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## Bringing Federalism Back In

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### INTRODUCTION

In the past decade, comparative federalism has moved from the periphery of scholarship on the European Union to the mainstream. While pioneering scholars (see for instance Friedrich 1969; Forsyth 1981; Cappelletti et al. 1986; Scharpf 1988; Weiler 1991; Dehousse 1992; Sbragia 1992) have long applied insights from comparative federalism (or confederalism) to describe and explain the dynamics of European integration, the dominant theoretical perspectives on European integration rejected the relevance of federal comparisons. Intergovernmentalists had clear reasons to do so. From the intergovernmentalist perspective, European integration is driven by the same forces that explain the development of other international regimes (Moravcsik 1998), forces which differ in fundamental ways from the forces at work in domestic settings. From this perspective, any effort to gain comparative leverage on explaining European integration should be based on comparisons with other instances of regional integration (e.g. Mattli 1999), rather than with the experience of federal polities.

Scholars building on Haas' (2004) neofunctionalist tradition who do view the EU as a supranational polity in its own right have less compelling reasons to reject comparative federalism, but most have done so nonetheless. Some associate federalism with statehood and emphasize that because the EU lacks key elements of statehood, it cannot be studied as a federation. Such scholars have developed a new conceptual vocabulary associated with 'multi-level governance' (Marks et al. 1996; Hooghe and Marks 2001). Other 'institutionalist' scholars in the Haasian tradition seem to view an emphasis on the concept of federalism as a semantic distraction. For instance, Sandholtz and Stone Sweet's (1998: 9) study of the processes of 'institutionalisation' that drive European integration seeks to, 'avoid an argument about the precise nature of the EU polity and how it compares with other federal polities'. In short, the federalism lens on European integration has been considered either as privileging the descriptive over the explanatory (emphasizing the 'what' over the 'why') or as overly laden with normative connotations (suggesting what the EU should be rather than what it is).

Despite the best efforts of many EU scholars to steer research away from the dreaded F-word, it has continued to rear its head. The notion that federalism is relevant to understanding the EU has persisted for a number of reasons. First, as the EU has expanded its range of competences into realms typically associated with the nation state, comparisons with federal systems have become ever more plausible. Second, the language and analysis of subsidiarity and ideas related to identifying optimal divisions of authority between member states and the Union have clear parallels in federal systems. Third, political discourse has placed a spotlight on federalism. In particular, Joschka Fischer's controversial May 2000 speech on the EU's move toward federalism (Fischer 2000) stimulated widespread debate on the relevance of federal models for the EU, and the debate over the EU's draft Constitutional Treaty has again placed questions of European federalism centre stage.

Crucially, these trends have combined in partially freeing the federal paradigm from statehood (Elazar 1987; Nicolaidis 2001). Federalism has been defined in terms of leagues or collectivities of states each with a distinct identity (McKay 1999). The study of federalism addresses both the *why* (why federal unions emerge and survive) and the *what* (what forms and variants of political community they represent). Recently, more and more EU scholars have applied the lens of comparative federalism to the EU polity (see for instance Bednar et al. 1996; Koslowski 1999; Schmitter 2000; McKay 2001; Nicolaidis and Howse 2001; Zweifel 2002; Bogdanor 2003; Börzel and Hosli 2003; Kelemen 2003, 2004; Ansell and Di Palma 2004; Fabbrini 2005; Trechsel 2005a; Schain and Menon 2006; Halberstam and Maduro 2007). And conversely, scholars of comparative federalism have discovered the European Union and increasingly integrate the EU into their comparative studies of other federal systems (Friedman Goldstein 2001; Filippov et al. 2004; Rodden 2005; Bednar 2006). Indeed, interest in the EU has helped spark the renaissance in comparative federalism research in recent years, with some scholars arguing that, with more than half of the world's space and nearly half of its population governed by federal

arrangements, an 'age of federalism' may be upon us (Hueglin and Fenna 2006).

The growing trend to apply tools and insights from the study of other federal systems to the EU is part of a broader trend to import tools and concepts from other branches of political science to EU studies. EU studies has never existed on an island completely unto itself; however, for years the field remained isolated on a *presqu'île* with only a tenuous connection to 'mainland' political science. This isolation was encouraged by the fact that so much of EU studies focused on the macro-historical debate over the general explanation for European integration. Today, the literature on EU politics is focusing increasingly on mid-range theorizing, with authors focusing less on explaining why the EU came into existence and more on explaining how it operates in particular domains. However, the federal vision/lens can shed light on a wide range of areas, from questions of power allocation, to democratic legitimacy, to regulatory competition, to fiscal federalism, to party system development and identity formation. In these and other areas, comparative federalism can help EU scholars escape the barren empirical terrain inhabited by those who insist that the EU can only be viewed as a *sui generis* polity.

We divide the remainder of the chapter into four sections. The first section reviews earlier traditions in EU studies that invoked the concept of federalism. Section two explains the main reasons for the turn to federalism. The third section highlights emerging themes for federalism research and section four concludes.

## THE EARLY PHASE: FEDERALISM IN ITS NORMATIVE GHETTO

### Federalism as a Political Goal

The relevance of the federalism lens to European integration has been fiercely contested from the very inception of the EU, and remains so today. This is because, more than any other theoretical anchor to understanding the integration process, the notion of federal Europe is political

and normative: a dream of what the European continent ought to be on the part of idealist thinkers and mainstream politicians alike in the interwar and immediate post-war era (Coudenhove-Kalergi 1938), when scarcely any book about Europe would fail to include the term *federal* in its title. An echo of these visions, the Hague conference of 1948 referred to the European federal project as a destiny, a *finalité politique*. But the choice made in the wake of the failure of the EDC and the run up of the Treaty of Rome, was that of another type of project, the step-by-step functionalism that has made the EU what it is today.

Nevertheless, the pre-war tradition of federalism never left the European scene and continued to inspire figures like Spinelli, Monnet and even Jacques Delors (Burgess 1993, 2000, 2003; Pinder 1998; Sidjanski 2000). Its appeal in the minds of continental politicians lay with the precise constitutional and democratic model it provided. Spinelli, in particular, was influenced by the British federalist literature stemming out of the Federal Union movement (Lord Lothian, Lionel Robbins and Sir William Beveridge among others), which he read on the island of Ventotene in 1939. As Burgess has noted, however, many (if not most) such statesmen in the post-war setting were reluctant to wear the federalist label, preferring instead '... to act as one rather than to use the word itself' (Burgess 2000: 74).

Consequently, the federalist strand in EU studies was weak for the first three decades of the project's life, with federal scholarship confined to a few key authors like Pinder and Burgess. Indeed, even as federal scholarship re-emerged in the 1980s it was tainted by its normative complexion and was viewed with a fair degree of scepticism in many quarters. This unfortunate impression was perhaps inevitable as the authors did indeed view federalism favourably, seeing it as a natural fit with the inherently global 'nature of problems' that confronted humankind; but this was reinforced by a formal definition of federalism integrating ideological positioning, philosophical statement and empirical fact (Burgess and Gagnon 1993). Federalism was defined as '... the recommendation and (sometimes) the

active promotion of support for federation ... ideological in the sense that it can take the form of an overtly prescriptive guide to action' (Burgess 1993: 8). The federal scholars, on the other hand, felt outnumbered and outgunned by those arguing that the then EC was then, and (implicitly) would remain in the future, an inter-governmental enterprise, as opposed to one in which strong supra-national elements were developing and would develop further. There was much misunderstanding and mutual suspicion on both sides.

## The Emergence of Federations

Unsurprisingly, a core theme of this early attempt to fit the EU in a comparative federalism framework was the question of why states or politicians decide to form political union in the first place and under what conditions federations are viable (Forsyth 1981; Burgess and Gagnon 1993). The subject attracted a great deal of attention in the 20 years following world war II in the context of state building in the defeated axis powers and the former colonies and the successful examples of federations in the New World (McKay 1999). Applying these insights to the emerging EU, two broad schools of thought emerged (McKay 1999).

The first explored what Karl Deutsch called 'the essential conditions' for a federation around the notion of *common interest* (Deutsch 1957; Wheare 1964). While the earliest benchmark had to do with a shared aversion to external threat, this was expanded to include the presence of an external military or diplomatic threat or opportunity for aggrandizement (Riker 1964, 1975). Lists of conditions were drawn and assessed such as Deutsch's mutual compatibility of main values, a distinctive way of life, a broadening political elite, increased economic growth, administrative capabilities and social communication. Or Watts (1966) and Wheare's (1956): (1) a sense of military insecurity; (2) a desire to be independent from foreign powers; (3) some previous political association; (4) geographical neighbourhood; (5) similarity of political institutions. But clearly in the EU as well as other unions, these were not universally necessary



conditions and therefore held little explanatory power.

The second perspective treated federalism as an *ideology* and argued that these conditions are not sufficient either. In this view, objective conditions must be combined with the subjective beliefs of the actors involved, as it is the very commitment to the 'primary goal of federalism as an end in itself' on the part of some of them that will help transform the idea into reality (Franck 1968). In the same vein, Pinder (1995) emphasized the conscious action of federalists' support from specific interests, be they groups or particular member states. Burgess also offers a powerful revisionist critique of the established history of post-war integration, seeking to reassert the over-looked role that federalists played at many critical moments in the EU's development. He argued that '... inter-governmental approaches to explaining European integration, with their exclusive emphasis upon the role of states and governmental élites, effectively close off and shut out rival perspectives' (Burgess 2000: xiii). Most recently, Parsons (2003a) also argued for the rehabilitation of the federalist impulse in driving integration forward, attributing to the actions of purposeful supra-national agents at least equal importance to the self-interested actions of national governments. To some extent, neo-functionalism is infused with similar assumptions, emphasizing as it does the importance of support from specific interests generated by the internal logic of integration in various areas.

Both of these traditions, however, have failed to generate a cumulative research programme. Below we present four 'strategies of appropriation' that may facilitate 'bringing federalism back in' to EU studies in a manner that will stimulate well-focused, systematic and cumulative comparative research.

#### BRINGING FEDERALISM BACK IN: FOUR STRATEGIES OF APPROPRIATION

There are several proximate causes for the re-emergence of federalism as a conceptual lens for the EU in the 1990s. First and foremost, the

combined momentum provided by the success of the 'Europe 1992' relaunch of the single market under Delors' leadership combined with the end of the Cold War seemed to project the union into a new era. There is little doubt that the Maastricht Treaty, as the initial institutional embodiment of this new state of affairs, represents the major turning point in this regard: substantively, as the newly relabelled 'Union' was then seen to fulfil minimal conditions for qualifying as an instance of federalism (Hesse and Wright 1996; McKay 1999); and politically, as for the first time, the federal nature of the enterprise became the explicit object of political bargaining. That the pace of integration continued to quicken in the 1990s with further widening of the scope of EU competences at Amsterdam and Nice in 1997 and 2000 appeared to provide mounting evidence that the EU was taking on a federal-type character – a diagnosis obviously contested and contestable (Moravcsik and Nicolaidis 1998; Moravcsik 2001).

As usual with the EU, developments in the real world were followed with a lag by developments in the field of EU studies. The few prior proponents of the EU-as-federal paradigm claimed to be vindicated, since in Burgess' words '... [today], the EU exhibits so many federal and confederal elements in its constitutional, legal, economic and political make-up that only the most ill-intentioned, not to say perverse, observers would attempt to deny it' (Burgess 2000: ix). Indeed, within a decade of Maastricht, courses and programmes on comparative federalism were created – as with the project COMFED bringing together six US and European universities. A number of collaborative projects brought scholars of the EU together with scholars of comparative federalism, and in particular US federalism (Nicolaidis and Howse 2001; Parsons 2003b; Fabbri 2005; Trechsel 2005b; Halberstam and Maduro 2006; Menon and Shain 2006). And articles and monographs on comparative federalism including the EU alongside Switzerland, the US or Germany started to appear regularly (Friedman-Goldstein 2001; Kelemen 2001, 2004; McKay 2001; Zweifel 2002; Börzel and Hosli 2003; Sbragia 2004). Even established, yet contested federations like Canada or India began to look at the EU

as a possible model for accommodating their centrifugal pulls.

It would be a stretch to claim, however, that federalism has taken the field of EU studies by storm. While the standard international relations (IR)-based debate between functionalist, supranationalist and liberal intergovernmentalist approaches appears to have reached a substantial impasse, the EU remains an 'IR-object', with many treating the EU as the most advanced instance of regional integration or as a model for global governance (Nicolaidis and Howse 2002). Nevertheless, the small band of federal scholars in EU studies has recently been joined by a wider band of comparativists, who now include the EU within their universe of comparison (Hix 1994).

In short, scholars who argue for a federalism lens must address two conceptual challenges: how to accommodate the *distinctive* character of the EU while integrating it in the family of comparative federalism; and how to fend off the political and normative connotations of the term, implying a teleological rather than analytical focus. We identify four main strategies for addressing these challenges.

The first strategy we could term *constitutional* (Stein 1981; Cappelletti et al. 1986; Mancini 1989; Craig and de Burca 2002; Fabbri and Sicurelli 2004; Stone Sweet 2004; Halberstam and Maduro 2006; Nicolaidis 2006). Mostly originating in constitutional law, and generally inspired by the European Court of Justice's role and jurisprudence, the strategy rests on the long-held diagnosis of constitutionalization of the treaties. Accordingly, the combination of direct effect and supremacy of EU law has created a direct link between citizens and the supra-national level of governance. In this view, the recent exercise of writing it all down *qua* Constitution merely makes explicit a long-term evolution. In reflecting the nature of the EU as it has evolved, the draft Constitution laid out the three basic principles of federalism as constitutional lawyers would have it (Nicolaidis 2007):

- Structurally, it describes a *multi-tier governance system* in which the member states are units that both constitute and belong to the federal whole, while remaining

autonomous from it in a broad range of areas.

- Functionally, it establishes an explicit *division of power* between the constituent states and the federal whole, *la grande affaire* of federalism, and sets out the ways in which the boundary between them can be changed.
- Procedurally, it organizes an intense *mutual participation* between the respective legal orders involved – states shape the substance of federal supremacy while the federal level must acknowledge state autonomy.

There are limits, however, to this formal constitutional approach. First we can ask whether the failure to adopt an actual Constitution is not itself a testimony to the fact that the EU has not and should not reach this mature state (Moravcsik 2006). Even if the text was adopted it would fail to recognize explicitly the *federal* nature of the covenant, as the British government successfully argued for avoiding the use of this politically loaded expression, and would simply state the EU's *raison d'être* – that we can achieve more by working together than working alone.

The second strategy we could term *disaggregative*. It accepts that the EU cannot be seen as an accomplished or mature federation, stressing instead that it exhibits *some* of the characteristics of a federal polity in certain policy areas, e.g. regulatory or fiscal federalism (see below). Here again, the decision on a common currency led at least those analysts already wedded to federalism to characterize Maastricht as 'the basis of a federal state' (McKay 1999). In this spirit, the majority in the Convention on the Future of Europe, including lawyers, defended the use of the word federal in its Article 1 as describing a decision-making process, but *not* the Union itself: the EU would be a Union of States administering common objectives 'in a federal way'. As such, the reference to federalism would cover only some of the Union's activities, like money, competition policy or external trade, and not others, like foreign policy or economic co-ordination. The latter would continue to be conducted under the so-called intergovernmental method, where the member states have the first and last word.

One teleological variant of this approach can be found in Pinder's distinction between *constitutional* (or 'big bang') and *incremental* federalism (Pinder 1995). Since the former, whereby a constituent assembly of people's representatives would have drawn up a federal constitution for ratification by European citizens, proved too ambitious for the post-war European, a form of *incremental federalism* was adopted. Here, the 'Monnet method' of integration via small steps is repackaged as *neo-federalism*, the combination of a 'federal aim and steps towards it', which is '... in some respects a synthesis of the federalist and the neo-functionalist approaches' (Pinder 1995: 240–1).

The third strategy for bringing federalism back in can be termed *distributive*, in that it focuses on the distribution of power between the centre and the component units as well as among the component units themselves (Nicolaidis and Howse 2001; Kelemen 2003; Bednar 2004; Swenden 2004; Thorlakson 2006). Here the federal lens takes us back to an analysis of the system as a whole while trying to avoid the normative connotation of the constitutional approach. As usual, academic interest followed developments in the real world, with the increasing concern throughout the 1990s over the 'creeping competences' of the EU (Pollack 1994) and efforts to enforce the principle of subsidiarity proclaimed at Maastricht. Not surprisingly therefore, analysts in this vein have been especially preoccupied with the mechanisms designed to protect the rights and powers of the sub-federal units in the federal contract.

This focus on the distribution of authority rests on firm analytical grounds, often with a strong historical component. 'Who does what?', 'Who decides?', 'On what grounds?' and 'What explains the transfer of authority between levels of government?', are surely fundamental questions for all political systems of a federal nature. Under what kind of safeguards do states choose to part with some of their competences? Are different types of 'federal safeguards' (ascriptive, procedural, judicial, structural) functionally substitutable? Is the allocation of competences in a federal polity consistent with the principles adopted at its founding? One of the most important insights from studies of the distribution of

authority in federal systems runs counter to the teleological centralizing tendency of the two strands of analysis we discuss above: the distribution of authority in federal systems moves in two-way 'cycles of federalism', with power sometimes shifting to the centre only to later pass back to the states (Donahue and Pollack 2001).

While much of the scholarship on distribution of authority focuses on explaining why authority is divided as it is, other work focuses on normative questions of how authority *should* be divided. Economists and institutionalists interested in federalism have produced an abundant literature, some of which we discuss below, on optimal design and 'optimal allocation' of competences, be they regulatory or fiscal. EU scholars have borrowed from this literature, focusing on how concerns regarding efficiency and legitimacy should be balanced and authority should be organized in a European Union (EU) composed of 25 member states, and which of the 'sharply different jurisdictional designs' (Hooghe and Marks 2003: 233) suggested by the literature are most relevant (Börzel and Hosli 2003).

A fourth and final strategy deployed to serve the cause of federalism, which we term *essentialist*, rests on a more philosophical premise, namely to ask what the idea or the concept of federalism actually refers to, what is in effect its 'essence'. Perhaps the starting assumption here is that the real debate should no longer be about whether the EU is federal, but *what kind of federalism* it represents, or indeed how the prevailing understanding of federalism should be reconfigured to accommodate the case of the EU and potential cases like it. The main challenge here is to do away with the mental association between federalism and statehood, which has come to spill over from the normative to the analytical domain. In effect, the door for using the federal lens can be opened most widely by the assumption that the EU is not, and will not likely become, a classic federation (Elazar 1987) or the reproduction of any national model at the supranational level (Nicolaidis and Weatherill 2003). In other words, it will instead inhabit the area of multi-state federalism, qualifying as a federal union, not a federal state (Nicolaidis 2004; Magnette 2005).

A variant on this strategy brings us back almost to the beginning, that is the classical distinction between federations and confederations, to the new confederalist school, which views federalism as encompassing the study of confederations and federations. In this regard, King's distinction between federalism and federation provided an early marker; for it is here that we see the embryo of the idea that integration may be '... leading to ultimately to some new form of federal organization' (King 1982; Burgess 1993: 4). This has provided the foundation for Pinder to take up Forsyth's concept of a federal union of States, and for Burgess to explore the avenue of re-conceptualizing confederation into a new or strong form (Burgess 2000). They may, ultimately, be talking about the same thing. Indeed, Forsyth defines federal union and confederation as synonyms and uses the terms interchangeably (Forsyth 1981). Defining the relationship between confederalism and federalism in the light of the actuality of the EU, and seeking to better understand how the concepts interrelate, is a central challenge for EU federal scholarship today (Law 2005).

## TODAY: RESEARCH THEMES

In this section we review a number of topics addressed by scholars employing the lens of federalism to study the EU. We move from the areas in which this approach is most accepted, to the areas where it is most contested. We begin with a discussion of regulatory federalism and fiscal federalism in the EU, two well-established areas of research. We review recent contributions examining the EU's emerging party system from the perspective of comparative federalism. Finally, we discuss the relevance of federal models to questions of legitimacy, democracy and identity in the EU.

### Regulatory Federalism

While the EU may remain a fiscal and foreign policy weakling, it is a regulatory powerhouse. Some EU scholars even characterize it as a 'regulatory state' (Majone 1996; McGowan and Wallace 1996). Applying the lens and the lessons

of regulatory federalism to the analysis of EU regulation has emerged as an active area of research. Research on regulatory federalism in the EU has focused on a series of *normative* and *positive* questions. Scholars have borrowed from the literature on comparative federalism to ask what allocation of regulatory competences serves to maximize administrative efficiency and social welfare (Revesz 1997; Esty and Geradin 2001; Börzel and Hosli 2003). They have also asked what comparative federalism can tell us about the division of regulatory authority that is actually emerging in the EU, what legal and regulatory instruments structure the relationships between the federal centre and the states, and how these relationships affect the legitimacy of EU regulation (Bermann 1997; Halberstam 2001; Kelemen 2001, 2004; Majone 2001; Nicolaidis and Howse 2001; Börzel and Hosli 2003; Parsons 2003b).

The literature on regulatory federalism in the EU suggests that while the EU may be special, it is hardly unique: the EU faces many of the same regulatory challenges, and adopts variants of the same solutions, as other federal polities. The choices that EU regulators make – concerning when federal intervention is justified (the subsidiarity test), what form intervention should take (partial vs. total pre-emption of state authority), what regulatory instruments will be used (loose framework directives or detailed regulations) and, ultimately, the degree of discretion to allow member states in implementing – all echo choices made by regulators in other federal polities.

Viewing the EU in comparative perspective suggests that in the field of regulation, the EU is by no means the weak end of the federal continuum: in some policy areas, EU regulators enjoy a level of authority and exercise a degree of control over member states that clearly exceeds that of federal regulators in other well-established federations (Kelemen 2004).

### Fiscal Federalism and Economic and Monetary Union

Arguably the best-developed literature on federalism is that on fiscal federalism, where



analysts tend to focus on the efficient allocation of fiscal authority. In other words, how the authority to tax and spend *should* be allocated between levels of government in federal systems. Related to this normative concern are a series of positive questions and hypotheses concerning the likely impact of various alternative approaches to allocating authority.

The first widely shared argument of the fiscal federalism literature (building on Musgrave 1959 and Oates 1972) is that in order to maximize welfare, macro-economic stabilization functions and redistributive policies should be assigned to the federal level, while the provision of locally consumed public goods should be the responsibility of state and local governments. Only public goods with significant externalities and economies of scale should be centralized. Macro-economic stabilization should be centralized, because state governments lack the capacity to fulfil this function under conditions of deep integration. Redistributive policies should be centralized, because the mobility of households (both tax avoiders and benefit seekers) would limit the potential for redistribution by decentralized governments. By contrast, if local governments are responsible for providing locally consumed public goods, they can tailor such public goods more closely to local voters preferences. Moreover, as Tiebout (1956) argued, citizens can 'vote with their feet' and relocate to jurisdictions that provide the mix of local public goods and taxation most suited to their preferences. The literature on fiscal federalism also deals with questions of tax assignment, both in terms of which forms of taxation should be levied at which level of government and, crucially, in terms of the importance of imposing hard budget constraints on state governments. The essential conclusion here is that while there may be an important role for inter-governmental transfers in federal systems, decentralized governments must face a 'hard budget constraint'. If instead state governments can count on bail-outs from the federal government, they may easily succumb to the temptation to run excessive deficits, which in extreme cases may destabilize the entire economy.

While there is broad agreement on these basic principles, there is sharp disagreement

concerning other implications of fiscal federalism, in particular concerning the costs and benefits of fiscal competition between jurisdictions. While some argue that fiscal competition can lead to destructive, 'race-to-the-bottom' tax competition that leads to sub-optimal levels of public good provision (Oates 2002), others insist on their positive role in restraining government spending (Hayek 1939; Brennan and Buchanan 1980; Weingast 1995).

These arguments will sound very familiar to anyone following contemporary debates in Europe concerning tax competition, 'social dumping', and the impact of EMU more broadly. From questions concerning whether EU control over monetary policy will eventually necessitate a greater centralization of fiscal power, to debates over whether the Stability and Growth Pact (SGP) should be scrapped, the literature on fiscal federalism has long informed thinking by scholars of European political economy.

Building on Musgrave and Oates, some scholars argue that fiscal federalism suggests that there is a strong case for transferring a number of redistributive and public goods-related policies – and the taxation capacity to fund those activities – to the European level (Inman and Rubinfield 1992; Persson and Tabellini 1996; Scharpf 1999; Tabellini 2003). Official pronouncements – from the 1977 MacDougall Report on the feasibility of EMU to the 1989 Delors Report – have long relied on theories of optimal currency areas and fiscal federalism to, argue that EMU would need powerful fiscal capacity to deal with asymmetric shocks (Mundell 1961; Sachs and Sala-i-martin 1991).

Similarly, scholars have applied lessons from fiscal federalism to assess the credibility – and ultimately the desirability – of the SGP (Von Hagen and Eichengreen 1996; Rodden 2006) designed to enforce fiscal discipline among member states after the transition to EMU. While some observers have reacted to its recent violations by calling for the SGP to be strengthened, the lessons of fiscal federalism cast serious doubt on the need for the SGP in the first place. As Rodden (2006) explains, the literature on fiscal federalism suggests that in federations where the centre is vulnerable to

pressure to bail out states that run excessive deficits, it is vital for the centre to impose limits on borrowing by states such as an even stronger SGP. However, the EU is not vulnerable to pressure for bail-outs. Its fiscal capacities remain so limited that neither voters nor creditors perceive implicit guarantees from the EU to bail out member states, and, will therefore discipline states themselves.

In sum, the literature on fiscal federalism is rich in theoretical models and empirical findings that can inform debates concerning EMU. This literature both provides indications of the challenges EMU is likely to face and offers insights that policy-makers can draw on in responding to those challenges.

### Federalism and the EU Party System

Federalism also offers useful a lens on the political side. With the growing power of the European Parliament (EP), research on EP 'party groups' and more generally, the development of European parties and their relationship with national parties is also on the rise (see Chapter 12 in this volume). The rich literature on the role of party systems in federations, and the experience of other federal systems can provide useful comparative leverage for the study of the emerging European party system.

Some scholars have treated party systems as independent variables in explaining the dynamics of federalism. Riker (1964) emphasized how the decentralized structure of US political parties helped to defend state interests and maintain federalism in the face of centralizing pressures. Bermeo (2002) highlights the opposite dynamic, whereby the incorporation of regional interests into national political parties can help maintain federalism in systems threatened by centrifugal pressures.

Other scholars have treated party systems as dependent variables, shaped by broader developments in federal systems. In their historical study of Canada, Great Britain, India, and the United States, Kollman and Chhibber (2004) find that party systems develop by tracking the shifting allocation of power in the federation.

Applying their insights to the EU, one would predict that the increasing transfer of authority from the national to the EU level (Donahue and Pollack 2001) will be accompanied by a strengthening of the role of European-level parties. Indeed, though not framed in terms of comparative federalism, Kreppel's (2002) work suggests that the increasing legislative power led to increased centralization of party groups in the European Parliament.

Conversely, Hix et al.'s (2006) study of the development of parties in the European Parliament explicitly draws on the experience of federal systems. They use literature on the formation of national and regional parties in federal systems to develop hypotheses suggesting why, in a highly decentralized polity like the EU, regional conflicts would rarely be expected to emerge as major sources of cleavage in elections to the parliament at the federal level (2006: 79). Rather, this literature suggests that 'the left-right dimension should be the main dimension of conflict in the European Parliament and also the main axis of party and coalition formation' (2006: 87).

In a recent study, Thorlakson highlights the benefits of the comparative federalism approach to the study of the European Party system: 'First, it provides the analytic tools to assess linkages between national and European party systems. Second, it raises important questions such as how different models of federal aggregation and political competition at the federal level channel conflict and balance partisan and territorial competition through the linkage or separation of party organisations and party systems' (Thorlakson 2005: 468–9). Her finding – that party systems at the state and federal level remain most 'incongruent' in federations where power is most decentralized – supports Kollman and Chhibber's conclusions. She emphasizes how such lack of congruence between the national and the emerging European party systems makes it difficult to build linkages between national parties and party groups in the EP. The literature on party systems in federations can both stimulate hypothesis formation and provide empirical material for comparative studies of the process of party formation at the European level.

### Legitimacy, Democracy and Identity

A fourth strand of insights from federalism studies turns to the most fundamental macro-political question, namely the connection between legitimacy, democracy and identity in the formation and maintenance of the polity. While the legitimacy crisis of the EU, first made visible with Maastricht and reaching an apogee in the aftermath of the no votes on the European Constitution, spurred a great deal of scholarship on the so-called democratic deficit, scholars were slow to bring comparative federalism to bear on the issue.

To be sure, this is perhaps where federalism as a political project and federalism as an analytical framework are most intertwined, since the diagnosis around the EU's lack of legitimacy tends to revolve around whether it is – rightly or wrongly – taking on the features of a federal state. On the 'pro' side, a classic point of departure is to contrast the EU with the 1787 American settlement and the emergence of an indigenous ideology that may appropriately be termed federal democracy (Elazar 2001). Indeed, US federalism was not only seen by the founding fathers as a means of consolidating cooperation between the states, but also as means of deepening democracy within the states themselves through the appeal to the doctrine of 'dispersed sovereignty' or the idea that sovereignty belonged neither to the states nor to the federation, but to 'We, the People' (Magnet 2006). While the EU lacked such a democratic settlement at its origin – sovereignty in this construct still rests with the member states – the adoption of a constitution would be a way to bring about a paradigm shift for Europe similar to that which was wrought two centuries ago in the former British colonies. On the 'anti-federal' side, the civic-republican school continues to stress that democracy in Europe was left to rest squarely with the state for good reasons (Lacroix 2002). In line with the *essentialist* strategy outlined above – redefining federalism as a non-statist construct – the question which animates federal studies of the EU today is whether it is possible to adapt the federalist lens to an 'in-between' vision of democracy.

This line of thought can first be found in studies of federal citizenship in the EU which stress the asymmetry between its strong horizontal and weak vertical dimension (Magnet 1999). To be sure, a number of scholars of the EU have based their analysis on the three legal orders with which Kant defines a 'federation of free states', namely relations between citizens and state, relations between states and relations between nationals and a foreign state (Kant 1983; Magnet 1999; Cheneval 2005; Ferry 2000; Eleftheriadis 2001). But it is the third, cosmopolitan order, characterized by systematic non-discrimination and mutual recognition, which has been perfected in the EU context, including an extraterritorial dimension at odds with territorially-based notions of democracy (Nicolaidis and Shaffer 2005). Indeed, the kind of institutional supranationalism that has characterized the EU differs from federalism most in the weakness of the direct link between citizens and the whole. While some authors focus on the institutional incarnation of such a direct link through the European Parliament, others ask what is the political foundation for federal citizenship beyond specific institutions, in terms of forms of participation and contestation linked to multi-level governance, as well as in terms of (objective) rights and (subjective) feeling of belonging. While comparative federalism can shed light on all these dimensions of a nascent European citizenship, such citizenship remains in its infancy and is a far cry from that found in the other federal projects (Beaud 2004; Christin et al. 2005).

The second strand of research concerns identity. Most analysts agree that in contrast to American federal unity, the EU is not founded on the fiction of a single people or even the idea that its creation would necessarily bring one about. There is sharp disagreement among EU scholars as to what degree of common European identity is necessary to stimulate and support further transfers of authority to the EU level, and how likely it is that such common identity is to emerge (Cederman 2000). Scholars of identity politics in Europe recognize that 'Europeanness' may be mixed with national and subnational identities to form nuanced multiple identities (Choudhry 2001;

Risse 2001). Others argue that the irreducible diversity of not only cultural but also political identities in Europe is not antithetical to a federal vision, if such a vision is conceived as a federal union (rather than a federal state) and seeks to develop novel understanding of democracy, or *demosi-cracy* (Nicolaidis and Howse 2001; Nicolaidis 2004).

It is striking, however, that very little research has been conducted that seeks to draw lessons from the experience of identity formation in multi-national and multi-cultural federations (India, Nigeria, Belgium, Canada, Switzerland) for questions of 'European' identity formation in the EU. EU scholars may benefit greatly from asking what the experiences of other multi-national federal systems may have to teach us. Ultimately, federalism is about the primacy of the political and the idea that political legitimacy can only be found through a sustained equilibrium between unity and diversity, thus ensuring constitutional government in plural liberal democratic societies (Wheare 1963; Rosamond 2000). In this sense, it may offer more inspiration to EU studies as an ideal type than through any of its historical incarnations.

### CONCLUSION: CRISIS? WHAT CRISIS? ON THE DURABILITY OF EU FEDERALISM

In the end the federalism lens may be most useful in helping us assess the trajectory of the EU in the *longue durée*. Politicians and pundits proclaim the EU to be in 'crisis' with astonishing regularity. Events great and small including 'No' votes in EU referenda, stalled budget talks, rising protectionism, attacks on the Euro from idiosyncratic Italian politicians, and even blockades on British Beef are treated by many as threats to the survival of the European Union. Likewise, many policy-makers and scholars suggest that the EU's current institutional arrangements will not function in an EU of 25 (or more) member states, and that without significant reforms, the EU's institutional machinery may grind to a halt. Is EU federalism indeed as fragile as the persistent reports of 'crisis' suggest? Are the EU's basic

institutions indeed in danger of collapsing under the weight of enlargement? More often than not, these questions are addressed on grounds of intuition and conjecture rather than theory and systematic comparative analysis. And yet, a potential guide to the fate of the EU lies at hand, in the study of stability and instability in other past and present federal systems.

At the most general level, the literature on federalism does suggest that those who fear for the EU's future may have a point. After all, most federations fail (Frank 1968; Lemco 1991). Federalism is inherently unstable because all federations face two fundamental dilemmas (Riker 1964; Bednar et al. 2001; De Figueiredo and Weingast 2005): they must prevent the two levels of government from undermining federalism, first by federal governments overreaching their competences, second by constituent states shirking on their commitments to the federation (Halberstam 2004). Unfortunately, institutions that help to resolve one of the dilemmas of federalism often exacerbate the other. While constitutions may provide for what appear to be rigid divisions of authority, in practice there is a continuous 'ebb and flow' of authority between states and the centre (Donahue and Pollack 2001; Filippov et al. 2004). To be durable, a federation must provide for a rigid enough division of authority to prevent one level of government from usurping the authority of the other, while remaining flexible enough to allow for shifts in the division of authority in response to economic, technological, socio-cultural and political developments (Nicolaidis 2001).

Recent work on the concept of self-enforcing federalism (Bednar et al. 2001; Filippov et al. 2004; De Figueiredo and Weingast 2005) suggests that one way to resolve this tension is for federal institutions to be self-enforcing in the short term and self-reinforcing in the long term. To be *self-enforcing*, they must create a structure of incentives in which no player wants to deviate from the rules and commitments of the federation, given their expectations about other players' behaviour. To be *self-reinforcing*, they must encourage behaviours that, over time, serve to expand the range of situations in which it is self-enforcing. So



the single market is currently weakened, for instance, given growing expectations of protectionist defection, and the question is whether EU institutions still have the power to be self-reinforcing through rewards and punishments.

Whether and under what conditions one thinks the EU will fall apart depends on what one thinks holds it together. The literature on stability and change in federal systems suggests a number of common sources of institutional stability mentioned in this chapter, from the classic common external threats (Riker 1964), to a sense of federal comity or culture (Franck 1968; Elazar 1987), judicial enforcement of federalism disputes (Bzdera 1993; Bednar et al. 2001), structural safeguards (Bednar et al. 2001), or trans-state party systems (Riker 1964; Filippov et al. 2004). Which of these is most important in holding the EU together, and which is currently being strengthened or weakened, are key questions that can only benefit from a comparative perspective.

Assessments of the ultimate durability of the EU's institutional arrangements need not take place in a theoretical and empirical vacuum. Scholars who want to think systematically about the EU's short-term 'crises' and long-term prospects, can draw on recent theoretical work and the long historical record of successful and failed federal systems. Bringing federalism back in may not help make better predictions, but it is certainly a good way to stop obsessing about the EU's unique character and instead to begin shedding light on it in its proper global context, across time and space.

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## Normative Political Theory and the European Union

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### INTRODUCTION

In 2005 the French and Dutch referendum rejections of the European Union's Constitutional Treaty once again brought issues of the EU's legitimacy and identity to the forefront of political debate.<sup>1</sup> Does the EU suffer from legitimacy deficits? If so, what are their alleged symptoms, diagnoses and prescriptions? Is there, and should there be, a 'European identity'? Must Europeans share a core of values, traditions and rights – and should that requirement deny Turkey membership?

The expression of public concern in Europe for these issues of normative political theory underscores the value of such research both for doing and for understanding politics. This academic subdiscipline centrally seeks to evaluate the legitimacy of institutions and policies, and scrutinizes both the relevant standards, and the soundness of their normative grounds. The salience of such issues of normative political theory in the current political debate confirms a recognizable pattern: Perceived political crises increase the demand, supply and impact

of normative political theory. The insights of John Locke, Jean-Jacques Rousseau, Immanuel Kant, Mary Wollstonecraft, John Stuart Mill, Karl Marx, John Rawls, Jürgen Habermas and Susan Okin and others arose from, and informed, the political crises of the day.

Consider the alleged legitimacy deficit of the European Union (EU). Worries about a 'democratic deficit' did not emerge in response to the Constitutional Treaty. Indeed, the reverse may be argued: that concerns about such deficits actually added fuel to the calls for a constitution for the EU. Popular disquiet had already gained political salience in response to the contentious ratification process surrounding the Maastricht Treaty on European Union. Indeed such reactions were in line with the predictions of some scholars, who had warned of domestic backlashes in response to European integration (e.g. Keohane and Hoffmann 1991: 29).

What is at stake – for the EU and for academic subdisciplines? For some political theorists, legitimacy is centrally a matter of whether citizens have trust in the future