederation was intended to ensure Germany's internal and external security, as well as its member states' independence and inviolability (Article 2 of the 1815 Act and Article 1 of the 1820 Act). Each state was needed to have, but also to maintain and defend, an authoritarian constitution based on the mediation of the people by the nobility, church organisations, and city merchants (Stände), referred to at the time as a Landständische Verfassung (Article 13 of the 1815 Act). Each State and the Confederation were required to oppose constitutional changes as well as the emergence of press freedom, democracy, and German nationalism. They were the foundation for establishing the concept of a German Empire, conferring the title of Emperor on the King of Prussia, and electing a new Reichstag. On April 17, 1871, it was these new authorities who established the Second Reich Constitution. This Constitution, on the other hand, was just the 1867 Constitution expanded to all of Germany and made into an Imperial Constitution.

### **9.3 The Swiss Confederation (1815 - 1848):-**

Following the Napoleonic Wars, the Swiss Cantons, like the German States, established a confederal framework. To be more specific, they restored to the confederal system that existed prior to 1798 and was abruptly disrupted by the French military invasion. However, the old framework, like in Germany, was too loose and convoluted to give a good foundation for study here. The period of French sovereignty is responsible for two distinctive innovations in Switzerland. To begin, the legal disparity that existed among the old Confederation's parties was replaced by rigorous equality: the new Switzerland only had cantons, all of which were equal (with the exception, which we will not discuss here, of the "half-cantons"). Second, unlike the previous Confederation, the new Switzerland was multilingual: the Alemannic cantons were joined by a number of French-speaking cantons and one Italian-speaking canton. On 7 August 1815, the twenty-two Swiss cantons (twenty cantons and four "half-cantons") signed a "Confederate Pact" ("Pacte fédéral" or Bundesvertrag) to protect their freedom and independence from foreign assault while also ensuring domestic order and peace. A Diet, or Tagsatzung, was a periodic (usually annual) gathering in which each canton, regardless of size, received one vote (Article 8). In general, decisions were made by a simple majority, war and peace choices by a three-quarters majority, and other critical decisions by a simple majority. The Government of one of the three "steering" cantons, Zurich, Bern, and Lucerne, which took on this role on a two-year rota basis, managed business between sessions (Article 10).

The Confederation have minimal powers and no distinct financial resources. It had no direct legislative powers and was limited to making recommendations. However, in the military field, the Diet established a monitoring authority whose regulations were directly relevant to the army. Nonetheless, the cantons were generally envious of their own sovereignty. They organised and legislated as they wanted, saw themselves virtually as foreign States in their mutual ties, and did not even offer nationals of the confederate cantons freedom of movement. The Confederate Pact's history is divided into two nearly equal periods: the Restoration era (1815-1830) and the Regeneration era (1830-1848). Most cantons had reverted to the oligarchical, inegalitarian practises that had been interrupted by the French Revolution during the first phase. The second period began shortly after the July 1830 Paris Revolution, which resulted in the overthrow of the Bourbons. The Regeneration period was characterised principally by liberal/radical and democratic reform of the cantons' internal institutions: separation of powers, enlargement of the vote, development of the first tools of direct democracy, and guaranteed press freedom. As a result, the majority of the industrial and protestant cantons drafted new constitutions.

The Swiss Federal State, founded in 1848, is officially known as the Confédération suisse. This should not be interpreted as ambiguous, though it frequently is. In this context, confédération is a French version of the German word Eidgenossenschaft, not Staatenbund. To put it another way, the seeming ambiguity exists only in French and Italian, not in German. It's because of a "weakness" in the two Romance languages, which use the same word to refer to a specific legal structure, the Staatenbund, as well as the purely political idea of Eidgenossenschaft, which is inextricably related to the history of German-speaking Switzerland<sup>8</sup>.

## **10. WHETHER EUROPEAN UNION IS A CONFEDERATION OR FEDERATION?**

This argumentative and, in many ways, over-politicized issue comes up again and again for various reasons or circumstances. It happened in Estonia between the end of the 1990s and the beginning of this century, during the protracted and complicated discussions for Estonia's accession to the European Union (1998–2002). The issue reached a climax before to the 14 September 2003 referendum, when two-thirds of voters answered 'yes' to EU entry and

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<sup>8</sup> EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION) The modern concept of confederation, Santorini, 22-25 September 1994

associated constitutional modifications, but one-third opposed the EU. The main argument of the sceptics was that Estonia, which had recently regained its independence, would lose its sovereignty again. The movement's worst critics even threatened that Moscow's old dictate would be replaced by Brussels'. The most frequently asked questions were why Estonia couldn't be a completely autonomous and sovereign country like Switzerland, or why it couldn't look to Norway or Iceland as role models. The author's response would be: sadly, Estonia is neither Switzerland nor Norway: its degree of development is considerably different from either of these countries for a variety of reasons. Iceland's geopolitical situation is radically different from that of Estonia (the distance from the main continent affords some benefits as well as chutzpah, which, by the way, revealed itself in the act of recognising Estonia's recently restored independence). Furthermore, the likelihood that any of the aforementioned countries may consider joining the EU one day. In the context of the specific dispute—a federation or a confederation—the formal significance of concepts (names) should not be underestimated. Switzerland, for example, has the official name Swiss Confederation, yet it is a conventional federation (26 cantons and a bicameral federal parliament). The Soviet Union saw itself as a federation of union republics, but in reality it was a unitary state founded on a single-party political system. The issue is with the state's entire core and organisation, not with its name. The ruling is fully rational, as all European Union legislative actions reflect a clear principle: EU law is superior to national law, including a Member State's constitution. In practise, however, there has yet to be an example in which the European Court of Justice has declared an article of a Member State constitution to be incongruous with the principles of EU legislation. Perhaps this is due to the delicate nature of the problem. At the moment, the reader is more interested in the EU's past and future development than in its names, symbol system, or some other special phenomenon<sup>9</sup>.

## **11. COMPARITIVE STUDY OF FEDERATION OR CONFEDERATION:-**

Federation and confederation are political and strategic agreements formed between countries or provinces to provide constituents with political and economic benefits. Despite some similarities, the two ideas are very different:

Confederations were quite prevalent in ancient Greece and the Middle Ages, but there aren't

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<sup>9</sup> The European Union—A Federation or a Confederation? Gabriel Hazak <https://www.ies.ee/> (Last Visited 16 Dec 2022)

many instances left now. International organisations have a similar structure to confederations, but they have legal treaties and enforcement procedures, whereas confederations were loose agreements with no defined constitution. Federations, on the other hand, are more widespread now, and many confederations founded centuries ago transformed into federations. The central authority's powers and responsibilities differ substantially between the two. To begin with, there is no such thing as a central government in a confederation, but rather a weak entity elected by member states, while the federal government wields enormous authority and influence over the people. In a confederation, the central government has no de facto power and exists solely to assist decision-making and communication. When states join forces to form a federation, they form a new nation state with a functioning and powerful central government. Constituents lose some of their autonomy and authority, while the central government gains the ability to make national security, military, foreign policy, and diplomacy decisions. In the case of the federation, the links between states and provinces are significantly stronger. Indeed, states agree to join forces for various objectives in a confederation, but they are not legally bound together and can leave or rejoin the confederation at any time (depending on the type of confederation). A federation, on the other hand, has binding legal agreements that prevent states from leaving the union. Relations between states within a federation improve as the various entities join forces to become a new nation state. Being a member of a federation or a confederation has distinct consequences for member countries. In the first situation, constituents relinquish some of their power and sovereignty while retaining the opportunity to make certain independent decisions, but in the second case, individual states retain control over their territory and residents. We can find a few further distinctions between the two political systems based on the contrasts discussed in the preceding section.

### Definition

A federation is a political entity made up of regional states or constituents that are united into a single group with centralised control, whereas a confederation is a more or less permanent union of sovereign states based on shared interests and political, economic, or even administrative convenience.

### Central Government

In a federation, the central authority is usually a weak nominal body appointed by the member states, but in a confederation, the central authority is usually a weak nominal body appointed by the member states.

### New State

The New State Federation is the formation of a new state, but the confederation does not.

### Sovereignty

A federation's member states lose their sovereignty and are controlled by the central authority, but a confederation's member states retain their sovereignty even after their unification. This is the primary distinction between Federation and Confederation.

### Membership

Membership in a federation becomes mandatory, whereas membership in a confederation is voluntary. As a result, members of a confederation can exit the union at any time. Constitutions The Federation has a written constitution, whereas the Confederation does not.

### Examples

Federations include Russia, China, the United States, Belgium, Austria, Australia, and Germany, among others. Confederations include the European Union, indigenous confederations in North America, the Old Swiss Confederacy, the Rhine Confederacy, and others.

### Resolutions

The resolutions passed by federations concern the laws made by the federal government, and the member states bound to obey and enforce them. On the contrary, the resolutions passed by the Confederation are not of the status of law; they are mostly academic, or joint foreign policy etc. thus, not binding the member states to enforce them.

### Association

The extent of the association in a confederation is not as deep as in a federation. In other words, a federation is a rigid union while confederation is more or less a loose union<sup>10</sup>.

## 12. CONCLUSION & OPINION:-

In the world, there are two types of governing systems: federation and confederation. The federation system can be found in states that have broad territories with multiple provinces and

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<sup>10</sup> Difference Between Federation & Confederation <https://pediaa.com/> (Last Visited 16 Dec 2022)

regions, whereas the confederation system is frequently found among autonomous entities that share shared political and economic goals. The primary distinction between a federation and a confederation is the sovereign status of their members upon the foundation of the union. Confederation and federation are two forms of government in which states or provinces join forces for political, economic, social, or security reasons. Even though they are sometimes confused, they are not the same. There is no new central authority in a confederation, and constituents retain their autonomy, independence, and sovereignty. Members of a federation, on the other hand, are subject to laws and regulations enacted by the federal government, though they retain some autonomy. The number of existing confederations is currently restricted, although the number of federations is relatively large. The primary distinction between the two is the constitution (absent in the case of a confederation), which establishes legal relations between member states and establishes the balance of power between central and local authorities<sup>11</sup>. The primary distinction between a federation and a confederation is the possession of sovereign authority. The federal government has primary sovereignty in a federation. In the event of a confederation, primary sovereignty is located in the member nations. In both federations and confederations, the power and authority vested in the central government are diametrically opposed. Because the central administration of a confederation is only a theoretically appointed figurehead, the member countries hold the real power. Most confederations have a weak central authority. The central federal authority is immensely powerful in the case of a federation. In a confederation, the autonomy of the constituent member states is vitally important. Member states, on the other hand, must cede some of their authority to the central government. The powerful federal government has authority over areas such as military, national security, foreign policy, and finance. However, a confederation's weak government can only exercise powers in arenas specifically designated by the member states. It possesses no de facto powers. A federal nation's constituent states cannot withdraw from the federation. A federation's member states are bound by a variety of legal connections. In a confederation, all member nations have the option of seceding. They may use it if they believe the alliance is no longer beneficial. Federations are well-known political structures. Several former confederations have successfully embraced them. Confederations were common in ancient Greek and Italian society, but relatively few of them survived as nation-states in the modern period. Confederations are commonly used to build international organisations. A federal state may grant its residents dual citizenship, with one representing the

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<sup>11</sup> Difference Between Federation & Confederation <http://www.differencebetween.net/> (Last Visited 16 Dec 2022)

citizen's home state and the other representing the federal government's citizenship. A confederation does not grant its citizens separate citizenship; they remain citizens of the various member nations<sup>12</sup>.

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<sup>12</sup> Difference Between Federation & Confederation <https://askanydifference.com/> (Last Visited 16 Dec 2022)