

Federalism and Foreign Relations in the United States and the European Union: Hierarchy versus Pluralism

Over the last twenty five years, a paradox has manifested itself at the heart of the European integration project. On the one hand, the EU has been charged with ever greater responsibilities. From a narrowly defined project of market integration, the framers of the EU Treaties have transformed the EU into a polity active in a broad range of policy-making areas, including environmental protection, energy policy, police and judicial cooperation in criminal and private law matters, and so forth. On the other hand, Member States have become increasingly reluctant to share let alone surrender powers to the EU level of governance. The result, political scientists have argued, has been the emergence of a ‘New Intergovernmentalism’, i.e. a modus of integration in which the scope of the European integration project has expanded in parallel with an increasing grip of Member States on EU decision-making processes (see e.g. Bickerton e.a. 2015).

This paper explores this paradox in one particular area of EU policy- and law-making action: the area of foreign relations or ‘external action.’ The paper aims to foster a better understanding of the constitutional relationship between the EU level of governance and the Member States in the undertaking of action on the international scene. In particular, it tackles the question of how the EU Treaties, which in a functional sense can be understood as the constitutional charter of a compound EU polity, strive to reconcile unity and diversity in the sphere of EU foreign relations. Further operationalising this objective, the paper examines, firstly, how ‘foreign affairs powers’ are divided between the EU and its Member States and, secondly, how conflicts between the EU and its Member States in the undertaking of international action are prevented or resolved.

The paper adopts a comparative methodology. By comparing and contrasting the balance between unity and diversity in the sphere of foreign relations in Europe and the United States, the paper firstly examines the constitutional landscape in the EU from an external vantage point, thereby creating a potential for critical assessment. Secondly, the paper explores whether lessons can be drawn from the experience of the United States in this area. The paper advances a two-fold argument. First, in historical terms, it argues that in both polities the relationship between the centre and the member units has undergone a transformation from a paradigm of exclusively federal or EU powers to a paradigm in which powers are shared in principle. Second, in normative terms, and drawing on the US experience, the paper argues that much is to be gained from understanding shared EU powers as concurrent powers. Under this understanding, the existence of constraints ought to be recognised on the exercise of shared powers by the Member States, in particular when the EU itself has undertaken international action. It follows that ‘mixed’ or joint EU-Member State action should be considered the exception rather than the general rule.