INTERNATIONAL REGIONALISM AND NATIONAL CONSTITUTIONS: A JURIMETRIC ASSESSMENT

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This Article considers a large global sample of constitutional texts (i.e. 171 constitutions from 153 countries) and assesses to what extent and how they refer to the increasingly important phenomenon of international regionalism (or regional integration) and how they deal with potential sources of tensions and contradictions between the national legal systems and the emerging regional regulatory universes. A typology of clauses is therefore proposed. In addition, some evidence is presented on the evolution of constitutional references over time and on the relationship between constitutional referencing and the depth of the de facto and de jure regionalization processes.

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I. INTRODUCTION***

International regionalism[1] has gained considerable importance since WWII, and there are good reasons to think that this tendency of deepening regionalism might well continue in the foreseeable future.[2] No doubt there are many cross-border policy challenges (such as migration and related social security issues, infectious diseases, large infrastructure works, natural resource management, environmental disaster management, consumer protection, economic crisis management, and monetary stabilization) for which the regional level might well be the most adequate to tackle them, especially if the responses to these challenges show features of regional public goods.[3]

Such a process of gradual deepening of regional integration or regionalism implies, however, that the institutional and legal nature of the arrangements is also being transformed.[4] From a legal perspective, it is recognized that a new form of globalization of the law (called "the third globalization") is taking place, characterized by institutional innovations such as structural adjustment, economic integration, and the generalized protection of human rights.[5] These phenomena have influenced the displacement of legal positivism by other normative legal schools such as Neo-Constitutionalism in Europe and Legal Pragmatism in the United States, which seem more compatible with these new phenomena.[6]

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1. In this article, regionalism, regional governance, and regional integration refer to international regions, as distinguished from sub-national regions (or cross-border regions). These regions are also called macro-regions or supranational regions. As used in this article, supranationality refers to the nature of arrangements (i.e., not regarding membership), as distinguished from intergovernmental arrangements.

2. *See* Jaime de Melo & Arvind Panagariya, *Introduction*, *in* NEW DIMENSIONS IN REGIONAL INTEGRATION 3 (Jaime de Melo & Arvind Panagariya eds., 1993); UNCTAD, *Developing Countries' Participation in Regional Integration: Trends, Prospects and Policy Implications*, *in* MULTILATERALISM, REGIONALISM AND BILATERALISM IN TRADE AND INVESTMENT 7 (Philippe De Lombaerde ed., 2007). *See generally* 1 & 2 LUDGER KÜHNHARDT, REGION-BUILDING (2010).

3. Todd Sandler, *Global and Regional Public Goods: A Prognosis for Collective Action*, 19 FISCAL STUD. 221 (1998).

4. See, for example, J.H.H. Weiler, *The Transformation of Europe*, 100 YALE L.J. 2403 (1991), for a description of the transformation of institutions and law in the most emblematic European case.

5. Duncan Kennedy, *Three Globalizations of Law and Legal Thought: 1850-2000*, *in* THE NEW LAW AND ECONOMIC DEVELOPMENT 19 (David M. Trubek & Alvaro Santos eds., 2006).

6. *Id.* at 64; Jacco Bomhoff, *Balancing, the Global and the Local: Judicial Balancing as a Problematic Topic in Comparative (Constitutional) Law*, 31 HASTINGS INT'L & COMP. L. REV. 555, 558 (2008); Richard A. Posner, *Legal Pragmatism*, 35 METAPHILOSOPHY 146, 157–59 (2004).

From a situation of pure treaty-based intergovernmental cooperation, which can be handled with the established instruments and practices of international public law, states may move in the direction of deeper forms of integration which imply less policy autonomy and/or the pooling or transfer of sovereignty. With deeper integration, the paradigms of formal international public law and the capacity of national constitutions to interact with it are being tested.

The purpose of this Article is twofold. First, it is related to ontological and typological issues, as a first step in theorizing. We aim to describe how and to what extent constitutional texts, drawn from a large global sample of constitutions, actually refer to the phenomenon of international regionalism (or regional integration). In other words, the questions that will be addressed are about the extent to which constituents and legislators worldwide refer in their constitutions to the emerging reality of regionalism and deal explicitly with potential sources of tensions and contradictions between the national legal systems and the emerging regional regulatory universes. This Article proposes a typology of clauses, which we claim will be useful for both legal and political analyses, and applies a jurimetrics approach (i.e., empirical analysis of the law). This will provide an initial idea of the extent to which national constitutions deal with potential sources of tensions and contradictions between the national legal systems and the (existing or emerging) regional regulatory universes. Second, this Article presents exploratory analytical work that shows some evidence on the evolution of constitutional references over time and on the relationship between constitutional referencing and the depth of de jure and de facto regionalization processes.

The structure of the Article is as follows: It first presents a literature review in Part II. This includes the connection to ontological and conceptual discussions in the field (Part II.A), and the connection to the literature on the transformation of international public law in the context of regional integration (Part II.B). Part III addresses various aspects of our empirical methodology, including pertinent research questions, selection of constitutions, selection of relevant clauses, typology, and indicators. Part IV presents the results in terms of frequency and typology of constitutional referencing to the regional phenomenon. The jurimetric results are contextualized and reconnected to the regional and national constitutional and institutional contexts. Part V presents further analysis and interpretation of the data. Using a sub-sample of constitutions, evidence will be presented on the evolution of constitutional

referencing over time and the relationship between constitutional referencing, on the one hand, and de jure or de facto depth of the regionalization process, on the other.

II. LITERATURE REVIEW

A. International Regionalism

The broader political science/international relations literature on regionalism is characterized by conceptual variety, if not conceptual confusion.[7] This variety reflects both the heterogeneity of the underlying population of regions,[8] and the fact that regions (and regionalization processes) can be looked at through a variety of theoretical lenses. We cannot go deeply into this conceptual debate here, but what comes clearly out of it is that comparative studies on regionalism require *ab initio* conceptual pluralism and flexibility. This will also be our underlying approach when selecting relevant clauses from a sample of constitutions.

Regionalism will therefore be construed as a phenomenon going beyond regional intergovernmental and supranational organizations. From institutional and legal perspectives, such organizations are undoubtedly relevant. From a transaction cost perspective, one could compare intergovernmentalism with the organization of a market of international relations, whereas supranational integration would represent with the creation of an organization.[9] They are usually seen as discrete, mutually excluding, and opposite extremes, but it is closer to reality to consider more gradual transformations within a spectrum.[10] More recently, they have been considered as rather complementary options for regional integration.[11] Supranationality is usually

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7. *See* Andrew Hurrell, *Regionalism in Theoretical Perspective, in* REGIONALISM IN WORLD POLITICS: REGIONAL ORGANIZATION AND INTERNATIONAL ORDER 37 (Luis Fawcett & Andrew Hurrell eds., 1995); Peter J. Katzenstein, *Regionalism in Comparative Perspective*, 31 COOPERATION & CONFLICT 123 (1996); THE POLITICAL ECONOMY OF REGIONALISM (Edward D. Mansfield & Helen V. Milner eds., 1997); Alex Warleigh-Lack, *Studying Regionalization Comparatively: A Conceptual Framework*, *in* REGIONALISATION AND GLOBAL GOVERNANCE: THE TAMING OF GLOBALISATION? 43 (Andrew F. Cooper, Christopher W. Hughes & Philippe De Lombaerde eds., 2008); Alberta Sbragia, *Comparative Regionalism: What Might It Be?*, 46 J. COMMON MKT. STUD. 29 (2008); Philippe De Lombaerde et al., *The Problem of Comparison in Comparative Regionalism*, 36 REV. INT'L STUD. 731 (2010).

8. *See* Gaspare M. Genna & Philippe De Lombaerde, *The Small N Methodological Challenges of Analyzing Regional Integration*, 32 J. EUR. INTEGRATION 583 (2010).

9. Joel P. Trachtman, *The International Economic Law Revolution*, 17 U. PA. J. INT'L ECON. L. 33, 48 (1996).

10. Weiler, *supra* note 4.

11. *See* Adriaan Schout & Sarah Wolff, *The 'Paradox of Lisbon': Supranationalism-Intergovernmentalism as Administrative Concept*, *in* THE EU'S LISBON TREATY: INSTITUTIONAL CHOICES AND IMPLEMENTATION 21 (Finn Laursen ed., 2012).

understood as a vertical transfer of competences to supranational institutions (i.e., a hierarchical institutional design) while intergovernmental schemes are more based on horizontal cooperation. One illustration of the complementarity hypothesis is the European Union (EU), considered as the cornerstone of the supranational model, which continues to deepen its regional integration process, increasingly through intergovernmentalist arrangements.[12]

But even from a legal perspective, regionalism is not only a matter of (regional) intergovernmental treaties and supranational organizations; it is also, more generally, one of the factors that contributes to the transformation of international law and to the consequential changing nature of national sovereignty regarding the regulation of the internal affairs of countries. When looking at these developments, the EU is usually taken as the main point of reference, given that its regional integration process has created an important body of supranational law and institutions and simultaneously reduced the national sovereign competences of its Member States. Yet, when looking at regionalism globally, although one can observe a renewed dynamism since the 1990s (the so-called "new regionalism") in many regions, one cannot observe elsewhere a systematic adoption of the "European model" (i.e., the formal model of European supranationalism).[13] For instance, ASEAN rejected the creation of regional supranational institutions. By contrast, the African Union has taken some steps toward the model of European supranationalism while de facto being more inclined toward intergovernmental designs.[14] This is reflected in our empirical analysis where, aside from the European countries, the countries of the African region have the largest amount of explicit references to belonging to regional organizations in their constitutional texts (e.g., Algeria, Angola, Cape Verde, and DR Congo).[15] In Latin America, there is some formal similarity between the regional institutions and the European institutions (the Andean Community being a case in point), but despite the intentions, intergovernmentalism still predominates. While there is an extensive literature on the

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12. Max Fontes, *Mercosul and Supranationality. How to Overcome Brazilian Constitutional Obstacles*, INT'L STUD. ON L. & EDUC. (2000), http://www.hottopos.com/harvard4/max.htm; Schout & Wolff, *supra* note 11, at 33–34.

13. Edward Best, Supranational Institutions and Regional Integration 39 (Mar. 4, 2005) (unpublished manuscript), *available at* http://www.eclac.cl/brasil/noticias/paginas/2/22962/BEST-SUPRANATIONAL%20INSTITUTIONS%20AND%20REGIONAL%20INTEGRATION.pdf*; see also* THE EU AND WORLD REGIONALISM (Philippe De Lombaerde & Michael Schulz eds., 2009).

14. Best, *supra* note 13, at 40–41.

15. *See infra* Part IV.

European model (in its normative and positive understandings) and the comparability of regionalization processes in political science and international relations,[16] this Article will focus instead on the legal aspects that interact with regional integration policies worldwide.

Regional integration can be considered as public international (economic) law whose scope has sometimes been interpreted as a new way of governing competition among states with respect to the regulation of all issues related with international trade, particularly public goods.[17] As such, the regulation of competition at the international level seeks to achieve local public policy goals of national governments.[18]

However, regionalism has been presented as weakening the unitary sovereignty of the nation state and the traditional hierarchy of legal rules.[19] According to Trachtman, the degree of regional integration has a direct relation to the scope of constitutional competences of the legislative branch of government.[20] When the competences expand, governments engage more frequently with intergovernmental organizations. The scope of the constitutional judicial competences may also influence the discussion concerning supranational rules. Therefore, constitutional design is relevant for the deepening of regional integration processes when transiting from an intergovernmental arrangement towards a supranational organization.

B. Regional Integration, International Public Law and Constitutional Law

The discussion on constitutional referencing to regionalism or regional integration should be seen in the broader context of a global transformation of international public law and constitutional law. Relevant aspects of this transformation include the constitutionalization of international public law, the debate about the enforcement of international treaties by national authorities, and the growing relevance of international soft law.

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16. For an introduction into this literature, see, for example, De Lombaerde et al., *supra* note 7. *See also* Amitav Acharya, *Comparative Regionalism: A Field Whose Time has Come?*, 47 INT'L SPECTATOR: IT. J. INT'L AFF. 3 (2012); Sbragia, *supra* note 7; Warleigh-Lack, *supra* note 7.

17. Trachtman, *supra* note 9, at 50–51.

18. *Id.*

19. Elsa Bernard, *La résistance de la norme constitutionnelle face à l' Union européenne*, FORCES DU DROIT (June 14, 2011), https://forcesdudroit.wordpress.com/2011/06/14/la-resistance-de-la-norme-constitutionnelle-face-a-l%E2%80%99union-europeenne/ (Fr.).

20. Trachtman, *supra* note 9, at 57–58.

1. The Constitutionalization of International Public Law[21]

An empirical study of national constitutions and case law concluded that although the influence of international law on national constitutional systems is significant, constitutional courts do not necessarily uphold the supremacy of international law over national constitutions.[22] However, while this appears to be a problem of hierarchy of rules and while it sometimes seems that international law and national constitutions are irreconcilable, there is a clear trend toward a progressive harmonization of national constitutions worldwide, mainly in the terrain of human rights.[23]

Modern constitutions (those enacted after 1945) generally protect fundamental rights, based on "a flexible and pragmatic style of interpretation and enforcement" which seems closer to the German model.[24] This model has been widely adopted in countries with recent democracies and is becoming the most influential model outside the United States.[25] In the United States, the scope of foreign and international law, case law or doctrine has been frequently debated. Some argue that globalization and the diffusion of the protection of human rights have an effect on U.S. constitutional cases, while others oppose this possibility because it is not in line with the meaning of the U.S. Constitution.[26] As a result, world constitutionalism is not considered as having a strong influence on U.S. constitutionalism.[27]

At the global level, a progressive constitutionalization of international public law has been suggested, precisely because of the progressive weakening of national constitutions caused by the

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21. This concept has been widely analyzed, and it is also referred to as world constitutionalism. *See* Bruce Ackerman, *The Rise of World Constitutionalism*, 83 VA. L. REV. 771 (1997); Anne Peters, *Bienes Jurídicos Globales en un Orden Mundial Constitucionalizado*, 16 ANUARIO DE LA FACULTAD DE DERECHO DE LA UNIVERSIDAD AUTÓNOMA DE MADRID [AFDUAM] 75 (2012) (Spain). The idea behind these concepts is that some issues regulated by public international law enjoy a sufficient degree of "objectivity" such that they may limit the sovereignty of the nation–state and even of international organizations. *See* Thomas Kleinlein, *Summary: Constitutionalization in International Law*, *in* KONSTITUTIONALISIERUNG IM VÖLKERRECHT 703 (2012).

22. Anne Peters, *Supremacy Lost: International Law Meets Domestic Constitutional Law*, 3 VIENNA J. ON INT'L CONST. L. 170 (2009).

23. *Id.* at 197.

24. Thomas C. Grey, *Judicial Review and Legal Pragmatism*, 38 WAKE FOREST L. REV. 473, 484 (2003).

25. Tom Ginsburg, *The Global Spread of Constitutional Review*, *in* THE OXFORD HANDBOOK OF LAW AND POLITICS (Keith Whittington, R. Daniel Kelemen & Gregory A. Caldeira eds., 2008).

26. David C. Gray, *Why Justice Scalia Should Be a Constitutional Comparativist Sometimes*, 59 STAN. L. REV. 1249, 1254, 1256–63 (2007).

27. *See* Ackerman, *supra* note 21, at 772.

growing globalization of some issues. This is mainly supported and promoted by courts and the academic world.[28] The points of departure for this global constitutionalism are two international legal systems in force: international human rights norms, and the WTO.[29] These legal systems are more and more interconnected.[30]

The protection of fundamental rights and their consequent judicial globalization is characterized by mutual citation in human rights matters, named the "new *ius gentium* of human rights."[31] This movement represents the culmination of a long process of increasing the pertinence of rights, in many cases taking the form of rules; in other cases, rights have become embedded as policies, but their relevance cannot be ignored, even if they are not part of the constitution.[32] The growing, direct application of international conventions of human rights as binding rules by national courts corroborates this trend.[33]

The WTO signifies a strong global institution that aims to fight protectionism through the principles of most favored nation (MFN) and national treatment.[34] However, the stagnation of the Doha Development Agenda in recent years (similar to what happened during the Uruguay Round) has affected the WTO's global influence through the explosion of bilateral and regional free trade agreements (FTAs). Consequently, some have argued that the recently approved Bali Package in 2013 only seeks to recover the role of the WTO as the main regulator of international trade.[35] In addition, the constitutionalization of international economic law is also justified by the need to solve the conflicting relations between human rights protection and

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28. *See* Peters, *supra* note 21, at 82.

29. *Id.*

30. *See* FLORIS VAN HEES, PROTECTION V. PROTECTIONISM: THE USE OF HUMAN RIGHTS ARGUMENTS IN THE DEBATE FOR AND AGAINST THE LIBERALISATION OF TRADE (2004); Philippe De Lombaerde & Liliana Lizarazo Rodríguez, *Cumplimiento de Tratados de Libre Comercio: Carácter vinculante de sus reglas y justiciabilidad de derechos constitucionales, in* DESPUÉS DE SANTIAGO: INTEGRACIÓN REGIONAL Y RELACIONES UNIÓN EUROPEA-AMÉRICA LATINA 209 (Joaquin Roy ed., 2013); Liliana Lizarazo et al., *Constitutional Aspects of FTAs: A Colombian Perspective*, 20 EUR. L.J. 824 (2014).

31. Grey, *supra* note 24, at 485; *see* Alex S. Sweet & Jud Mathews, *Proportionality, Balancing and Global Constitutionalism*, 57 COLUM. J. TRANSNAT'L L. 73 (2008); Bomhoff, *supra* note 5.

32. Kennedy, *supra* note 6, at 65–66.

33. *See* INT'L COMM'N OF JURISTS, COURTS AND THE LEGAL ENFORCEMENT OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS: COMPARATIVE EXPERIENCES OF JUSTICIABILITY (2008).

34. Klaus Armingeon et al., *The Constitutionalisation of International Trade Law*, *in* THE PROSPECTS OF INTERNATIONAL TRADE REGULATION: FROM FRAGMENTATION TO COHERENCE 71–76 (Thomas Cottier & Panagiotis Delimatsis eds., 2011).

35. *E.g.*, David Ramírez Morán, *9ª Conferencia Ministerial de la OMC en Bali*, INSTITUTO ESPAÑOL DE ESTUDIOS ESTRATÉGICOS (Dec. 18, 2013), http://www.ieee.es/Galerias/fichero/docs_analisis/2013/DIEEEA68-2013_Doha_OMC_DRM.pdf.

trade liberalization with the corresponding creation of a multilevel judiciary.[36]

2. Treaty Enforcement by National Authorities

Although the debate on the scope of self-executing treaties versus non-self-executing treaties is to a large extent associated with the United States, its relevance extends to other federal states in the processes of international integration. The concept of self-executing treaties refers to the possibility that an international treaty may be directly enforced before domestic courts without the implementation of prior legislation.[37] This subject remains highly controversial and the U.S. Supreme Court has not produced a clear precedent that would guide lower courts in distinguishing between self-executing treaties and non-self-executing treaties.[38] A non-generalized position in case law supports the presumption of non-self-execution, mainly in the context of multilateral treaties.[39] Another interpretation, seeking to apply a more selective filter to the direct application of international treaties, affirms that if a treaty creates a "primary international duty," it is judicially enforceable, but the nature of the duty is also relevant.[40] Therefore, courts should determine whether this international duty creates a primary national duty whose nature and scope is a constitutional issue and whether the national duty is judicially enforceable. However, this extreme position limits the enforcement of treaties by the courts when the political branches decide not to comply with them.[41] In recent years, the U.S. Supreme Court has influenced the way of understanding self-executing-treaties through its ruling in *Medellín v. Texas* in 2008.[42] Since then, it is accepted that treaties have a double character of political and legal agreements whose judicial enforcement may also be

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36. Armingeon et al., *supra* note 34, at 76–77, 94; VAN HEES, *supra* note 30; Smita Narula, *International Financial Institutions, Transactional Corporations and Duties of States* (N.Y. Univ. Sch. of Law, Pub. Law Research Paper No. 11-59, 2011), *available at* http://ssrn.com/abstract=1922873.

37. Carlos Manuel Vazquez, *The Four Doctrines of Self-Executing Treaties*, 89 AM. J. INT'L L. 695 (1995).

38. *Id.* at 722–23; MICHAEL J. GARCÍA, CONG. RESEARCH SERV., RL32528, INTERNATIONAL LAW AND AGREEMENTS: THEIR EFFECT UPON US LAW (2014).

39. Curtis A. Bradley, *International Delegations, the Structural Consitution, and Non-Self-Execution*, 55 STAN. L. REV. 1557 (2002).

40. David Sloss, *Non-Self-Executing Treaties: Exposing a Constitutional Fallacy*, 36 U.C. DAVIS L. REV. 1, 81 (2002).

41. *See id.* at 60–61.

42. Medellín v. Texas, 552 U.S. 491 (2008).

considered as a political decision or as a discretionary decision of courts that may be controlled by the political branches.[43]

In Europe this issue has also been analyzed. The Netherlands, Poland, and Germany are quoted as countries remarkably inclined towards accepting the character of some treaties as self-executing, in particular those that refer to rights enforcement.[44] The existence of the EU legal system is one reason that may explain why some national courts in some European countries are more familiar with the character of self-executing treaties.[45]

In some of the more visible countries belonging to the Commonwealth (such as Australia, Canada and the UK), the courts are in general open to accept the self-executing character of some treaty clauses, also mainly when they relate to rights. In the UK, the Human Rights Act (1998) is at the basis of this position; Canada accepts the direct enforcement of treaties by the application of "the presumption of conformity," and in Australia, the "legitimate expectations doctrine" is the basis of this acceptance.[46]

Recent judicial activism of some courts is attracting attention to emerging markets where the international treaties of human rights are not only self-executing but are also used as a binding principle of constitutional adjudication. This is the case in India and South Africa[47] as well as Colombia.[48]

3. Trade Agreements and Regional Economic Integration

Concerning international trade agreements, the U.S. Constitution does not establish their character as self-executing treaties approved under the competence of the Commerce Clause. Case law of the U.S. Supreme Court has not consistently interpreted the scope of that provision, although it has ruled that one of its purposes is the abolition of trade barriers.[49] Therefore,

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43. Curtis A. Bradley, *Self-Execution and Treaty Duality*, 2008 SUP. CT. REV. 131, 182 (2008). See David Sloss, *Treaty Enforcement in Domestic Courts: A Comparative Analysis*, *in* THE ROLE OF DOMESTIC COURTS IN TREATY ENFORCEMENT: A COMPARATIVE STUDY 32–39 (David Sloss ed., 2009), for a comparative analysis of the reluctance to accept self-executing treaties in the United States and Israel.

44. Sloss, *supra* note 40, at 12–13.

45. *Id.* at 15.

46. *Id.* at 24.

47. *Id.* at 25.

48. Liliana Lizarazo Rodríguez, *Constitutional Adjudication in Colombia: Avant-garde or Case Law Transplant? A Literature Review*, 13 REVISTA ESTUDIOS SOCIO-JURÍDICOS 145 (2011); Lizarazo et al., *supra* note 30.

49. Richard M. Goodman & John M. Frost, *International Economic Agreements and the Constitution* 1, 3, 5 (Peterson Inst. for Int'l Econ., Working Paper No. 00-2, 2000), *available at* http://www.iie.com/publications/wp/00-2.pdf.

regional integration treaties signed by the United States, such as the North American Free Trade Agreement (NAFTA), are not clearly self-executing treaties. Congress has the competence to overrule them; as such, regional integration agreements need special constitutional status to warrant more institutional stability.[50] In some cases, the Court follows policy arguments in favor or against the (federated) states, and in some cases it has considered NAFTA a threat to national sovereignty.[51] States are concerned that their constitutional competences may be compromised by the federal government because it does not have a binding duty to consult with them during the negotiation of trade agreements, though NAFTA includes a duty to align state competences with NAFTA regulations.[52] Again, the issue turns on the nature of "constitutional state rights" with a political component. While for some observers the constitutional sovereignty of states is an obstacle in the processes of FTA negotiations,[53] for others the federal government cannot compromise the constitutional sovereignty of the states, lest the federal government widen its competences.[54] But the issue is not exclusive to the United States. In Canada, some tensions between NAFTA regulations and provincial policies have been observed in the areas of environmental protection and investment.[55]

In Australia, it has been proposed that the constitutional court address the problem of federal states regarding the competences of sub-national entities in the context of regional agreements by balancing and reconciling (protectionist) sub-national constitutional competences with federal constitutional competences on free trade.[56] By contrast, as will be illustrated *infra* Part IV, European countries with strong federal states such as Germany, Italy and Austria are solving the conflict between levels of government by constitutional regulation of

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50. Frederick M. Abbott, *Regional Intergration Mechanisms in the Law of the United States: Starting Over*, 1 IND. J. GLOBAL LEGAL STUD. 155, 184 (1993).

51. Goodman & Frost, *supra* note 49, at 9.

52. A.J. Tangeman, *NAFTA and the Changing Role of State Government in a Global Economy: Will the NAFTA Federal-State Consultation Process Preserve State Sovereignty?*, 20 SEATTLE U. L. REV. 243, 245 (1996).

53. Goodman & Frost, *supra* note 46, at 1.

54. Ted Cruz, *Limits on the Treaty Power*, 127 HARV. L. REV. F. 93, 102–03, 105 (2014).

55. *See* Joseph Cumming & Robert Froehlich, *NAFTA Chapter XI and Canada's Environmental Sovereignty: Investment Flows, Article 1110 and Alberta's Water Act*, 65 U. TORONTO FAC. L. REV. 107 (2007).

56. Gonzalo V. Puig, *The Constitutionalization of Free Trade in Federal Jurisdictions* 1, 18 (Centro de Estudios Politicos y Constitucionales, Working Paper No. RS 4, 2011), *available at* http://www.cepc.gob.es/docs/working-papers/working_paper4.pdf?sfvrsn=4.

multilevel governance, seeking to avoid regulatory obstacles to the regional integration process as in North America or Australia.

At the European level, the development of European integration and the self-executing character of most of the hard European law have been possible because national constitutions have been made compatible with (the supremacy of) EU law.[57] The principles of primacy and the direct effect of European law have been developed by the case law of the Court of Justice of the EU (CJEU), and they have been considered as the point of departure of a progressive constitutionalization of EU primary law.[58]

Although in principle the primacy of EU law could be seen as an expression of the Vienna Convention of 1969, which does not allow member states to invoke national rules as a justification to breach treaties,[59] the relationship between EU law and the national constitutions of the Member States has been analyzed in a very specific way: it has been considered as a sort of composite constitutional framework or an "intertwined constitutionalism."[60] This compatibility has been made possible mainly through constitutional amendments that authorize the limitation of national sovereignty and/or the consequent transfer of competences to the EU. In many countries, the objective to participate in the EU as a regional integration process was made explicit in the corresponding constitutional amendment by means of the enactment of "Europe Clauses"[61] or "integration clauses."[62] This explains why many EU Member States include

57. LEONARD F.M. BESSELINK ET AL., EUROPEAN PARLIAMENT, DIRECTORATE-GEN. FOR INTERNAL POLICIES, NATIONAL CONSTITUTIONAL AVENUES FOR FURTHER EU INTEGRATION 9 (2014).

58. The first principle refers to the prevalence of EU law in case of contradiction with national legal rules of the Member States, and the second one refers to the above-defined self-executing treaties. *See* Augusto A. Calahorro, *La Primacía del Derecho Europeo y su Invocación Frente a los Estados: Una Reflexión Sobre la Constitucionalización de Europa*, 12 RIVISTA ELETTRONICA DEL CENTRO DI DOCUMENTAZIONE EUROPEA DELL'UNIVERSITÀ KORE DI ENNA. KOREUROPA 6, 7–8 (2012), *available at* http://www.unikore.it/index.php/augusto-aguilar-calahorro-la-primacia-del-derecho#.VLx1MyvF-So.

59. Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331, 339.

60. Javier Díez-Hochleitner, *El derecho a la última palabra: ¿Tribunales constitucionales o Tribunal de Justicia de la Unión?* 3–4 (Instituto de Derecho Europeo e Integración Regional, Working Paper No. 17, 2013), *available at* https://www.ucm.es/data/cont/docs/595-2013-11-07-el%20derecho%20a%20la%20%C3%BAltima%20palabra.pdf (quoting Jacques Ziller, *National Constitutional Concepts in the New Constitution for Europe*, 3 EUR. CONST. L. REV. 479, 480 (2005)).

61. BESSELINK ET AL., *supra* note 57, at 8–21.

62. Bernard, *supra* note 19.

explicit references to the regional grouping in their constitutional texts.[63]

However, "good" European governance in coordination with the national competences of the Member States depends not only on constitutional and legal regulators who support regional integration, mainly by the elimination of constitutional barriers ("constitutional safeguards"), but also on the behavior of courts, who can and should also ensure international cooperation by avoiding the "protection biases" that may affect regional integration. In other words, regional integration law needs to be enforced with the support of a multilevel judicial safeguard that should take into account the constitutional diversity of the Member States.[64] Therefore, the enforcement of EU law depends on a strong coordination between EU law and national constitutional systems; this entails favoring the interpretation *pro unione* of constitutional rules, in particular the "Europe clauses,"[65] while at the same time maintaining national constitutional values as a criterion of interpretation for the CJEU.[66]

Thus, although from the perspective of the EU institutions national constitutions cannot be used as an argument to refuse the enforcement of EU law, from the perspective of Member States secondary EU law is enforceable if it respects constitutional rights, the limits of the transferred competences to the EU, and constitutional principles (also called "national identity").[67] These conditions coincide with the Treaty on European Union, but they have also been identified in the case law of national courts (e.g.,

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63. *See infra* Table 3. The relevant role of national constitutions in the enlargement of the European integration has been particularly notorious in the case of Eastern European countries where deep constitutional reforms were needed in order to make their national legal order compatible with EU law. *See* MATTHIAS HERDEGEN, PRINCIPLES OF INTERNATIONAL ECONOMIC LAW 144 (2013).

64. *See* Ernst-Ulrich Petersmann, *De-Fragmentation of International Economic Law Through Constitutional Interpretation and Adjudication with Due Respect for Reasonable Disagreement*, 6 LOY. U. CHI. INT'L L. REV. 209, 246 (2008–2009). Although the creation of supranational institutions, including courts, has been presented as the best way to promote regionalism, the "multilevel legal and judicial protection" of regional markets may also occur by means of intergovernmental designs as in the case of the Economic European Area (EEA). *Id.* at 235–36.

65. *See* Díez-Hochleitner, *supra* note 60, at 4.

66. This position has as legal basis Article 4.2 of the Treaty on European Union, which holds that "The Union shall respect the equality of Member States before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional, inclusive of regional and local self-government. It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State." Consolidated Version of the Treaty on European Union art. 4.2, May 9, 2008, 2008 O.J. (C 115) 13 [hereinafter TEU].

67. BESSELINK ET AL., *supra* note 57, at 22–27.

Germany and Denmark) and in some national constitutions (e.g., Germany and Portugal).[68]

The case of Germany is a benchmark inside the EU, and the German Constitutional Court has extensively ruled on the scope of the delegation of competences to the EU. Initially, the discussion revolved mainly around the level of protection afforded under German constitutional rights. The German Constitutional Court has in general upheld EU law if the EU reveals at least the same level of protection of fundamental rights provided by the German Constitution.[69] However, since the enactment of the Treaty of Lisbon, which gave binding force to the EU Charter of Fundamental Rights, the tensions concerning constitutional rights have diminished.[70] Some authors argue that the German Constitutional Court is also inclined to be in line with the CJEU because European integration is a German constitutional value.[71] Nevertheless, the respect for fundamental constitutional principles by EU law (which in some cases still includes rights concerns) remains a relevant issue in national courts.[72]

As far as the respect for the transfer of competences is concerned, the German Constitutional Court accepts that the CJEU verifies first whether the EU respects its own competences, and it would only rule in cases of notorious detriment to national competences.[73] As such, the conflict becomes real only after a ruling of the CJEU by means of the proceedings for annulment or by a preliminary ruling.[74] This issue (known as ultra vires control) remains the main source of potential conflict between EU law and national constitutions, despite the fact that the Treaty on European Union establishes that all "competences not

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68. *See infra* Part IV.B for a discussion of the principle of subsidiarity in France, Germany, and Portugal.

69. Ingolf Pernice, *Constitutional Law Implications for a State Participating in a Process of Regional Integration. German Constitution and 'Multilevel Constitutionalism'*, *in* GERMAN REPORTS ON PUBLIC LAW 40, 42–44 (Eibe Riedel ed., 1998); Carl Lebeck, *National Constitutionalism, Openness to International Law and the Pragmatic Limits of European Integration – European Law in the German Constitutional Court from EEC to the PJCC, Part I-II*, 7 GER. L.J. 907, 908 (2006), *available at* http://www.germanlawjournal.com/index.php?pageID=11&artID=767.

70. BESSELINK ET AL., *supra* note 57.

71. *See* Lebeck, supra note 69; Díez-Hochleitner, *supra* note 60; Andreas Paulus, *Germany*, *in* THE ROLE OF DOMESTIC COURTS IN TREATY ENFORCEMENT: A COMPARATIVE ENFORCEMENT 241 (David Sloss ed., 2009); BESSELINK ET AL., *supra* note 57, at 19.

72. BESSELINK ET AL., *supra* note 57, at 22–25.

73. The Lisbon case has been seen by some as showing a Euroskeptic position of the German Constitutional Court because it purports to sustain the court's competence of revising ultra vires acts of the EU. Díez-Hochleitner, *supra* note 60, at 7. However, the court upheld the treaty and even made the ultra vires control compatible with the "Europe clause," seeking not to interfere with the normal activity of the EU. *Id.* at 13.

74. *See id.* at 33.

conferred upon the Union in the Treaties remain with the Member States."[75] The problem is that the Lisbon Treaty does not contain a clear catalogue that would avoid potential conflicts.[76] The main concern of the German Constitutional Court when analyzing the constitutionality of the Lisbon Treaty in the so-called *Lisbon Case* referred mainly to the flexibility clause (Article 352 of the Treaty on the Functioning of the European Union (TFEU)), which allows that EU competences may be adjusted to the objectives of the Treaty in case it fails in providing the necessary competences to reach them.[77] The German Constitutional Court held that EU law and the competences of the CJEU should respect and protect the democratic principle,[78] i.e., each new transfer of competences should be approved by national parliaments and not only by the European Parliament. This position has been seen as a rejection of the creation of a European federal state.[79]

In Africa, the constitutional rules and case law of African states in general are currently not in a state of accommodating supranational rules to support the further deepening of regional integration. Some countries reformed their constitutions after independence to favor regional integration. However, the Organization of African Unity (OAU) emphasized the national sovereignty of the Member States and the principle of non-interference in internal affairs, which is not necessarily compatible with a deepening process of regional integration.[80] More recently, after the creation of the African Economic Community in 1991, new constitutions do not attach much relevance to regional integration, but a clear interaction between national

75. TEU, *supra* note 66, arts. 4.1, 5.2.

76. Díez-Hochleitner, *supra* note 60, at 7, 9.

77. *See* Philipp Kiiver, *The Lisbon Judgment of the German Constitutional Court: A Court-Ordered Strengthening of the National Legislature in the EU*, 16 EUR. L.J. 578 (2010), *available at* http://www.cesruc.org/uploads/soft/130305/1-130305191915.pdf; Christian Wohlfahrt, *The* Lisbon *Case: A Critical Summary*, 10 GER. L.J. 1277 (2009), *available at* https://www.germanlawjournal.com/pdfs/Vol10No08/PDF_Vol_10_No_08_1277-1286_Lisbon%20Special_Wohlfahrt.pdf.

78. The respect of the democratic principle (i.e., the approval of international agreements by national parliaments) is not an exclusive position of the German Constitutional Court. It is understood as the way to legitimize the international economic order. HERDEGEN, *supra* note 63, at 67. Bothe argues that this case law is useful and necessary for Europe, because the active participation of parliaments in daily issues of European policy would shorten the distance between EU institutions and EU citizens. *See* Michael Bothe, The Judgement of the German Federal Constitutional Court Regarding the Constitutionality of the Lisbon Treaty (Istituto Affari Internazionali, Documenti No. IAI0920, 2009).

79. *See* Kiiver, *supra* note 77, at 580–83; Díez-Hochleitner, *supra* note 60, at 14; Wohlfahrt, *supra* note 77, at 1280.

80. Richard Frimpong Oppong, *Making Regional Economic Community Laws Enforceable in National Legal Systems – Constitutional and Judicial Challenges*, *in* MONITORING REGIONAL INTEGRATION IN SOUTHERN AFRICA 2, 15 (Anton Bösl et al. eds., 2009).

constitutions and regional directives with respect to democracy and human rights is notorious.[81] However, courts in Africa have not been active in ruling on regional integration treaties and commitments, despite the fact that some constitutions may allow such judicial review. In general, regional integration treaties are treated like other international treaties, without a special constitutional status.[82]

In Latin America, despite the constitutional aims to promote regional integration (in some cases with a supranational character), many countries are still more inclined to give primacy to national sovereignty in practice, leaving regional integration agreements at the same level as national laws (e.g., Colombia). Some of them give regional integration agreements a higher hierarchy than internal law (e.g., Venezuela and Argentina); however, in all the cases, national constitutions are at the top of the legal system, which means that regional integration treaties are subordinated to national constitutions.

4. Self-Regulating Markets and Soft Law

Although this Article refers to hard law (law and regional integration treaties), the growing relevance of soft law cannot be ignored. The process of regional integration has been influenced by the growing privatization of markets and vice versa. Private actors are pushing for more regionalism, but they are simultaneously and increasingly self-regulating their markets in less explicit ways, and not only through the institutionalization of their lobbying activities. This transformation of the traditional paradigms of the legal system has been producing an explosion in the number of regulations applied in countries not necessarily enacted by the national constitutional and democratic authorities.[83] The growing and generalized use of private hard and soft law by private and public institutions is considered as the privatization of international law with a clear influence on regional integration and the empowerment of private actors in the global markets vis-à-vis the national states.[84] In other words, besides traditional hard law created by constitutional national authorities or by means of international treaties in force under the law of treaties, other kinds of hard law enacted by regional institutions are

81. *Id.* at 2, 16, 18.

82. *Id.* at 23–24.

83. Joseph Corkin, *Constitutionalism in 3D: Mapping and Legitimating Our Lawmaking Underworld*, 19 EUR. L.J. 636, 648–49 (2013).

84. Peters, *supra* note 21, at 78.

displacing norms adopted by national authorities. The latter are also seeing their regulatory competences limited or at least influenced by the increasing relevance of soft law produced by regional organisms and private actors (e.g., codes of conduct, standards, certification schemes, etc.), which are now part of a complex international legal system.[85] In some cases, constitutional authorities try to interact with these non-traditional lawmakers, making explicit the supremacy of their constitutional competences of regulation or judicial adjudication on all issues related with national or institutional supranational legal systems.[86] Although there has been reluctance to recognize the growing relevance of soft law for international law, it has been used by EU authorities[87] alongside self-regulation, mainly through codes of conduct.[88] Despite the increase of soft law regulations worldwide, the production of binding hard law does not seem to have been influenced.[89] At the EU level, it also means a flexible regulation that has marginal effects on the national sovereignty of Member States and guides the interpretation of hard European law.[90] However, this may create tensions between institutions (the European Parliament and the Commission) because soft law does not have a democratic origin and has been associated with the bureaucratization of the EU.[91]

III. METHODOLOGICAL ASPECTS

As mentioned *supra*, the central research question that will be addressed in this Article is the extent to which constituents and legislators worldwide refer in their constitutional texts to the emerging reality of regionalism and deal explicitly with potential sources of tensions and contradictions between the national legal systems and the emerging regional regulatory universes. In addition, this Article will assess whether there is evidence of increasing constitutional referencing over time and any relationship between constitutional referencing and the depth of the corresponding (de jure and de facto) regionalization processes.

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85. Corkin, *supra* note 83, at 650–51.

86. *Id.* at 659–61.

87. Two clear examples of soft law inside the EU have been the Charter of Fundamental Rights, which became hard law with its recognition in the Treaty of Lisbon in 2009, and the Luxemburg Agreement. *See* Anne Peters, *Soft Law as a New Mode of Governance*, *in* THE DYNAMICS OF CHANGE IN EU GOVERNANCE 26–27 (Udo Diedrichs et al. eds., 2011).

88. *Id.* at 27, 31.

89. *Id.* at 22.

90. *Id.* at 33, 36.

91. *Id.* at 44–45; *see also* Corkin, *supra* note 83.

We apply a jurimetric (empirical) analysis to a large sample of constitutions. Inclusion of texts in the sample was as wide as possible and depended largely on the availability of the constitutional texts in electronic format. A sample was built from the constitutions accessible through *Constitution Finder*.[92] Of all the constitutions available, the texts were selected in the original language, if the original language was English, French, Spanish, German, Dutch, or was otherwise available in English translation. Dates of enactment and most recent amendments were systematically registered. If various (consecutive) texts were available for a specific country, they were all included in the database in order to also make a dynamic analysis possible. Some micro-states and territories with special status were excluded from the sample. This led to a final sample of 171 post-WWII constitutional texts, corresponding to 153 countries.

As a first step, all relevant articles were identified and uploaded in a database. We started from a wide and flexible conceptualization of the regional phenomenon. Any reference to international regions was registered, independent of its domestic legal implications. However, the numbers of articles as reported in the tables in the following sections should be interpreted with some caution. Not all constitutions are organized in the same way, and therefore the use of 'articles' or 'sections' is not necessarily consistent. We have tried to base our analysis on equivalent articles, but some margin for interpretation was unavoidable. This should not significantly influence the main conclusions of our analysis.

In Part V, some further analysis of the data is presented. Within the sample of 171 constitutions, sixteen pairs were identified that covered consecutive constitutions for particular countries (i.e., a given constitution and a later new, substantially reformed, or amended one), in order to assess the referencing patterns over time. For another sub-sample of recent constitutions (i.e., constitutions enacted or amended after 2000), we contrast referencing statistics with measures of de jure and de facto regionalization. The former is an index of institutional integration, similar to the integration achievement scores first developed by Hufbauer and Schott,[93] based on Balassa's framework,[94] further

92. The tool which was used for the identification and collection of constitutional texts was *Constitution Finder*, which is an open access tool made available by a team affiliated with the University of Richmond School of Law. CONSTITUTION FINDER, http://confinder.richmond.edu/index.html (last visited Apr. 7, 2015).

93. GARY C. HUFBAUER & JEFFREY J. SCHOTT, WESTERN HEMISPHERE ECONOMIC INTEGRATION (1994).

94. BELA BALASSA, THE THEORY OF ECONOMIC INTEGRATION (1961).

developed and applied by Feng and Genna,[95] and then refined by Dorrucci et al.[96] We use the data as reported in De Lombaerde et al.[97] The latter index, intra-regional trade shares, reflects the relative importance of intra-regional trade as a percentage of total trade of the member states of a given regional organization.[98] We use data from the Regional Integration Knowledge System (RIKS).[99] This indicator shows the degree of regional (economic) interdependence and, thus, de facto regionalization.

IV. RESULTS: FREQUENCY AND TYPOLOGY OF CONSTITUTIONAL REFERENCING

As explained *supra*, we consider a large sample of constitutional texts to assess the degrees and ways in which regions and/or regional organizations are referred to and defined in constitutional texts worldwide. The analysis of this database is reflected in Tables 1–4.

The main results are as follows: Around 50% of all constitutions in the sample refer to international regionalism in one way or another, which is quite significant (Table 1). Most of these cases refer to international regionalism in one or two articles, although there are outliers of up to nine articles (France). Looking at broad geographical regions, Asia, Oceania, and North America tend to refer relatively less to international regionalism, whereas Europe, Africa, and South America tend show relatively more constitutional references to regionalism (Table 2).

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95. *See* Yi Feng & Gaspare M. Genna, *Regional Integration and Domestic Institutional Homogeneity: A Comparative Analysis of Regional Integration in the Americas, Pacific Asia and Western Europe*, 10 REV. INT'L POL. ECON. 278 (2003).

96. Ettore Dorrucci et al., *The Link Between Institutional and Economic Integration: Insights for Latin America from the European Experience*, 15 OPEN ECON. REV. 239 (2004). For a more complete bibliography on indicators of regional integration, see Philippe De Lombaerde et al., *Composite Indexes and Systems of Indicators of Regional Integration*, *in* THE REGIONAL INTEGRATION MANUAL: QUANTITATIVE AND QUALITATIVE METHODS 323–46 (Philippe De Lombaerde et al. eds., 2011).

97. De Lombaerde et al., *supra* note 96.

98. For a methodological discussion of the intra-regional trade share measure, see, for example, Lelio Iapadre, *Regional Integration Agreements and the Geography of World Trade: Statistical Indicators and Empirical Evidence*, *in* ASSESSMENT AND MEASUREMENT OF REGIONAL INTEGRATION 65 (Philippe De Lombaerde ed., 2006); Lelio P. Iapadre & Michael Plummer, *Statistical Measures of Regional Trade Integration*, *in* THE REGIONAL INTEGRATION MANUAL: QUANTITATIVE AND QUALITATIVE METHODS 98 (Philippe De Lombaerde et al. eds., 2011).

99. *See* REGIONAL INTEGRATION KNOWLEDGE SYSTEM, http://www.cris.unu.edu/riks (last visited Apr. 7, 2015).

Table 1: Distribution of constitutions in sample according to number of articles referring to regionalism[100]

Number of relevant articles	0	1	2	3	4	5	6	7	8	9	Non-zero	*Total*
Number of constitutions in sample	85	57	13	7	3	1	2	2	0	1	86	*171*

Table 2: Distribution of constitutions according to presence of references to regionalism, by broad geographical regions[101]

	No references	References	Total
Africa	22	25	47
Asia	27	17	44
Europe	16	26	42
North America	2	0	2
Central America	4	4	8
South America	3	10	13
Caribbean	4	3	7
Oceania	7	1	8
Total	*85*	*86*	*171*

100. Own calculations based on constitutional texts. CONSTITUTION FINDER, *supra* note 92.

101. *Id.*

When looking at the constitutional provisions in more detail (Table 3), one notices that the references to international regions come in various forms and are not necessarily concerned with clearly defining regional organizations. They either refer to international regions in rather vague terms, leaving it to the national authorities to interpret the constitutional and legal consequences of these provisions and how this should be reflected in a country's international relations, or they refer to specific regional organizations rather than to the generic category. The latter contrasts with how the constitutional principles of foreign policy are usually articulated. In order to explore this more thoroughly, we established a typology of how constitutions refer to regionalism. The following types were considered: (i) belonging to a wider cultural region; (ii) belonging to a wider geo-political region; (iii) belonging to a regional organization and/or the commitment to respect its rules; (iv) mandate to engage in further regional cooperation and/or formal regional integration in the future; (v) rights for citizens of regional organization co-member states in national elections; (vi) organization of elections of members of regional parliaments; (vii) compatibilization[102] of sub-national autonomy and supranational rule-making; (viii) compatibilization of the constitutional framework and autonomy of national parliament, on the one hand, with supranational rule-making, including the treaty negotiation process, on the other; (ix) requirement of a referendum on regional integration treaties/reforms; and (x) (preferential) conditions for acquiring citizenship based on belonging to a region or regional organization.

102. We use this term to signify clauses that seek to make sub-national autonomy compatible with supranational rule-making.

Table 3*: Type of references to regionalism, by constitution[103]

Country	Constitution	Number of relevant articles	Belonging to wider cultural region	Belonging to wider geo-political region	Belonging to regional organization – respect for its rules	Mandate to engage in further regional cooperation and/or formal regional integration in the future	Rights for citizens of regional organization in national elections	Elections of members of regional parliament	Compatibilization of sub-national autonomy and supranational rule-making	Compatibilization of constitutional framework and autonomy of national parliament with supranational rule-making, including treaty negotiation process	Requirement of referendum on regional integration treaties/reforms	Conditions for acquiring citizenship based on belonging to a region
Algeria	1963	1	2	2								
Algeria	1976	4	87	87, 88	86, 88. 89	87						
Angola	1992	1			15							
Argentina	1994	2	25	75. 24								
Austria	1929 (2008)	6			23c, 23f			23a, 23b	23d	23e		
Bahrain	1973 (2002)	2	1			10						
Bangladesh	1972 (2004)	1	25									
Barbados	1966	3										8.1, 8.2, 8.3
Belgium	1994 (2007)	2			8, 168		8			168		
Belize	1981	1		1								
Bolivia	2009	4	265	10, 265		265		266			257	
Brazil	1988 (2006)	1	4	4		4						
Bulgaria	1991 (2007)	1			4	4						

* Note: Cells contain article numbers. For the "Constitution" column, the year of most recent amendment is noted parenthetically.

103. *Id.*

Burkina Faso	1991 (2002)	2		146		146					147	
Burundi	2005	1				291						
Cape Verde	1992	1	11	11	11	11						
Central African Republic	1995	1		67		67					67	
Colombia	1991 (2005)	2		9	227	9, 227		227				96.2
Congo (Brazzaville)	1992	1				177						
Congo (Brazzaville)	2001	1				182						
RD Congo	2003	1		195		195						
RD Congo	2005	1		217		217						
Costa Rica	1949 (2003)	1		14								14
Croatia	1990	2		2		2				2, 141	141	
Cuba	1976 (2002)	1		12		12						
Dominican Republic	2002	1		3								
East Timor	2002	2	8.3	8.4								
Ecuador	2008	6	416	416, 423		416, 423				417, 418, 419, 420, 421, 422	420	
Egypt	1971 (2007)	1	1									
Egypt	2011 (Interim)	1	1									
Eritrea	1996	1				13						
Finland	1999	3			93, 96, 97					93, 96, 97		
France	1958 (2011)	9	87	53-1	88-1, 88-2, 88-3, 88-4, 88-5, 88-6	53-1	88-3			88-2, 88-4, 88-5, 88-6, 88-7	88-5	
Germany	1949 (2010)	3		23	23	23, 24			23, 24	23, 24, 45		

Greece	1975 (2008)	1		28						28		
Guatemala	1985 (1993)	1		150		150						
Guinea-Bissau	1984 (1996)	1		18		18						
Hungary	2011	7		E	E, XXIII, XXVIII, 8, 19, 47	E	XXIII	XXIII, 9		E, XXVIII, 19, 47	8	
Ireland	1937 (2011)	1			29					29		
Italy	1947 (2007)	3			117		122	122	117, 120, 122	117		
Ivory Coast	2000	2				122, 123						
Jordan	1952	1	1									
Kazakhstan	1995	1				8						
Kenya	2010	1				240						
Kuwait	1962	1	1									
Kyrgyzstan	1993 (1998)	1				9						
Kyrgyzstan	2007	1				9						
Latvia	1922 (2005)	2			68					68, 79	68, 79	
Liberia	1986	1		9		9						
Libya	1969	1	1	1								
Liechtenstein	1921 (2003)	1			67					67		
Lithuania	1992 (2004)	1								138		
Macedonia	1991	1								120	120	
Madagascar	2010	1								137	137	
Mali	1992	1		117		117						
Malta	1964 (2003)	3			23, 24, 65					65		23
Marshall Islands	1979 (1990)	1			XIII					XIII		
Monaco	1962 (2002)	1			1							

Montenegro	2007	1			15	15						
Myanmar	2008	2				96				96, 209		
Nepal	2007	1				35						
Nicaragua	2007 (2010)	3		5, 9		5, 9				9		17
Nigeria	1999	1		19		19						
Oman	1996	1				10						
Pakistan	1999 (2011)	1	40	40		40						
Paraguay	1992	1			144							
Peru	1993 (2005)	1		44		44						
Portugal	1976	2	7	7	118	7		118				
Portugal	1976 (2005)	5	7	7	7, 8, 15, 33	7	15	15		8, 33	295	
Qatar	2003	1	1									
Romania	1991 (2003)	3			38, 148, 149			38		148, 149		
Saudi Arabia	1992	1	1									
Senegal	2001	1		96		96				96		
Serbia	2006	1	1									
Sierra Leone	1991 (2002)	1		10		10						
Slovakia	1992	1			7	7				7	7	
Slovenia	1991 (2006)	4	5, 64, 65		3a	3a, 5, 64, 65				3a, 64	3a	
Spain	1978	1										11
Sweden	1974	7			1.10, 2.19, 10.4, 10.6, 10.7			8.2		2.19, 10.4, 10.6, 10.7, 10.10		
Tunisia	1959 (2002)	1	2			2				2	2	
United Arab Emirates	1971 (1996)	1				123				123		
Uruguay	1967	1		6		6						
Venezuela	1947	1										12

Venezuela	1999 (2009)	2		153		153				153		33
Vietnam	1992	1				14						
Yemen	1990 (1994)	2	1		6							
Total number of constitutions containing a particular type of reference			*25*	*37*	*27*	*49*	*5*	*9*	*3*	*29*	*14*	*8*

Table 4*: Explicit references to regional organizations in constitutions, by regional organization[104]

Country	Constitution	Articles explicitly referring to regional organization	Organization of African Unity/African Union	Arab League	European Community/EAEC/EU	European Economic Area	Council of Europe	Conventions France-Monaco	Andean Community	Organization of American States	North Atlantic Treaty Organization
Algeria	1976	86, 88, 89	X	X							
Angola	1992	15	X								
Austria	1929 (2008)	23c, 23f			X						
Belgium	1994 (2007)	8, 168			X						
Bulgaria	1991 (2007)	4			X						
Cape Verde	1992	11	X								
Colombia	1991 (2005)	227							X		
RD Congo	2003	195	X								
Finland	1999	93, 96, 97			X						
France	1958 (2011)	88-1, 88-2, 88-3, 88-4, 88-5, 88-6			X						
Germany	1949 (2010)	23, 45			X						
Hungary	2011	E, XXIII, XXVIII, 8, 19, 47			X						

* Note: For the "Constitution" column, the year of most recent amendment is noted parenthetically.

104. *Id.*

Ireland	1937 (2011)	29			X						
Italy	1947 (2007)	117			X						
Latvia	1922 (2005)	68			X						
Liechtenstein	1921 (2003)	67				X					
Malta	1964 (2003)	23, 24, 65			X						
Monaco	1962 (2002)	1						X			
Montenegro	2007	15			X						
Paraguay	1992	144								X	
Portugal	1976	118			X						
Portugal	1976 (2005)	7, 8, 15, 33			X						
Romania	1991 (2003)	38, 148, 149			X						X
Slovakia	1992	7			X						
Slovenia	1991 (2006)	3a			X						
Sweden	1974	1.10, 2.19, 10.4, 10.6, 10.7			X		X				
Yemen	1990 (1994)	6		X							

From the distribution of articles in Table 3, it can be observed that the four most frequently recurring types of references are: (ii) belonging to a wider geo-political region, (iii) belonging to a specific regional organization, (iv) mandate to engage in further regional cooperation/integration, and (viii) compatibilization of national constitutional framework with supranational rule-making.

The specific regional organizations to which references are found are shown in Table 4. The European case is clearly the most developed at this level. Sixteen Member States of the EU make

reference to their belonging to the EU. The countries of other regions do not include this item, with very few exceptions.

In sum, a large number of national constitutions refer to international regions. However, this is done in a variety of ways with a variety of legal implications. There is still some way to go in the direction of a more homogeneous treatment of international regions in constitutions, thereby contributing to definitional standardization, but the foundations are laid.

A. The Americas

In North America, the constitutions of Canada, Mexico, and the United States do not establish any concrete reference to the regional groupings to which they belong. In the United States, the Commerce Clause gives the competence to the Congress "[t]o regulate Commerce with foreign Nations, and among the several States . . . ."[105] The competence to negotiate regional integration treaties is based on this clause.

In Latin America, as elsewhere, the main trend is to strengthen intergovernmental institutions. This occurs in spite of existing supranational law and institutions. In South America, one finds an above-average number of relevant constitutional clauses referring to international regionalism.[106] However, only two countries explicitly refer to existing regional organizations in their constitutions, and only the Colombian constitution refers to a concrete existing economic regional integration grouping.[107] In any event, some constitutions in South America contain "integration clauses," but there has not been enough interest in the development of a supranational regional integration grouping.

Notably, the Andean Community (CAN) has shown a development of supranational law and institutions, but it has been progressively losing members, political relevance, and national support. Rather, the recently created Union of South American Nations (UNASUR) is expected to succeed both the Common Market of the South (MERCOSUR) and CAN, but this regional grouping has a clear intergovernmental character. The emergence of UNASUR (and also of the Pacific Alliance) has affected the sustainability of CAN as an institution with supranational characteristics—UNASUR is promoting a flexible

105. U.S. CONST. art. I, § 8, cl. 3.

106. *See supra* Table 2.

107. *See supra* Table 3. On the constitutional aspects of FTAs in Colombia, see Lizarazo et al., *supra* note 30.

intergovernmental way of regional association without having the intention to follow the European model of deepening regional integration.[108]

Additionally, the Central American Integration System (SICA) is based on an intergovernmental logic; however, not all the Member States are bound to the same extent, because each of them has concluded international agreements with different scopes instead of entering into a completely reciprocal arrangement. The creation of a court inside SICA has been regarded as an advance in the process of supranationalization, but not all Member States have approved its creation.[109]

In South America, the types of references that are used mostly follow the general pattern as indicated above: (ii) belonging to a wider geo-political region, (iii) belonging to a specific regional organization, (iv) mandate to engage in further regional cooperation/integration, and (viii) compatibilization of national constitutional framework with supranational rule-making.

The Chilean constitution does not have any clause referring to regional integration. It has been the most independent country of the region, following unilateral and bilateral trade policies, and has been part of CAN for a very short period of time. It has been active in the promotion of interregional relations with the Pacific basin and in the negotiation of bilateral FTAs. More recently, it entered into a regional agreement with Mexico, Colombia and Peru when the Pacific Alliance was created.[110]

By contrast, although the constitutions of other countries refer to the respect of national sovereignty and to the principle of non-intervention in internal affairs, they make explicit reference to the promotion of Latin-American regional integration. This includes Brazil,[111] Peru,[112] and Bolivia[113] (which also mentions

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108. *See* Juan David Escobar del Villar, *Análisis sobre el proceso de desinstitucionalización de la supranacionalidad en la Comunidad Andina de Naciones – CAN- ante la institucionalización intergubernamental de la Unión Suramericana de Naciones –Unasur-*, (Mar. 24, 2009) (unpublished Ph.D. Dissertation, Pontificia Universidad Javeriana), *available at* http://www.javeriana.edu.co/biblos/tesis/politica/tesis97.pdf; Laura E. Vilosio, *Mercosur y Unasur Posturas de la Argentina frente a ambos procesos – sólo un ejemplo*, 10 CIVITAS 63 (2010).

109. Michele Carducci & Lidia P. Castillo Amaya, *Comparative Regionalism and Constitutional Imitations in the Integration Process of Central America*, 1 EUNOMIA 24–27 (2012).

110. *See, e.g.*, Cristobal Vasquez, *Is the Pacific Alliance the Next Big Thing?*, WORLD POL'Y BLOG (Nov. 14, 2014), http://www.worldpolicy.org/blog/2014/11/04/pacific-alliance-next-big-thing; *see also The Pacific Alliance and Its Objectives*, THE PAC. ALLIANCE, http://alianzapacifico.net/en/home-eng/the-pacific-alliance-and-its-objectives/ (last visited Apr. 13, 2015).

111. CONSTITUCIÓN POLÍTICA DEL ESTADO PLURINACIONAL DE BOLIVIA art. 4.

112. CONSTITUCIÓN POLÍTICA DEL PERÚ art. 44.

113. CONSTITUCIÓN POLÍTICA DEL ESTADO PLURINACIONAL DE BOLIVIA art. 265.I.

the integration with indigenous peoples of the world). Colombia[114] and Venezuela[115] also refer to the promotion of regional integration with the Caribbean.

Uruguay mentions the defense of their products and raw materials and the complementarity of public services as goals of Latin-American integration.[116] The Paraguayan constitution[117] refers to the Organization of American States (OAS) and mentions the possibility to sign integration treaties in general.

The constitution of Argentina expressly refers to integration treaties with a supranational character, although it has also been interpreted in such a way as to place them hierarchically below the constitution.[118] It is also remarkable that Argentina's constitution imposes the respect of the democratic order and human rights as a limit on regional integration.[119]

In Brazil, the necessary intervention of the legislative and executive branches to execute international treaties, such as regional integration agreements, situates them below the constitution; therefore, they can be subject to judicial review by the Supreme Court.[120] In addition, given that Brazil is the major player inside MERCOSUR, it is not strongly pushing for the transfer of sovereignty toward MERCOSUR.[121]

The constitution of Ecuador mentions regional integration with the Andean region, South America and Latin America (and the Caribbean) as a strategic objective.[122] It is the most detailed in this respect and seeks the promotion of a global order with economic and political regional blocs with horizontal relations. It refers to the free movement of people worldwide and the end of conditionality in north-south relations. It also refers to the respect of human rights (in particular the rights of migrants), rejects colonialism and imperialism, and promotes the democratization of international institutions. At the institutional level, the constitution of Ecuador is the most progressive in South America. It promotes Latin-American and Caribbean citizenship and free movement of persons in the region, and the creation of supranational institutions of regional integration. Regional integration may include a

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114. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 227.

115. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA art. 153.

116. CONSTITUCIÓN DE LA REPÚBLICA art. 6 (Uru.).

117. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DE PARAGUAY art. 144.

118. AUGUSTÍN GORDILLO ET AL., FUNDACIÓN DE DERECHO ADMINISTRATIVO, DERECHOS HUMANOS II-17 (6th ed. 2005).

119. Art. 75.22, CONSTITUCIÓN NACIONAL [CONST. NAC.] (Arg.).

120. Fontes, *supra* note 12, at 8.

121. *Id.* at 15–16.

122. CONSTITUCIÓN POLÍTICA DE LA REPÚBLICA DEL ECUADOR art. 416.11.

productive financial and monetary union and the adoption of a common international political economy, taking into account the existence of asymmetries. It also includes the strengthening of the harmonization of national legislation related to labor, migration, environmental, education, health, and social policy. However, international trade agreements should not affect the right to health, nor the access to medicines, services, or technical and scientific progress. It is also forbidden to conclude treaties that transfer judicial competences to international arbitration institutions related to commercial issues, except for the resolution of disputes among states or citizens within Latin America.[123]

Concerning the creation of supranational organizations and the character and scope of the regional integration regime, the Colombian constitution promotes the creation of supranational organizations, including the creation of a Latin-American Community of Nations (which is also mentioned in the Brazilian Constitution). The Colombian constitution also establishes the possibility of elections for regional parliaments.[124]

The constitution of Bolivia stipulates that the approval of treaties of "structural economic" regional integration, monetary integration, or the transfer of competences to international or supranational institutions in the framework of regional integration processes should be approved by referendum.[125] The Venezuelan constitution also accepts the creation of supranational organizations and stipulates that the legal rules adopted in integration agreements are part of the national legal order and of direct and preferential enforcement vis-à-vis internal law.[126]

B. Europe

Although European constitutions tend to refer relatively more frequently to international regionalism than constitutions in most world regions,[127] not all constitutions do so, not even all EU Member States. The Czech Republic, Denmark, Luxembourg, the Netherlands, Norway, Poland, Estonia, and Lithuania do not have any reference to "Europe" or an integration clause. The constitution of Greece does not refer explicitly to the EU, while

123. *Id.* art. 416.
124. CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 227.
125. CONSTITUCIÓN POLÍTICA DEL ESTADO PLURINACIONAL DE BOLIVIA art. 257.
126. CONSTITUCIÓN DE LA REPÚBLICA BOLIVARIANA DE VENEZUELA art. 153.
127. *See supra* Table 2.

Bulgaria makes a short reference to its participation in the building and development of the EU.[128]

The constitutions of former empires (France,[129] Portugal,[130] and Spain[131]) promote solidarity and special cooperation with countries sharing their language heritage, which is an example of the type of reference signifying belonging to a wider cultural region. Moreover, Portugal includes the principle of non-intervention in internal affairs and rejects imperialism and colonialism.[132] Sweden makes reference to its membership in the EU but also to its participation in international cooperation within the framework of the United Nations and the Council of Europe.[133] Hungary states that the government shall take into account decisions of the EU and the North Atlantic Treaty Organization in security issues.[134]

Rules that may be included in the category "compatibilization of national constitutional framework with supranational rule-making" can be classified into four groups:

A first group includes references, such as in the constitution of Germany, which highlight that the EU should respect the rule of law and democratic, social, and federal principles. The German constitution states in particular that EU law should guarantee a level of protection of basic rights, essentially comparable to that afforded by its Basic Law.[135] Along the same lines, Sweden allows its parliament to transfer decisionmaking authority so long as the transfer does not affect the basic principles, rights, and freedoms recognized by the constitution and the European Convention for the Protection of Human Rights and Fundamental Freedoms.[136] Slovenia also conditions such transfers on the respect for human rights and fundamental freedoms, democracy, and the rule of law.[137] The Greek constitution allows for limitations on national sovereignty, insofar as this does not infringe human rights, democratic governance, and the principles of equality and reciprocity.[138] The constitution of Bulgaria also makes reference to the respect for the rule of law and for human rights.[139]

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128. KONSTITUTSIYA NA REPUBLIKA BĂLGARIYAART [CONSTITUTION] art. 4 (Bulg.).

129. 1958 CONST. art. 87 (Fr.).

130. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] art.7 (Port.).

131. CONSTITUCIÓN ESPAÑOLA, B.O.E. n. 311, Dec. 29, 1978, art. 11 (Spain).

132. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] art.7 (Port.).

133. REGERINGSFORMEN [RF] [CONSTITUTION] 1:10 (Swed.).

134. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY] art. 47.

135. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW] art. 23, May 23, 1949, BGBl. I (Ger.).

136. REGERINGSFORMEN [RF] [CONSTITUTION] 2:23 (Swed.).

137. USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] art. 3a (Slovn.).

138. 1975 SÝNTAGMA [SYN.] [CONSTITUTION] 28 (Greece).

139. KONSTITUTSIYA NA REPUBLIKA BĂLGARIYAART [CONSTITUTION] art. 4 (Bulg.).

References in a second group include the constitutions of France[140] and Germany,[141] which establish the superiority of the principle of subsidiarity with respect to a draft European law. National authorities may present an action before the CJEU to challenge a legislative act of the EU for infringing the principle of subsidiarity. Portugal also refers to European identity but under the principles of reciprocity, the rule of law, and subsidiarity.[142]

A third group concerns the participation of national parliaments in the decisions of the EU. For example, Austria has a very detailed regulation of the control of the National Council over the position that the government would assume before EU authorities. The government is bound by the opinion of the National Council during EU negotiations and voting. The government may deviate only for imperative foreign and integrative policy reasons, but if a constitutional amendment is necessary, then the deviation is only possible when the National Council does not controvert it.[143] Germany also regulates in detail the duty of the federal government to consult and take into account the position of the Bundestag during the EU negotiations.[144] The consent of the federal government is necessary when an issue may increase expenditures or reduce revenues for the Federation. Additionally, Finland establishes that the government should prepare the decisions to be made in the EU unless the decision requires the approval of the parliament, in which case the parliament will participate.[145] France orders the government to submit draft European laws to the parliament. The parliament may oppose reforms on the rules of adoption of European treaties according to the rules of the TFEU.[146] Belgium only mentions that treaties reforming the EU treaties in force should be approved by the parliament before their signature.[147] The constitutions of Finland,[148] Hungary,[149] Croatia,[150] Romania,[151]

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140. 1958 CONST. art. 88-6 (Fr.).

141. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW] art. 23, May 23, 1949, BGBl. I (Ger.).

142. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] art. 7(6) (Port.).

143. BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] BGBl No. 1/1930, art. 23 (Austria).

144. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW] art. 23, May 23, 1949, BGBl. I (Ger.).

145. SUOMEN PERUSTUSLAKI [CONSTITUTION] 8:96-7 (Fin.).

146. 1958 CONST. art. 88 (Fr.).

147. 1994 CONST. art. 168 (Belg.).

148. SUOMEN PERUSTUSLAKI [CONSTITUTION] 8:96-7 (Fin.).

149. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY] art. 19.

150. USTAV REPUBLIKE HRVATSKE [CONSTITUTION] art. 144 (Croat.).

151. CONSTITUȚIA ROMÂNIEI [CONSTITUTION] art. 148(5) (Rom.).

Slovenia,[152] and Sweden[153] establish the duty of their respective governments to keep the parliament informed on matters related to EU decisions and law creation, and some of them refer to amendments being prepared to the EU treaties. The binding force of parliamentary opinion for the governments when negotiating before the EU institutions has different levels of intensity in the various constitutions.

Finally, a fourth group concerns the status of EU law in the internal legal systems. Croatia retains its sovereign right to decide upon the powers to be delegated and the right to freely withdraw therefrom.[154] As a consequence of the transfer of competences to the EU, national authorities should apply EU law directly, and Croatian courts shall protect subjective rights based on the EU. In Hungary, EU law is binding.[155] Romania establishes the supremacy of EU treaties and other mandatory Community regulations over opposite provisions of the national laws, and all national authorities should guarantee their implementation.[156] In Slovakia, legally binding acts of the EU also take precedence over national laws.[157] The transposition of legally binding acts which require implementation should be realized through a law or governmental regulation. The constitution of Ireland clarified that it does not invalidate laws enacted before, on, or after the entry into force of the Treaty of Lisbon that are necessary for the compliance of obligations of membership of the EU.[158] In Portugal, EU law is enforced in the internal order taking into account democratic principles.[159] The Portuguese constitution also recognizes the rules of judicial cooperation in the EU.[160] The only explicit reference in the Spanish constitution to EU law is that the volume of public debt held by the public administration services may not exceed the reference value established in the TFEU.[161] Spain also refers to its cultural ties with Latin America and other countries with which it has had or currently has special links, mainly by facilitating access to

152. USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] art. 3a(4) (Slovn.).

153. REGERINGSFORMEN [RF] [CONSTITUTION] 2:23 (Swed.).

154. USTAV REPUBLIKE HRVATSKE [CONSTITUTION] arts. 141–43 (Croat.).

155. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY] art. E.

156. CONSTITUŢIA ROMÂNIEI [CONSTITUTION] art. 148 (Rom.).

157. ÚSTAVA SLOVENSKEJ REPUBLIKY [CONSTITUTION] art. 7 (Slovk.).

158. IR. CONST., 1937, art. 29(6).

159. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] art. 8(4) (Port.).

160. *Id.* art. 33(5).

161. CONSTITUCIÓN ESPAÑOLA, B.O.E. n. 311, Dec. 29, 1978, art. 135 (amended Sept. 27, 2011) (Spain). This article was not included in the tables because our study took as reference the version of the constitution that is on *Constitution Finder* and which did not yet have the constitutional amendment of 2011.

Spanish nationality for citizens originating in these regions or countries.[162] Slovenia refers in general to the principle that legal acts adopted within international organizations shall be applied in accordance with the legal regulation of these organizations.[163] Greece stipulates that generally recognized rules of international law ratified by statute shall be an integral part of domestic law and shall prevail over any contrary provision of the law.[164]

With respect to the compatibilization between sub-national autonomy and supranational rulemaking, the constitutions of Austria[165] and Germany[166] establish a very detailed regulation of the proceedings in case EU law creation or modification could affect sub-national entities (the *Länder*); in this way, the constitutions assure the concrete participation of sub-national authorities in the harmonization of their competences with EU law. Along the same lines, the constitution of Italy establishes that legislative powers of the State and the Regions are constrained by the constitution, EU legislation, and international obligations.[167] Regions may not adopt measures that obstruct the freedom of movement of persons or goods; the government can act if they fail to comply with international rules and treaties or EU legislation.[168] Conversely, regions may take an active part in the preparatory decisionmaking process of EU legislative acts in areas of their competences.[169]

The references related to the rights for citizens of regional organization co-member states in national elections (i.e., the right to vote in local elections for citizens of the EU with residence in their countries) is recognized by Belgium,[170] Croatia,[171] France,[172] Portugal,[173] and Hungary,[174] which also recognizes this right to every person recognized as a refugee, immigrant, or resident. Some of them refer to the elections for the European Parliament as well. Referring to people living in EU countries, France creates the possibility of concluding agreements with

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162. *Id.* art. 11.

163. USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] art. 3a (Slovn.).

164. 1975 SÝNTAGMA [SYN.] [CONSTITUTION] 28 (Greece).

165. BUNDES-VERFASSUNGSGESETZ [B-VG] [CONSTITUTION] BGBl No. 1/1930, art. 23d (Austria).

166. GRUNDGESETZ FÜR DIE BUNDESREPUBLIK DEUTSCHLAND [GRUNDGESETZ] [GG] [BASIC LAW] art. 23, May 23, 1949, BGBl. I (Ger.).

167. Art. 117 Costituzione [Cost.] (It.).

168. *Id.*

169. *Id.*

170. 1994 CONST. art. 8 (Belg.).

171. USTAV REPUBLIKE HRVATSKE [CONSTITUTION] art. 146 (Croat.).

172. 1958 CONST. art. 88-3 (Fr.).

173. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] art.15 (Port.).

174. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY] art. 23.

EU members on issues of asylum,[175] while Slovenia protects and guarantees the rights of (Italian and Hungarian) minorities and stipulates that the rights of the Roma community will be regulated by law.[176]

Concerning the reference to referenda on regional integration issues, the constitution of France establishes that all ratifications of treaties related to its membership in the EU should be approved by referendum.[177] Latvia establishes that membership and substantial changes in the terms regarding its membership in the EU shall be decided by a referendum.[178] Portugal establishes the possibility to organize referenda to approve treaties related to the construction or deepening of the EU.[179] Slovenia offers the possibility to call a referendum before ratifying treaties that transfer sovereign rights to supranational organizations.[180] Slovakia establishes that a constitutional law confirmed by referendum decides on the entry into a state union.[181] By contrast, Hungary's constitution states that no national referendum may be held on any obligation arising from an international agreement.[182]

C. Some General Patterns in Other Regions

Generally speaking, the constitutions of countries in Asia and Oceania refer relatively less to international regionalism.[183] Those that do refer mostly to a belonging to a wider cultural region and/or to a mandate to engage in further regional cooperation or integration in the future.[184] In Central Asia, after the disintegration of the USSR, the agreements that seek regional integration take into account the European model, considering not only trade but also political cooperation and security matters. However, the development of supranational institutions has not been pursued. According to some observers, this is related to the lack of democracy and transparency in those states.[185]

In Africa, the proliferation of regional integration agreements is prevalent, and constitutions tend to refer to regionalism

175. 1958 CONST. art. 53-1 (Fr.).
176. USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] art. 64 (Slovn.).
177. 1958 CONST. art. 88-5 (Fr.).
178. SATVERSME [CONSTITUTION] arts. 68, 79 (Lat.).
179. CONSTITUIÇÃO DA REPÚBLICA PORTUGUESA [CONSTITUTION] art. 295 (Port.).
180. USTAVA REPUBLIKE SLOVENIJE [CONSTITUTION] art. 3a(2) (Slovn.).
181. ÚSTAVA SLOVENSKEJ REPUBLIKY [CONSTITUTION] art. 7 (Slovk.).
182. A MAGYAR KÖZTÁRSASÁG ALKOTMÁNYA [CONSTITUTION OF THE REPUBLIC OF HUNGARY] art. 8.
183. *See supra* Table 2.
184. *See supra* Table 3.
185. Zhenis Kembayev, *Legal Aspects of Regional Integration in Central Asia*, 66 ZAÖRV 967, 983 (2006).

relatively more than elsewhere, especially references to belonging to a wider geo-political region and to a mandate to engage in further regional cooperation or integration.[186]

V. RESULTS: FURTHER ANALYSIS

In this section we present some further exploratory analysis of the available data. We analyze whether constitutional references to regionalism are increasing over time and whether the intensity of constitutional referencing is related to the intensity of regional integration processes. By looking at consecutive (i.e., replaced, reformed or amended) constitutional texts, the evolution of referencing patterns can be examined. Based on the sub-sample of consecutive "constitution pairs," the increase of references is not necessarily spectacular over time (Table 5). On the contrary, it appears to be a slow and gradual process. However, the sample size may be too small to extract robust conclusions.

Table 5: Evolution of number of references in consecutive constitution pairs in sample[187]

	Total	No references over whole period	Growing number of references (+)	No change (=) (excluding cases without any reference)	Declining number of references (-)
Number of constitution pairs in sample	16	5	5	5	1

As to whether the intensity of constitutional referencing is related to the intensity of the regional integration processes, we selected a subset of thirty-one constitutions enacted or amended since 2000 and identified the relevant constitutional references. This information was then reorganized by regional organizations to which the corresponding states belong (Table 6), thereby allowing us to contrast this information with statistics reflecting the depth of the integration processes in a cross-section setting. For this purpose, we selected indices of institutional integration and intra-regional trade shares—the former is a proxy of de jure integration, while the latter is a proxy of de facto integration or interdependence.[188]

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186. *See supra* Table 3.

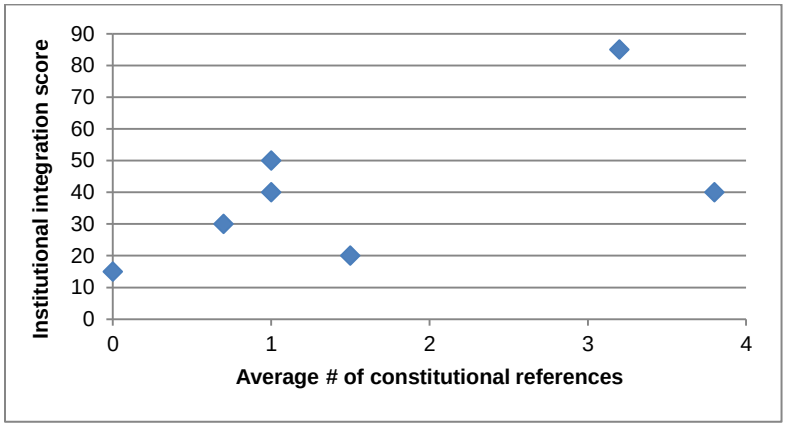
187. Selected constitution pairs derived from CONSTITUTION FINDER, *supra* note 92. *See also supra* Table 3.

188. For a discussion of these indices as proxies of integration, see *supra* Part II.B.3.

Table 6: Constitutional references and integration indicators, for selected regional organizations[189]

	Number of constitutions in sample (> 2000)	Average number of constitutional references	Average number of compatibilization provisions	Index of institutional integration (0-100) (2003)	Intra-regional trade share (%) (2010)
ASEAN	3	0.7	0.7	30	26.1
EU	16	3.2	1.9	85 (EU-15)	60.8
NAFTA	1	0	0	15	40.0
CAN	4	3.8	1.5	40	8.8
MERCOSUR	2	1.5	0.5	20	11.8
SICA	4	1	0.3	40	16.3
CARICOM[190]	1	1	0	50	18.1

Figure 1: Correlation between constitutional referencing and de jure integration[191]

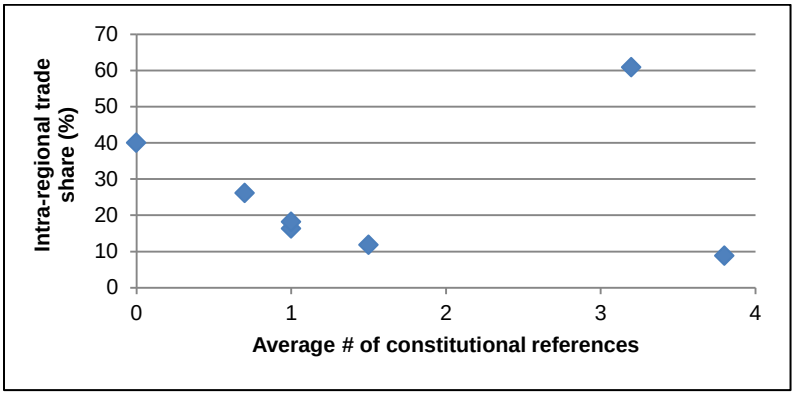


189. CONSTITUTION FINDER, *supra* note 92; De Lombaerde et al., *supra* note 96; REGIONAL INTEGRATION KNOWLEDGE SYSTEM, *supra* note 99.

190. Caribbean Community and Common Market.

191. "Constitutional referencing" refers to the average number of constitutional references to regionalism per grouping; "de jure integration" refers to the index of institutional integration per grouping. CONST. FINDER, *supra* note 92; De Lombaerde et al., *supra* note 96; REGIONAL INTEGRATION KNOWLEDGE SYSTEM, *supra* note 99.

Figure 2: Correlation between constitutional referencing and de facto integration



As expected, the regions with highest and lowest degrees of institutionalized integration (EU and NAFTA) are also the ones with the highest and lowest referencing intensity, respectively (Table 6 and Figure 1). However, the association between both variables within the extreme values (i.e., for the remaining cases) is not linear. In addition, the average values that are reported here cover quite some variation at the individual country level. Notably, the two cases that are generally considered as being characterized by supranational institutional designs (EU and CAN) are the ones that show the highest average frequencies of compatibilization references. Apart from the outlier case (EU), the relationship between constitutional referencing and de facto regionalization seems even less straightforward, at least on the basis of the available data (Figure 2).

VI. CONCLUSION

With deeper integration the paradigms of formal international public law (based on intergovernmental treaties) and the capacity of national constitutions to interact with it are tested. Deepening regional integration can lead to the creation of supranational authority and to constrained, conditioned or diluted national sovereignty. However, it should be added that, in practice, supranationalism and intergovernmentalism are not necessarily mutually exclusive. Moreover, regional governance is not only about hard law; it also has an important soft law component. The proliferation of soft law is not well visible in constitutions, but it should not be ignored in the design of regional legal systems. Accordingly, national legal systems and the multilevel governance

world surrounding them increasingly exist in tension. Outside of Europe, an evolution can be observed with respect to treaty enforcement by national authorities, especially courts (e.g., case law on self-executing versus non-self-executing treaties). Finally, in federal or quasi-federal states, there are growing tensions between the outward (international) regional commitments of the federal states, on the one hand, and the constitutional autonomy and prerogatives of the federated states, on the other.

The observation of these increasing complexities leads to the central question addressed in this Article: to what extent do constituents and legislators worldwide refer in their constitutions to the emerging reality of regionalism and explicitly deal with potential sources of tensions and contradictions between the national legal systems and the emerging regional regulatory universes? For that purpose, this Article represents a global mapping exercise based on an analysis of 171 constitutional texts, with an eye toward global and longer-term tendencies.

In the end, about half of our worldwide sample of constitutional texts refers to (international) regionalism in one way or another. In addition, constitutional references to regionalism come in a great (formal and substantive) variety. In our assessment, we considered ten different "types." However, many of these references are more political in nature, with unclear implications for constitutional case law. Our global mapping exercise reveals a fragmented landscape, with a lot of room for conceptual harmonization, convergence, learning, and imitation. In the coming years, more activity that will reshape national legal systems to become more compatible with the changing reality of (international) regional governance should be expected from constitutional assemblies and constitutional courts.

We also presented some further preliminary analysis. On the one hand, we looked at the dynamics of constitutional referencing over time. Based on the available data, it appears that the number of constitutional references to regionalism is slowly increasing. It is too soon to evaluate whether the current global financial and economic crisis is acting as a catalyst in this respect, but there are indications that this is indeed the case, especially in Europe.[192] On the other hand, we looked at the relationship between constitutional referencing and (de jure and de facto) depth of the integration processes. Although deeper de jure integration seems to increase the need for the inclusion of "integration clauses" in the constitutional texts, this seems to be a

192. CONSTITUTIONS IN THE GLOBAL FINANCIAL CRISIS. A COMPARATIVE ANALYSIS (Xenophon Contiades ed., 2013).

loose relationship with a lot of variation. Even in the EU, for example, there are still various national constitutions without any reference to the EU at all. The relationship between constitutional referencing and de facto integration is even less straightforward.

These empirical results should be read with caution. They illustrate how data on constitutional referencing (to international regionalism) can be related to data on de jure and de facto regionalism/regionalization and then statistically tested. Before embarking on the latter, however, further work is needed on building more complete databases (such as by including more countries and more observations per country), offering more detailed coding, and gathering data on other relevant variables reflecting the depth, causes, and consequences of regionalism. This will allow firmer conclusions on the complex causalities between (aspirational and reactive) constitutional drafting, on the one hand, and de jure and de facto regionalism, on the other.