

## Federal challenges and challenges to federalism. Insights from the EU and federal states

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### ABSTRACT

The purpose of this collection is to discuss what we may learn from thinking about the EU in federal terms. Our point of departure is that this represents a two-fold challenge. It is on the one hand a matter of establishing 'how federal' the EU is (the EU's federal challenge). On the other, the EU has federal features but is not a state; thus raises the question of whether federal theory and practice may have to be adapted to take proper account of the EU (the EU's challenge to federalism). The contributions to this collection supplement and extend existing scholarship through focusing on two important lines of inquiry. The first focuses on the relationship between federalism and democracy, with particular emphasis on how federal systems respond to and deal with citizens' interests and concerns, within and outside the political system. Particular emphasis is placed on representation, in the process of federalization, and as a feature of established systems. The second line of inquiry places the emphasis on the relationship among the governments of federal systems. The focus is on intergovernmental relations, and the particular merits that emanate from studying these from a federal perspective.

**KEYWORDS** Comparative federalism; integration theory

### Introduction

The relationship between federalism, and the study and practice of European integration, is complex and composite. The EU has obvious federal traits and yet there is no consensus that the EU is federal, or even has the vocation to become a federation. In overall terms, the fact that the EU's nature is so contested has bearings on the propensity for comparing and contrasting it with federal systems.

There are roughly speaking three categories of federal-type comparisons in EU studies: (a) across systems; (b) within-EU (between member states, issues, policies, and over time); and (c) implicit comparisons. The latter group consists of studies that borrow aspects from other federal political systems and apply them to the EU. This category of studies does not generally apply an explicit

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comparative method. It depends on the overall acceptability of federalism in EU studies: the more readily accepted EU federalism is the greater the propensity to draw analogies to federal states.<sup>1</sup> Since this category is quite dependent on the other two categories we will focus on these other categories here.

With regard to category (a) (federal comparisons across systems), we find that efforts at discerning similarities and differences between the EU and the USA have dominated. Tortola (2014) in his survey of 104 cases of EU-US comparisons notes that this body of comparisons is mainly a post-Maastricht affair. Most of these studies can be labeled as having a federal orientation but far from all do so (he identifies 17 out of the 104 as non-federal). The core areas of focus that Tortola identifies are: agriculture, democracy, environmental policy and institutional development.

In the following, we present some of these more recent EU-US comparisons. Mauro Cappelletti *et al.* (1986) launched a major multivolume EU-US comparative undertaking under the heading of 'integration through law'. Sergio Fabbrini in *Compound Democracies* (2010) argues that the EU and the USA share important features of democratic organization. In *The Federal Vision* co-edited by Nicolaïdis and Howse (2001) we find a number of important contributions on the role of legitimacy in such multilevel federal-type systems as the US and EU. Daniel Kelemen in *The Rules of Federalism* (2004) compares the EU and the US as regulatory states and develops an innovative theory of regulation to that end. In *Euro-legalism* Kelemen (2011) examines the extent to which the EU adopts an American-style form of adversarial legalism. *Comparative Federalism* that Menon and Schain (2006) put together just after the EU Constitutional Convention compares and contrasts the EU and the USA in terms of institutions, policies and patterns of development.

There are also some important efforts at broad-based comparisons, i.e., where several and/or non-US federal systems are included. Alberta Sbragia's *Europolitics* (1992) reflects on the EU's nature and status as a federal-type entity. *Comparative Federalism and Federation* by Michael Burgess and Alain Gagnon (1993) highlighted the important distinction between federalism (ideas and principles) and federation (institutional structure) and applied this to a range of case studies of federal-type entities, the EU included. Burgess in *Comparative Federalism* (2006) elaborated on these themes and added asymmetry and globalization as important considerations. Burgess' *In Search of the Federal Spirit* (2012) examined a range of federal theorists in the effort to specify the somewhat elusive albeit important notion of federal spirit, and discussed that in relation to different categories of federal systems. He labels the EU an incomplete federation. Mikhail Filippov *et al.* in *Designing Federalism* (2004) examine a broad range of federal-type entities in search of conditions that ensure sustainability over time. They argue for the need to cast the institutional net widely, and they in particular highlight the role of political parties as integrating agents. Jenna Bednar in *The Robust*

*Federation* (2009) focuses on the USA, Argentina, Canada and Australia and discerns lessons for robust federal design (strong, flexible and resilient) of relevance for other federal-type entities, including the EU. Thomas Hueglin and Alan Fenna in *Comparative Federalism* discuss the relevance of federalism in the contemporary world. They argue that European treaty federalism in contrast to the American model of constitutional federalism 'may serve as a model of multilevel governance in a globalizing world.' ([2006]: 13) Nicole Bolleyer in *Intergovernmental Cooperation* (2009) seeks to fill a gap in existing scholarship, namely the limited attention that has been paid to the nature and dynamic interaction of horizontal relations between lower-level governments in today's globalized and Europeanized world. Fossum (2007) and Fossum and Menendez (2011) compare efforts at constitution-making in the EU and Canada and find that whereas these systems are obviously very different there are some parallels, in particular with regard to the central role of executives in constitution-making/change. Arthur Benz and Jörg Broschek in *Federal Dynamics* focus on establishing a better way of understanding how and why federal systems change over time. They underline the complex character of federalism and note that: 'the field of comparative federalism, as it stands, appears to lack the state of development achieved by other areas of comparative politics in recent decades.' (2013: 1)

With regard to category (b) (within-EU comparisons) there are many important contributions. Of particular note is the pioneering study by Scharpf (1988) who argues that Germany and the EU have similar institutional traits that make both systems vulnerable to the same decision pathologies (the 'joint-decision trap'). Vivien Schmidt in *Democracy in Europe* (2005) focuses on how European integration affects national democracies and compares federal and non-federal member states. Alexander Trechsel in *Towards a Federal Europe?* (2006) combines federalism and European integration in four dimensions: constitutional; institutional; partizan; and policy. The large body of research on Europeanization of member states and regions is rife with comparisons, but there is little explicit federal imprint. A number of the studies we listed under (a) also contain comparisons of federal systems within the EU; thus there is some overlap between these categories.

These studies use comparison in at least two different ways. One is to understand the nature and distinctness of the EU in federal terms. The emphasis then naturally gravitates to the core features of the polity. The other uses comparison to understand various aspects of the workings of the EU and of other federations. The emphasis is on politics and policy. The survey shows that comparison is far more frequently used to understand politics and policy, even if there are some studies that focus on questions of polity.

When contrasting this important body of research with the enormous volume of studies on the EU, the federal dimension in EU studies is clearly underdeveloped in comparison to other fields and subfields. Systematic

comparisons of the EU with federal states (category a) studies) are present, but they have hardly developed into a vibrant research program in the sense of staking out a systematic program of research that ensures a truly cumulative development of knowledge.

The limited and somewhat scattered body of EU federalism research translates into a limited impact on framing the research agendas of EU studies and comparative federalism. Every academic discipline and sub-discipline frames and defines its specific research agenda and focuses on a certain range of core research questions, themes and possibly also methodologies that form the core of the discipline's way of framing issues. The field of EU studies is marked by pluralism. That can be a strong point insofar as it enhances reflection. But impact hinges on a well-developed and specified research agenda. The overall weak presence of federalism in EU studies is amplified by comparative federalism's relatively underdeveloped nature, as Benz and Broschek noted.

Neither comparative federalism nor EU studies have resolved the following: Is the main challenge for the EU to become more compatible with federalism, as we understand it from established federal theories and practices? The issue is not only whether the EU is an incomplete federation in which some building blocks are missing (such as a central government with independent tax resources and the means of force). It is also whether the EU might be too diverse ever to become a federation because many federations are much more homogenous and far less differentiated than the EU. Even if federations can be quite asymmetric, the EU is institutionally and culturally extremely diverse, which raises the question of whether such diversity is compatible with federalism. That in turn brings up the second unresolved issue: Does the EU pose a challenge to federal theory, in the sense that federal theory is not sufficiently developed to address the specific challenges facing the EU? Then the problem would lie more with federal theory than with the EU in the sense that federal theorizing has not caught up sufficiently with the EU.

The failure to address adequately these critical challenges entails that federalism's relevance for EU studies remains uncertain. We take up this ongoing discussion and direct it at two lines of inquiry that focus on core polity features.

The first line of inquiry focuses on the relationship between federalism and democracy, with particular emphasis on how federal systems respond to and deal with citizens' interests and concerns, within and outside the political system. Representation plays a central role in federal democracy. In federal democracies citizens are directly represented in the central institutions, as well as are collectively represented in the central institutions through their respective sub-units. The contributions to this issue spell out the EU's distinctive features with regard to the role of representation in the process of coming together as well as in the structure of EU multilevel representative democracy. Through comparing and contrasting the EU with other federations they shed light on the challenges cited above.

The second line of inquiry places the emphasis on the relationship among the governments of federal systems. Within comparative federalism we see an increased interest in the nature and workings of intergovernmental relations. A federal perspective frames this differently from how it has been traditionally framed in theories of European integration, namely as a theory of (non)integration. Federalism instead sees intergovernmentalism as a feature of federal-type systems, as one aspect of federal balancing and governing, and not as a designation of the system as such. Such an approach is fitting for the EU which holds both supranational and intergovernmental features.

In conceiving of intergovernmentalism in this manner, our contributors adopt a much more neutral attitude towards intergovernmentalism than is the case in the classical juxtaposition of intergovernmentalism as being more skeptical towards integration and neofunctionalism as being more optimistic. In this view, intergovernmentalism is one among several forms of integration and can co-exist with more supranational forms without any zero-sum relationship between the two. More integration may indeed be achieved with more intergovernmentalism (Bickerton *et al.* 2015; Genschel and Jachtenfuchs 2016).

In the next part of this introduction, we analyze some of the reasons and consequences for the weak federal framing effect on the study of the EU. In the subsequent part, we present a view of federalism that avoids the deficits we identified in the previous part and that is suitable for comparative research. We conclude by spelling out in further detail how the individual contributions fit into the framework.

## **A difficult relationship: EU studies and federalism**

One aspect that stands out is that those seeking to compare federal states and the EU are still haunted by the ghosts of the past, more specifically, the analytical and normative failure of early Euro-federalism. From before the EU's inception and well into the 1970s, federalism was present in the debate on the EU (for a brief selection, see Friedrich 1968; Monnet 1978; Spinelli and Rossi 1944).<sup>2</sup> Analytically, federalism was cast as an alternative to the 'international organization' frame for making sense of the newly emerging Euro-polity. The federalism perspective argued that the EU was an emerging federal system, and that its development could be understood by the concepts and theories of federal state-building, in other words, by a comparative politics approach. The alternative international organization perspective argued that the EU was an international organization built by states, and that its development could be understood by the concepts and theories of international relations.

The international relations perspective won the theoretical competition, and set the terms of debate. The international relations framework was the terrain within which the debate between neo-functionalism and intergovernmentalism unfolded, a dispute that came to dominate EU studies and remains

alive today. With scholars such as Ernst Haas and Joseph Nye it had a substantial influence on broader theories of international relations. Even those who were closer to comparative politics (such as Leon Lindberg and Philippe Schmitter) did not focus on comparative federalism, which had only been adopted by a few prominent political scientists at the time (e.g., Friedrich 1969).

Why did so many scholars downplay or neglect comparative federalism? A first reason is that many authors – as did decision-makers – saw federalism less as an analytical framework and more as a cherished political solution – to perennial wars among European states, to hyper-nationalism and xenophobia, to economic decline or to a loss of global importance. Federalism as a political program, and the scientific task of establishing the factual status of the EU in federal terms, became difficult to disentangle. The political desire to form a viable European federation focused attention on the need for developing a certain form of political organization. Thus, the important distinction that King (1982) introduced between federalism as a repository of values and principles or even a political ideology on the one hand, and federation as a form of political organization, on the other, was downplayed.

Subsequently, it was not always easy to distinguish between the views of political scientists, political practitioners such as the former President of the European Commission, Walter Hallstein (Hallstein 1973), or policy advocates (Pinder 1985). The necessary distinctions between federalism as a set of ideas and values and a distinct mode of belonging on the one hand and federation as the institutional embodiment on the other did not figure in the debate. Thus, the emerging analytical turn in political science could easily dismiss federal research as overly normative because it appeared to prescribe a specific institutional end-point to the process of coming together. One of the reasons for why neo-functionalism dominated over federalism was its explicit analytical orientation, and its insistence on the open-endedness of the process of regional integration (Haas 1970: 625, 634).

Second, federalism seemed to be increasingly at odds with reality. Federalism is generally considered as a pact that is entered into voluntarily. A distinctive feature of the EU's development has been the inability to reach agreement on a federal pact. EU integration takes place in a setting of already established national democracies; they will not easily be swayed to allow themselves to be superseded by a European state. The question that was left unanswered was: does that mean that the EU is unfit for federalism, or do the distinctive features of the EU's coming together bring up challenges that federal theory does not have ready-made answers for?

In the EU context, however, the 'ever closer union' advocated by the preamble of the EEC Treaty seemed to vindicate a highly specific political and legal program of creating a federal state with a constitution and centralizing powers in the EU institutions at the expense of the member states. This

created the fallacious impression that integration would be coterminous with federalization, a notion that was nourished by the distinctive program of Euro-federalism, to overcome the nation-state by creating a European federal state.

Federalization and integration clearly overlap, but with federalization is meant the establishment of a system based on shared rule and self-rule. The powers and prerogatives of the sub-units are constitutionally protected. A key tenet of federalism is therefore non-centralization. King and federalists in general have long argued that federalism as an ideology embodies both patterns of centralization and of decentralization, that federations could have both strong and weak centers, and that federalism is a dynamic process where the federation could develop in either direction: towards strengthening or weakening the center. Over time, however, an increased number of leaders and citizens used 'federal' to describe the centralized and state-like EU that they did not want, thus confirming the conflation of federalization with integration and centralization.

Third, is a general propensity, especially among non-experts, to equate federalism with a specific US version of *national* federalism. This is particularly problematic because federalism is not a general theory that just waits to be applied to the EU. It is itself in constant development, and many of the assumptions that underpin federal theorizing are highly context-dependent. Equating federalism with US federalism entailed pinning the empirical analysis and the normative evaluation on a rather specific type of federation, whose federalism was steeped in a unified nation and where the federal system, as James Madison underlined, figured centrally in a constitutional structure bent on safeguarding against the tyranny of faction. Conceiving of federalism mainly as a system for balancing power (see Ostrom 2008 for a major contribution) privileges a specific function of federalism. Comparing the USA with other political systems will naturally make reference to that function. Ostrom's reconstruction, however, tacitly assumes one people, one language, and persons moving quite freely and with low costs throughout the entire territory of the federation. The power-limiting effect of the compound republic depends on the ability of citizens to vote with their feet. In Europe, language-barriers, differences in welfare systems and in citizenship regimes strongly dis-incentivize such behavior.

The intensity of the debate and the sheer number of publications on American federalism easily make scholars overlook that while federal structures in some federations are indeed mainly devices for limiting governmental power that is not universally true. Federations not only constrain governmental power, some clearly also enable it, as is the case with federations with developed welfare systems.

Further, federations vary considerably on the unity–diversity scale. The strong onus on a unified nation that marks the American federation is far from a defining feature of contemporary federations. The challenges that

federations face differ, and their federal arrangements reflect that. The American contrast to Canada is quite instructive. In the USA 'the issue was how to create a large country without destroying individual liberty and local initiative' (LaSelva 1996: xii). In Canada, the key issue was to create a political nationality through federalism, not to limit central power. In the USA there was no need for federalism to reconcile multiple nationalities, whereas in Canada the main rationale for federalism was to address the challenge of creating a sense of nationhood, without eradicating multiple (national) identities. Europeans' strong reliance on the American version of federalism detracted attention from federalism's role in reconciling difference, including different nationalities within one and the same polity. Whereas there are good reasons for comparing aspects of the EU and the US, the irony is that the 'natural' propensity to focus on the USA meant downplaying the important difference between multinational federalism and national US federalism.

Since the 1980s, these specific ideological and methodological framings were attributed to federalism by non-experts. They did not afflict those studying the EU from a federalist perspective. The former were more visible and created the impression that federalism in EU studies would be factually wrong, methodologically sloppy, and ideologically rather than scientifically oriented. For many authors, 'cryptofederalism' (Majone 2005) had become a major problem rather than a solution for the EU. The final verdict is from Andrew Moravcsik who juxtaposes 'federal ideology' as a political movement motivating political actors and 'social science theorizing', thus arguing that federalism in EU studies was no social science at all (Moravcsik 1993).

The stigmatization of federalism as ideological and as inappropriate for scientific analysis has become a hindrance to understanding. In the post 2010 Euro-crisis, for instance, it is often argued that the EU's lack of the core features of a state-based monetary union (a large central budget, a system-wide social security insurance, easy mobility of labor, centralized banking supervision etc.) has contributed to the crisis (de Grauwe 2014). Whether such elements are necessary or in what shape or form they would be needed would become clearer through systematic comparison.

It is not very surprising given the propensity to dismiss federalism that there has been a search for alternatives. The most radical solution was to argue for the need to replace federalism with the more neutral concept of multilevel governance (MLG). That allowed for a comparative analysis unencumbered by the ideological baggage of federalism (Hooghe and Marks 2003). Students of MLG have also argued that political systems should not be classified as either unitary or federal, but rather placed on a continuum between these types (Hooghe and Marks 2013). Most importantly, MLG tries to break the link to the state – multilevel systems need not be states but can be located at the international level (Hooghe and Marks 2015). This is an important conceptual advantage over much of the existing federalist

literature which has often argued that federations need not be states but in practice has mostly focused on federal states. It also gains analytical leverage for the analysis of state transformation by offering analytical tools for the authority transfers downward towards regions and upwards towards international institutions, and for the analysis of the structures of the resulting spheres of authority.

At the same time, MLG does not rule out federalism but rather identifies it as a distinct state-based subspecies of multilevel governing systems. But as Michael Keating shows in his article, authority transfers can be understood as part of a broader process of rescaling, which can be studied from a federal perspective. The conceptual issue that Keating addresses is whether multilevel governance is equipped with the requisite analytical, ontological and normative tools to address the many issues brought up by state transformation, notably pertaining to authority, community, identity and legitimacy. These are issues pertaining to *federalism* (as basic values and justifying principles) as well as *federation* (institutional form). Federalism has traditionally dealt with these issues, but mainly in a statist context. In a state transforming world these issues take on new forms. Thus, they are not only federal challenges but also challenges to federalism.

We believe that bringing comparative federalism and EU studies more closely together will yield important insights. How, then, should we proceed? First, we need to be specific on what is to be explained, as well as the theoretically relevant variables that the comparison compels us to vary or to hold constant. That is a standard requirement in comparative politics.

Second, and more specifically, we have to address explicitly the question of whether and how we can compare states and non-state systems, in other words whether and in what sense 'stateness' is an important variable for the research question at stake. This is crucial for any attempt at including the EU in comparative federalist studies. Comparing the EU with federal states should take account of the striking differences between both: In the EU, the higher level has weak military, policing, taxing and spending capacities whereas even highly decentralized states are much stronger in this respect. And the EU is highly asymmetrical (differentiated) compared to federal states. These differences may not be relevant in all issue areas. Recent EU developments in border protection may be a case in point. In any case, it is necessary to establish whether the issue of stateness should be included in the comparison or not.

Third, specific attention has to be placed on the dynamics of process. The EU is not a full-fledged federation but is rather a case of federalization. It is generally assessed under the heading of coming-together federations (see Fabbrini's and Fossum's article in this volume). Its contested nature – amplified by the Euro-crisis, the refugee crisis, and the Brexit challenge – brings up issues of clarifying the relationship between the onus on coming together

and the onus on holding together. These developments have brought about a strong populist pressure for renegotiating the terms of states' role and status in relation to the EU and suggest that the balance may be shifting to that of holding together.

Fourth, and this is the most difficult point, we cannot avoid normative questions. The temptation to argue that the single most important reason for the decline of federal perspectives in EU studies was the normative overdose of earlier writings is tempting but dangerous. Federalism brings up a number of normative issues that are not related to the political program for the creation of the United States of Europe. Purely analytical studies are possible and useful, but it is difficult to avoid normative questions of institutional design when comparing federations or analyzing their dynamics. Analyzing task allocation, intergovernmental agreements, or judicial activity contributes to a better understanding of federations but ignoring how such systems *should* be organized leaves our understanding incomplete and shifts the burden of finding answers to these questions to other disciplines. Questions of task allocation between levels of government cannot be understood or assessed through functionalist analysis like in fiscal federalism (see Keating, this volume). The same can be said about democracy: Analyzing voter behavior, parliamentary votes, media reporting or interest group activity is a valid contribution to our understanding of democracy; nevertheless, issues of democracy and representation raise profound normative questions. And whereas these themes have become more prominent again in federalist accounts (Filippov *et al.* 2004; Hail and Lange 2010; Kymlicka 1995; Kymlicka 1998; Smith 2007), this interest is mainly confined to analysts dealing with multinational federation and those working on the 'demoicracy' project (Nicolaidis 2013). More mainstream contributions deliberately restrict themselves to comparative empirical analyses of patterns of democracy, interest intermediation etc. They refrain from posing normative questions about the appropriate institutional design of a heterogeneous federation.

In the following we proceed by unpacking federalism. That in turn informs our analytical approach and how we think about comparison, both elements of which we draw on to introduce the specific themes that this collection focuses on.

## Federalism as an analytical concept

Etymologically, federalism is derived from the Latin term *foedus*, which means covenant (Elazar 1987). Since today's world is made up of states, and all full-fledged federations are states, there is a general propensity to equate federalism with the (nation) state form. But federalism preceded the sovereign state, and has a broader resonance and a normative potential that was hemmed in by state sovereignty and nationalism. In other words, it is when

we disentangle these three core concepts: federalism, nationalism and state sovereignty that we can begin to consider the applicability of federalism to the European Union setting.

Federal theorizing draws an important distinction between federalism and federation. Federalism as was noted above refers to basic values and justifying principles, and federation refers to the institutional make-up of any federal system (King 1982).<sup>3</sup> The recognition that federalism is not only an administrative arrangement for organizing a system of governing but also a repository of values has been downplayed due to the manner in which federalism has been subsumed under nationalism, especially in the American federalism version. Federalism, and what Burgess (2012) refers to as the federal spirit, embodies a different mentality and conception of community and identity than does nationalism. Federalism has a particular affinity to and a special take on *fraternity* (LaSelva 1996), or what we here for gender-neutral reasons prefer to refer to as solidarity. The solidarity that is associated with federalism is more inclusive than nationalism because it is not confined to one community or way of life. That makes federalism relevant for situations marked by politically salient difference and diversity. As Norman (2006) underlines, multinational federations have developed specific mechanisms for handling the presence of multiple nationalisms and *nation-building* projects.<sup>4</sup>

The tacit assumption that federalism is confined to the state and its presuppositions of state sovereignty has long plagued the European – and no less the comparative – literature on federalism. As Patrick Riley has noted: ‘The oddness of all federal theory ... is due to its having seized on the very concept (sovereignty) which it actually opposed ... its oddity is due to federalism’s having *defined* the autonomy of its territorial units in terms of sovereignty, whereas in fact it would have done better to try to *overturn* the idea of sovereignty; all efforts to divide what could only be conceived precisely in terms of total unity drew federal theory into constant paradox and contradiction.’ (Riley 1973: 88). Today the institutional reality upon which the precept of state sovereignty is embedded is being transformed; that in turn opens new scope for federal theorizing.

Federalism is about divided and shared sovereignty under the precept of non-centralization. Core to federalism is balancing self-rule and shared rule within a system of constitutional constraints. Thus, federalism is inherently dynamic. All federal systems have to solve the balancing problem between self-rule and shared rule. Many authors agree that this is a fragile balance, and that there are ups and downs in terms of centralization (which may vary across issue areas). There is a debate about which causal factors are most important in shaping the federal balance (such as for instance courts and political parties – for the latter see Thorlakson’s article in this volume). Such balancing takes place in all multilevel systems, and our contributions show the relevance of comparing the EU with federations on this count.

The onus on balancing, that the terms under which federal balancing is taking place are changing due to globalization and international juridification and the general recognition that today's world contains deeply imbricated states and societies, compels us to reinvigorate the emphasis on federalization as process. Friedrich (1968) was the foremost modern champion of this conception. He did focus on the EU but did however not unpack federalization and therefore did not show with sufficient precision its analytic utility for the study of the EU. But precisely because the EU is such a complex and contested case it offers unique possibilities for unpacking federalization (see Fossum's article in this volume).

In this brief section we have shown that federalism is more amenable to the study of the EU than what the skeptics have claimed. Federalism's relevance has increased in the sense that some of the conditions that would militate against comparing a non-state European Union with state-based federations have changed as analysts have become more cognizant of the development of the EU and the changes that states undergo in the contemporary world. The next step is to show more concretely how we will proceed with comparing the EU and federations.

## **Two main lines of inquiry**

While we are convinced that comparisons along other dimensions are possible and fruitful, in this volume we have chosen to focus on two broad lines of inquiry which are important and salient in EU research. That is rendered clear in the various contributions to this volume, each of which is attentive and sensitive to the distinct features of the EU, and at the same time speaking to similarities and differences between the EU and other federations through consulting a broad body of comparative federalism research. That is a great aid to the comparative endeavor in the sense that we get a clearer view of where and in what ways we should focus on EU distinctness, and where and in what ways we should think of the EU as an intrinsic part of broader federalizing (or de-federalizing) patterns.

The first line of inquiry focuses on the relationship between federalism and democracy, with particular emphasis on how federal systems respond to and deal with citizens' interests and concerns, within and outside the political system. The second line of inquiry places the emphasis on the relationship among the governments of federal systems.

## **Federalism and democracy**

The contributions under this first dimension focus on the relationship between federalism and democracy with particular emphasis on representation, which is assessed in relation to federalization, patterns of multilevel

parliamentary relations, executive-legislative relations, and political parties. Representation serves as a vital bridging device between federalism and democracy; representation is intrinsic to federalism's balancing of shared rule and self-rule; and the very process of federalization (whether as coming together or holding together) has representation written all over it.

The standard view of federalism is that it connects citizens to the polity along two lines of representation: through collectives (sub-units) and individuals (citizens). This has been labeled as compounded representation (Tuschhoff 1999). Federations vary considerably in how subunits are represented: directly in the central institutions (Germany and the EU); through popularly elected representatives from each sub-unit (US Senate); or through elected bodies representing citizens respectively in their sub-unit (provincial) capacity and in their central (federal) capacity as is the case in Canada.

The European experience suggests the need to reconsider two aspects of the standard conception of representation in federalism. One is the general tendency within the comparative federalism literature to confine representation to what is taking place within given institutional structures; the other aspect implicitly reinforces that, namely to hold onto the standard Pitkin-inspired (1967) approach that casts representation in principal-agent terms. What is however needed to capture the distinctive features of the EU's development is a conception of representation that shows how it operates in the very making of a political system. John Erik Fossum, in his article, argues that Saward's (2006, 2010) theory of the representative claim can be extended to do precisely that, which results in a new analytical perspective on federalization. He argues that the effort to think of the EU in federal terms must place special emphasis on democratic federalization, in other words as a process. The initial EU was not based in a popularly sanctioned federal pact, but was instead marked by the need to obtain popular consent in and through the process of coming together. In order to capture such a process a novel analytical framework was needed that would be capable of tracing commitment and consent to federalism whilst paying sufficient attention to process dynamics, and institutional and structural factors.

A further innovation is to compare and contrast a novel EU trait with the situation in other federations. It is by now well-known that the EU has established a very complex system of representation that connects parliaments across levels. One way of depicting this has been to consider it in terms of a multilevel parliamentary field (Crum and Fossum 2009). Arthur Benz develops a typology of possible multilevel parliamentary configurations and compares the EU with Germany and Canada in order to get a better sense of the varieties and dynamics of multi-level parliamentary relations in these three entities, as well as the broader issues of authorization and accountability that emanate from this.

Nicole Bolleyer queries how patterns of executive-legislative relations in federations shape and condition the prospects for inter-parliamentary activism or joint parliamentary activities. She considers the conditions in three federations that are characterized by different executive-legislative relations, the USA with its separation of powers system; Canada whose relations are marked by parliamentarism; and Switzerland whose system of separation of powers is modified through party ties, and based on these findings considers the prospects for joint parliamentary activities in the EU.

Finally, Lori Thorlakson sheds new light on another still under-examined dimension of comparison of the EU and federal systems, namely parties and party systems. In comparing how comparative federalism on the one hand and the field of EU studies on the other has framed their respective research agendas in the study of parties and party systems, Thorlakson seeks to tease out the most promising avenues for comparison between the EU and comparative federalism research with regard to vote choice in a multi-level setting and party system development. The particular challenge in the EU setting is the issue of upward aggregation to the EU-level.

## Intergovernmental relations

Identifying intergovernmental relations as the second important comparative perspective requires some conceptual clarification. In EU studies, intergovernmentalism is first and foremost understood as an explanatory theory which insists on the primacy of member states in shaping the outcome of political decisions with a constitutional dimension (Moravcsik and Schimmelfennig 2009). Only in recent years has it become more common to use it to designate an empirical phenomenon, namely its suspected move away from the traditional community method towards a more intergovernmental decision-making system dominated by the European Council (Bickerton *et al.* 2015). Both accounts share the view that a prominent role of the member states and of intergovernmental processes is a crucial structural feature of the EU.

In the comparative federalism literature, intergovernmental relations have been discussed for a long time (see Cameron and Simeon 2002 for a prominent statement), but mainly as an important and often informal addition to divisions of powers and political processes set out in the federal constitution. In the comparative federalism literature, the notion of intergovernmental relations is mainly an important empirical feature of federal systems that is easily overlooked by studies focusing on formal constitutional processes. It is not a defining feature of the federal political system which continues to be based on a federal constitution. These differences have to be kept in mind when comparing federal states and the EU from an intergovernmental angle. We believe, however, that the comparative federalism literature offers an important analytical take on intergovernmental relations in the EU because

it normalizes intergovernmentalism in EU studies which tends to be dominated by essentialist arguments about the nature of the EU and about far-reaching institutional change.

Robert Csehi adopts a comparative federalism approach and takes as the point of departure that the economic and financial crisis in the EU has ushered in traits of a new intergovernmentalism in European integration, which in turn suggests less formally regulated horizontal coordination mechanisms among member states. Csehi seeks to capture the changing character and function of horizontal coordination in federal political systems, with specific focus on the EU and Canada.

Sergio Fabbrini takes as the point of departure the distinctive form of intergovernmentalism that has been institutionalized in the EU post-crisis, in particular in the realm of Economic and Monetary Union (EMU). Fabbrini distinguishes between federal unions (federations by aggregation) and federal states (federations by disaggregation), with emphasis on the forms of influence that constituent units exercise on federal decision-making, and compares these with the EU. The assessment shows that the intergovernmentalism currently developing in the EU fits neither model. The EU stands out in terms of the distinctive and particularly grave problems of legitimacy and accountability that this development engenders.

Markus Jachtenfuchs and Christiane Kasack provide a conceptual approach for studying the dynamics of shared policy-making in the EU and in federal systems. The point of departure is that both systems face a dilemma between effective problem-solving by system-wide policies and the preservation of the autonomy of sub-units by decentralized policy-making. Jachtenfuchs and Kasack argue that sub-units try to cope with this dilemma by finding an optimal balance between two variable factors: *exit* from collective policies and *voice* in collective decisions.

In the final contribution Michael Keating takes a bird's eye view of federalism in a state transforming context, highlighting federalism as a set of analytical principles rather than any given form of government. Given that in a transforming world both the meaning of territory and function are changing, the very way in which we consider political order requires re-examining, with obvious bearings on our conception of federalism. Keating analyses this by means of the notion of rescaling.

## Conclusion

The key merit of this collection is to consider the federal challenges facing states and non-states alike in concrete terms as well as from the perspective of challenges to federalism. Empirical and theoretical issues are closely related, and it is when considering federalism and federal systems from both angles that real innovation can come about. We have sought this

cross-fertilization through on the one hand systematically confronting the EU with the experiences of a range of federations in order to discern lessons for the EU and the federations. On the other, we have considered what the case of the EU might contribute to federal theorizing. Is the EU a deviant case that sits uneasily with federalism, or might the EU experience require rethinking federalism in a world of heightened state and societal interdependence? We conclude that federalism has merit. But we underline that the merits manifest themselves when we consider it not as a prefigured script but as a means of fostering intellectual reflection on the core issues of political order and political co-existence.

## Notes

1. Tortola (2014: 1344) notes that

as the integration process moves forward and the EU becomes (or at least is perceived as) more akin to a traditional federal polity, opportunities for meaningful comparisons with the US increase not only in those areas directly affected by integration (comparisons in the field of monetary policy, for instance, became possible only once the Union acquired one) but also, and generally, with respect to all those questions that rely on the two institutional contexts being similar for reasons of variable control or simple plausibility.

2. See also Burgess 2000 for an overview of federalism's role in European integration during 1950–2000, and Glencross and Trechsel 2010 and Castaldi 2009 for assessments of Spinelli's importance.
3. Federalism is about such values as respect, recognition, empathy, toleration. The federal spirit, as Burgess (2012) underlines, is additionally and centrally imbued with liberal democratic constitutionalism.
4. Norman (2006: 163–9) cites seven such principles: (a) partnership; (b) collective assent; (c) commitment and loyalty; (d) anti-assimilationism; (e) territorial autonomy as national self-determination; (f) equal right of nation-building; and (g) multiple and nested identities.

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No potential conflict of interest was reported by the authors.

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