Political and Normative Limits to Piecemeal Integration

Rethinking the European Project After the Crisis of Monetary Union·

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"Economies are politically embedded, and this is decisive for the way they perform" (E.L. Jones, *The European Miracle*, 2nd ed. 1987:XXIII)

Introduction: Thesmos v. Nomos

At some time about the end of the 6th century BC, the word for law as set down for the people's benefit by the law-giver, *thesmos,* was replaced by *nomos*, the law as approved and enacted by the people itself (Maddox 1989*).*Despite the central role assigned to law in the unification of the continent--"Integration through Law " being the title of one of the earliest and still influential series of texts on European integration--the leaders of the European Union seem to have always ignored a basic distinction that was well understood by Greek leaders even before the age of Pericles. In a sense, this is not surprising since Monnet's functionalist approach to integration was actually meant to obfuscate the difference between *thesmos* and *nomos*—or, using modern terminology, between technocracy and democracy. The essence of Monnet's philosophy has been aptly summarized by Pascal Lamy, former European Commissioner, erstwhile lieutenant of Commission President Jacques Delors and currently managing director of WTO: "Europe was built in a St.Simonian [i.e., technocratic] way from the beginning, this was Monnet's approach: The people weren't ready to agree to integration, so you had to get on without telling them too much about what was happening" (citation in Ross 1995: 194). This was also the position of Ernst Haas and of the other members of the neofunctionalist school. Elite groups most intensely concerned with an issue, Haas asserted, have the greatest impact on national decision-making, which is why a majority, in the strict sense, is not required to make policy (Moravcsik 2005: 352; see also Majone 2009, chapter 1). For Haas and his school the basic problem was not how to "Europeanize the masses"; rather, the problem was how to make "Europe without Europeans" (Schmitter 2005). Thus, while neofunctionalism was meant to be a theory of *political* integration, its practitioners badly underestimated the importance of popular support for the long-term viability of the European project. The superior problem-solving

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capacity of supranational institutions was supposed to produce a sufficient normative basis by inducing the progressive transfer of the loyalties and political demands of social groups from the national to the European level. This is what Haas meant by political integration: "Political integration is the process whereby political actors in several distinct national settings are persuaded to shift their loyalties, expectations and political activities to a new centre, whose institutions possess or demand jurisdiction over pre-existing national states" (Haas 1958: 16).

According to Haas, the bureaucratized nature of European states entailed that all crucial decisions are made by elites: public policymakers, as well as economic elites, trade unions, professional associations, business lobbies, etc. Public opinion at large, on the other hand, was deemed to be unimportant (Haas 1958: 17). A direct consequence of this elitist view of the integration process, and of the failure to convert a majority, or even a significant minority, of Europeans to the cause of political integration, is the EU's "democratic deficit"—the absence or incomplete development of the institutions and practices of parliamentary democracy at European level. As Heinrich Wefing wrote in *Die* Zeit of 29 September 2011, the EU is not undemocratic but "underdemocratized" (*unterdemokratisiert*). In the absence of popular support for the political unification of the continent, the founding fathers of communitarian Europe, and all integrationist leaders after them, were faced with a fundamental trade-off between democracy and integration—which they consistently resolved in favour of integration. Pascal Lamy's characterization of the Monnet approach gives a good idea of the atmosphere prevailing, then and now, not only in Brussels, but also in many national capitals. Indeed, as the present crisis of the euro zone has shown, the distance separating European citizens from the leaders and the institutions of the EU is growing instead of shrinking. Thus, the plan to have the national budgets verified in Brussels before they can be examined by the national parliaments would transform the democratic deficit into a democratic bankruptcy. Similarly, creating a supranational authority to manage an orderly default, should a country be unable to repay its debts—a plan seriously considered at some point by Wolfgang Schaeuble and by other members of the German government—would place the debtor country in the position of a mandated territory. As the crisis intensifies, all the proposed solutions tend to aggravate the democratic deficit and, more generally, the legitimacy deficit of the EU. Moreover, it is not only the citizens that are being excluded from the debate about the future of the euro zone, but also most national governments, as well as the European institutions--including the European Central Bank. Solutions are now expected from the deliberations of the leaders of France and Germany—countries that bear a heavy responsibility for the present situation, in particular for having weakened the Stability Pact in 2003, and refused to give Eurostat the means of checking the economic data provided by Athens in 2004 and 2005.

But it is not only political leaders who failed to face reality for so long; many, perhaps most, students of European integration have shared with the politicians and the Brussels bureaucrats what I have called a political culture of total optimism. Hence, praises of "the inherent ability of the EU integration process to constantly reinvent itself as part of an evolutionary process of political and economic survival"; and the conviction that "the approach to integration followed for half a century is still basically valid, and capable of evolving in response to changing pressures and new priorities" These quotes are taken from papers by legal scholars (citations in Majone 2009: 207). European social scientists have been even more enthusiastic in their assessment of the achievements of the approach to integration followed for half a century. Even a distinguished monetary economist could write, only a few years ago: "The success of the euro is not only technical and economic, it is also and foremost political. The euro is now the most visible and practical symbol of the progress towards a political union in Europe" (De Grauwe 2004: 363).

It seems that to get more realistic assessments of the current predicament of the EU—including the consequences of the by now chronic confusion of *thesmos* and *nomos*--we have to turn to columnists and other opinion makers. An excellent recent example is the article by Heinrich Wefing mentioned above ("Fragt das Volk!"--"Ask the People!"--in *Die Zeit* of 29 September 2011). Starting from the opinion of the Bundesverfassungsgericht that under the German Constitution of 1949 the limits to the transfer of national sovereignty to the EU have been well-nigh reached, Wefing argues that any significant step towards "more Europe" should be preceded by a popular referendum—even at the risk of a negative result, since there is simply no other way of legitimating the integration process. The present malaise, he points out, is not caused by the idea of European integration but by the integration methods followed so far. This is a challenge to all students of the integration process to re-examine critically the structural flaws of the imposing edifice erected in more than half a century of well-meaning but often reckless efforts. Are there intrinsic limits to how far or how deep economic integration can go before running into political, normative, and even economic constraints? I shall argue that acknowledging the existence of structural limits to deep economic integration is important for understanding, not only the current crisis but also to uncover the roots of the legitimacy crisis of the EU and its institutions.

The limits of neofunctionalism

Aside from some concerns recently expressed about the eventual limits of EU enlargement, the possibility that the continuous expansion of supranational powers may run into binding constraints has been pretty much ignored by both European leaders and students of European integration. When

a prominent legal scholar and member of the European Court of First Instance wrote that "there is no nucleus of sovereignty that the Member States can invoke, as such, against the Community" (Lenaerts 1990: 220) few people seemed to object to, or even to take notice of, these words. And yet, useful ideas bearing on this issue have been available for quite some time. In particular, Karl Polanyi's argument that only a socially constrained market can be an efficient market (Polanyi 1957 [1944]) has provided the initial inspiration for the twin notions of embeddedness (Granovetter 1985) and of social capital (Putnam 1993). Common to both concepts is the idea that a market cannot operate efficiently unless it is supported and constrained by a set of shared norms--a common culture that allows market actors to know whom they can trust and count on, to respond to unforeseen contingencies, and that also reduce transaction costs by increasing the probability that contracts will be kept. Starting from quite different ideological and methodological assumptions, also Friedrich Hayek (1948[1939]) raised fundamental questions about the conditions under which full economic and political integration may be possible, see below.

By contrast, ideas about the existence of limits to piecemeal integration were completely foreign to scholars, such as Ernst Haas, who started from the assumption that the forces moving integration forward—in Europe and perhaps more generally--are both endogeneous and self-reinforcing. As is well known, Haas and his school explained the dynamics of the integration process by means of the notion of "spillovers", according to which initial steps towards integration trigger, more or less automatically, endogenous economic and political forces providing the impetus for further integration. The basic intuition is that different parts of the economy do not exist in isolation. If tariff barriers and quotas are removed in order to facilitate the formation of a single market, this would in turn generate a need to deal with non-tariff barriers. Harmonization of national laws and regulations is one effective way of dealing with such barriers to intra-Community trade. Again, national markets cannot be integrated without supranational rules restricting the interventionist tendencies of national governments, as well as the protectionist temptations of both publicly-owned and private firms. Hence the Treaty of Rome's strong rules on competition, state aid, and public procurement. But then, it has been argued, a single European market cannot truly be said to exist as long as monetary sovereignty persists at the national level; hence the need of a common currency: *One Market, One Money* (Commission 1990). Again, is it possible to conduct an effective monetary policy at the supranational level without a close coordination, if not strict harmonization, of the financial and social policies of the members of the monetary union? This is precisely the question been raised today in connection with various proposals for resolving the sovereign-debt crisis of the euro zone.

To this extent the intuition of the neofunctionalists and of their latter-day followers seems to have been confirmed by recent developments. However, the observation that different parts of the economy do not exist in isolation is a truism rather than an insight leading to a theory capable of explaining both the benefits and the limits of economic and political integration. The deeper and more productive view is Polanyi's notion of the social and political embeddedness of the market—whether national or international. The technocratic view of economic and political integration which underlies the argument of the neofunctionalists may be compared to the neoclassical view of the firm as a production function. As Ronald Coase pointed out long ago, the neoclassical view fits a world of zero transaction costs. Once the existence and significance of such costs is acknowledged, the firm is no longer seen as a mere production function, but as a system of governance of contractual relations. Organizational variety is explained by the fact that transactions differ in their attributes, which means that their governance needs vary. Transaction-cost economies are realized by assigning transactions to governance in a discriminating way. Starting from this insight, the transaction-cost approach to the study of economic organization has been able to yield new and deeper insights on such issues as vertical integration; the multi-divisional firm; the limits to integration, i.e., the limitations of firm size; and even to throw new light on the meaning of corporate culture (Williamson 1985; Milgrom and Roberts 1992). More recently, this approach has been used to study the politics of economic policymaking (Dixit 1996). From this perspective, the neofunctionalist view of regional integration, like the neoclassical view of the firm, fits, at best, a world of zero transaction costs.]

It would of course be unfair to criticize Haas and his followers for having failed to anticipate later theoretical developments. The fact remains that they never gave much thought to the political and normative costs of a strategy for achieving political integration through piecemeal economic integration. In terms of such a strategy, it is almost inconceivable that the limited normative resources available to the supranational institutions could one day become a serious constraint on further task expansion. The error was compounded by a serious overestimation of the effectiveness of such institutions relative to the problem-solving capacity of the national governments. Neofunctionalists simply assumed that the comparative advantage of supranational institutions—their central position, superior information, capacity to act as "honest broker", and, not least, their assumed policy expertise—were such as to guarantee their effectiveness, and thereby a progressive transfer of loyalties and political demands from the national to the supranational level.

The Community method and the integration/democracy trade-off

On the occasion of the celebrations for the fiftieth anniversary of the Rome Treaty in 2007, some speakers attributed the accomplishments of half a century of integration to the invention by the Founding Fathers of an original institutional setting, having in the Community method its most significant expression. What these speakers failed to note, however, was that the continuous expansion of the scope of this method is also one of the main causes of the EU's democratic deficit. In choosing a high level of institutionalization as their approach to integration, the Founding Fathers overlooked the fact that "[i]t is not institutions that create a sense of belonging, but a sense of belonging which makes institutional constraints acceptable" (Guéhenno 1993: 79). Acceptance of institutional constraints is particularly problematic when both the legitimacy and the effectiveness of the institutions are questioned, see below. In the absence of popular support for the political unification of the continent, the authors of the Paris and Rome treaties, and all integrationist leaders after them, were faced with a fundamental trade-off between democracy and integration—which they consistently resolved in favour of integration. Perhaps the clearest example of how the integration/democracy dilemma was resolved is provided by the so-called Community method, which defines the role of the various institutions and the modes of their interaction. As defined by the European Commission's *White Paper on European Governance*, the classic Community method rests on three principles: the Commission's independence; its monopoly on legislative proposals; and the role of the European Court of Justice (ECJ) as guardian of the rule of law and of the balance among European institutions. From a normative point of view, the paramount feature of this method is the monopoly of agenda-setting enjoyed by the non-elected European Commission: where the method applies—roughly, in all matters related to economic integration—only the Commission can make legislative and policy proposals. The Commission also proposes the legal basis for the measure under discussion, which basis determines the required majority in the Council.

It is important to understand what is implied by this monopoly of agenda-setting. First, other European institutions cannot legislate in the absence of a prior proposal from the Commission. It is up to the latter to decide whether the Community should act and, if so, in what legal form, what should the content be, and which implementing procedures should be followed. Second, the Commission can amend its proposal at any time while it is under discussion, but the Council can amend the proposal only by unanimity. On the other hand, if the Council unanimously wishes to adopt a measure that differs from the Commission's proposal, the latter can deprive the European legislator of its power of decision by withdrawing its own proposal. Of course, the Council and the European Parliament may advance suggestions for new legislation, but the Commission is under no obligation to follow up the suggestions. Such a sweeping delegation of legislative powers to a non-elected body was a response to the crisis of the mid-1950s. After the collapse of the plans for a

democratic, pre-federal European Political Community, the architects of the Economic Community faced a situation never contemplated by the federalists of the first post-war decades: the existence of a trade-off between democracy and integration. The implications of the choice of the fathers of communitarian Europe to give priority to integration did not appear as serious to them as they appear to us today because it was expected that the competence of the European Economic Community would remain so narrow that the indirect legitimacy provided by the democratic character of the member states would suffice. Even Robert Schuman, father of the Coal and Steel Community and "European saint", thought that the competence of the supranational institutions should be limited to technical problems, and should not extend to functions involving the sovereignty of the member states (Milward 1992). Also at the national level, after all, certain technical tasks are delegated to non-majoritarian institutions such as politically independent central banks or regulatory authorities. As we shall see in later sections, however, such institutions, while politically independent, are socially and politically embedded. The absence of a European government, of a European political culture, and even of an articulate public opinion means that at the European level non-majoritarian institutions are not just independent but actually "disembedded".

The relatively limited scope of the original objectives explains why the debate about the democratic deficit started only after the Single European Act and especially the Maastricht Treaty expanded significantly both Community competences and the domain of application of majority voting. What was originally a marginal trade-off—a small sacrifice of democracy for the sake of greater efficiency in limited areas of economic integration—became a surrender of basic principles of representative democracy as the competences of the EU kept growing. Despite the ever widening gap between supranational powers and democratic legitimacy, most critics of the democratic deficit are reluctant to admit that the root cause of the phenomenon they deplore lies in the precedence given to integration over basic democratic norms. Less realistic than the founders, they would like to have both—more integration *and* more democracy—and grope for ways of resolving the basic dilemma without either questioning the logic of the methods followed so far, or admitting the lack of popular support for a full-fledged European government. However, all attempts to increase the legitimacy of the EU by such devices as the direct election of the European Parliament and the steady expansion of its powers, the symbolism of EU citizenship, and the launch of various "social" programs—from the agricultural, regional and cohesion policies to pro-labour regulations—have failed, for the simple reason that they do not tackle the underlying problem. In sum, scholars who lament the EU's "democratic deficit" in its different facets, and suggest possible solutions, tend to focus on epiphenomena, when they should go back to first principles in order to identify underlying

causes and possible remedies. Without going back to first principles there is no hope of understanding, let alone resolving, the legitimacy problems of the EU.

Legitimacy and effectiveness are of course distinct concepts. Legitimacy involves the capacity of a political system to engender and maintain the belief that its institutions are capable of resolving the major problems facing society. However Martin Lipset (1963:64-8) reminds us that an unsatisfactory level of effectiveness, especially in terms of economic growth, will eventually endanger even a legitimate polity's stability. It is therefore important to keep in mind that the effectiveness of the Community method has been questioned since the beginning of the integration process. According to most economists and economic historians, the contribution of Community policies to the growth of Europe in the 1950s and '60s—when Europe's rate of growth was second only to Japan's--has been very limited. Thus, it has been estimated that by 1965 the cumulative effect of the common market's establishment on the GDP of the member states barely reached one-half of one per cent. After the early phase of rapid catch-up with the United States, development stagnated and even regressed, so that the desire to improve poor economic performance has guided EU policy over the last thirty years (Majone 2009: 81-7). In spite of ambitious projects such as the Single Market and Economic and Monetary Union, the Community method has thus proved unable to reverse, and even to stop, the steady deterioration of the relative position of the EU as a whole with respect to its major international competitors. It is, however, a basic feature of the political culture of EU leaders to attach much more importance to process than to outcomes. Hence, despite growing evidence about the limits—when not the obsolescence—of the Community method, variants of the model envisaged by Monnet have been applied to areas traditionally regarded as being at the core of sovereignty such as monetary policy and justice and home affairs (Dehousse 2011).

The decoupling of politics and economics

The possibility of separating economics and politics had been one of the key, if implicit, assumptions of the founders of the EEC. In fact, the Treaty of Rome never mandated that social policies should be harmonized prior to or concurrently with trade liberalization inside the common market. Rather, it suggested that social harmonization should be regarded as a corollary rather then a requirement for the common market. The only significant exception to this stance was Article 119 of the Treaty, which declares that "Each Member State shall during the first stage ensure and subsequently maintain the application of the principle that men and women should receive equal pay for equal work". As we know, this article was inserted at the demand of France which, having

introduced similar legislation before 1957, feared the competition of other countries in sectors (such as textiles) employing a high proportion of female workers. At any rate, the application of Article 119 was blocked fir a long time by lack of political agreement between the member states on its compulsory nature. As a result, no directive based on this article was adopted by the Council of Ministers until 1975 (Sapir 1996: 550-555). The possibility of separating politics and economics was a reasonable, even fruitful, assumption as long as the competences of the European Community remained roughly comparable to the powers of other regional organizations such as MERCOSUR (Mercado Comùn del Sur, comprising Argentina, Brazil, Paraguay, and Uruguay, with the possible addition of Venezuela in the near future) and ANZCERTA (the Australia-New Zealand Closer Economic Relations Trade Agreement). Unfortunately, the subsequent expansion of the powers and increased social activism of the European supranational institutions were not matched by a corresponding strengthening of popular support for the integration process. The resulting mismatch between expanding supranational ambitions and shrinking normative resources made the separation of politics and economics increasingly untenable.

Referring to Polanyi's thesis about the social embeddedness of markets, Joerges and Roedl (2009: 6-7) interpret the initial decoupling of economics and political economy in the design of the integration project, and the later strive for competitiveness through the internal market programme, as disembedding moves. They clearly see that "the establishment of an ever greater sophisticated regulatory machinery entrusted with the management of the internal market, was simply not dictated by some functional necessity"; but they interpret this development as moves in the direction of greater social embeddedness of the European project. However, this rather optimistic interpretation is not supported by the recent jurisprudence of the ECJ, which these scholars so brilliantly analyse in the same paper. In the cases *Viking* and *Laval*, both decided in December 2007, and in *Rueffert* (April 2008) the European Court asserted the supremacy of the right of free access to the European single market over national labour laws and constitutionally protected social rights. In *Viking* the Court effectively redefined the terms of the traditional balance between economic freedoms at European level and social rights at national level, arguing that the member states, although "still free, in principle, to lay down the conditions governing the existence and exercise of the rights in question…must nevertheless comply with Community law" (cited in Joerges 2010:46; see also Joerges and Roedl 2009). In practice, the *Viking* judgment resulted in a limitation of the right to strike (by the Finnish trade unions) in the name of freedom to provide services in the European single market.

In *Laval* the Court determined that the 1996 Posted Workers Directive—a piece of European legislation supposedly enacted to avoid a "race to the bottom" in wage setting—prohibits union

activities beyond those essential working conditions listed in Article 3(1) of the directive, and also union activities for wages above the lowest wage group. As a result, Sweden was found in breach of Community law for allowing the determination of wage levels by collective agreements between the parties. In the third case, legislation of the German state of Lower Saxony was found to be irreconcilable with Article 49 of the EC Treaty because it prevented foreign service-providers from benefiting from lower wage costs within their country of origin. Thus, in all three cases the ECJ has reaffirmed the supremacy of economic rights protected by European treaties and secondary legislation over social rights and political norms developed at national level over many years. The Court’s position is quite consistent with the emphasis on the primacy of European law and the vision of the EU as a federal state in the making that characterize the Community version of legal centralism. Under present circumstances, however, such a position betrays insufficient appreciation of the fact that the deeper the level of integration, the more difficult it becomes to separate economics from political economy.

The textbook example of attempts to force the pace of integration is of course monetary union. Abandoning their initial insistence on the rigid application of the ”no-bailout” clause of the Maastricht Treaty, European leaders and EU institutions, including the European Central Bank, have embraced the idea that the survival of the European Union in its present form depends on the rescue of the common currency and thus on the provision of adequate financial aids to the countries facing the concrete possibility of bankruptcy. As usual, Germany is expected to make the largest contribution, but the prospect of having to support a monetary union they opposed from the beginning is hardly appealing to German voters. This hostile reaction forced Chancellor Angela Merkel to promise that the rescue operations would be complemented by rigorous measures of fiscal discipline, even if this meant a more or less binding coordination of national social policies. This seems to have been the first explicit acknowledgment by a EU leader of the connection linking monetary union, centrally coordinated fiscal policies, and the social policies of the member states—a significant departure from the original view of a “disembedded” monetary union operating in a political and social vacuum.

At the end of January, 2011 the influential German magazine *Der Spiegel* revealed that the chancellor was working out plans for an “economic government” of the euro zone. The first step in the new strategy to further integrate the EU on economic issues was to be the “Pact for Competitiveness”—a long term plan intended to provide a permanent solution for the ongoing euro crisis. The Pact would obligate all euro zone members to adhere to sound fiscal *and* social policies, including a pension limit to reflect demographic developments and modest wage increases that would no longer be adapted automatically to rising prices. In short, Frau Merkel proposed that the

countries of the euro zone, and perhaps later all EU member states, should "dovetail" (*verzahnen*) their economic and social policy (*Spiegel On Line* of 29 January 2011). The fact that the Pact for Competitiveness is viewed as a first step towards an economic government for the EU suggests that the dovetailing of the economic and social policies of the member states would be accomplished by means of the traditional instruments of legal centralism and top-down policy harmonization—and this at a time of growing popular disenchantment with the EU and its institutions. Biting criticism of the Pact has come from across the EU: from long-time members of the Union and from the new members of Central and Eastern Europe; from small and large countries, debt-ridden southern countries and fiscally virtuous northern countries; even from the head of the European Commission. The Belgian Prime Minister Yves Laterme pointed out that coupling wages to price trends has been a "social model" in his country for decades. Werner Faymann, the Austrian chancellor, opposed Merkel's pension plans saying: "I am not willing to tell my countrymen that they have to work longer". Luxembourg Prime Minister and chairman of the group of finance ministers of the euro zone, Jean-Claude Juncker, found the idea of eliminating wage increases pegged to inflation no more promising than the earlier proposal to suspend European Council voting rights for the countries that violated EU budget deficit rules. Even Commission President Barroso expressed fears that the Competitiveness Pact would undermine the single market, a concern shared by British Prime Minister David Cameron (*Spiegel On Line International* of 14 February 2011). Such widespread reactions to attempts to use the crisis of the euro to bend the social policies of the member states to the needs of monetary union are a good indication of growing resistance to the traditional strategy of piecemeal integration. They also confirm the brilliant intuition of Friedrich v. Hayek concerning social limits to economic and political integration.

Hayek on distributive limits to integration

According to this distinguished scholar, integration cannot proceed beyond a certain point without running into serious constraints on the policymaking capacity, not only of national governments, but also of the supranational institutions. His ideas on limits to integration have been expressed most cogently in one of the least cited papers by this Nobel-Prize winning economist—a short essay published in September 1939 in a rather obscure journal, the *New Commonwealth Quarterly,* and titled "The Economic Conditions of Inter-state Federalism" (reprinted in Hayek 1948). The federalist movement of the interwar period was largely driven by the ambition of restoring Europe to its former position at the centre of the world. This was to be accomplished by means of the economic and political integration of the continent. Hayek was open to federalist ideas but,

characteristically, he focused attention less on ambitious goals and potential achievements than on the constraints that would have to be overcome in order to implement such ideas. In the first part of the paper he raises an important if today fairly obvious point, namely that political union could hardly be possible without economic union, which means that the economic powers of the member states of a future federation would have to be severely limited, for example in the monetary and fiscal field, as well as in the area of industrial policy. But, Hayek adds, it is not only the powers of the member states that would have to be limited: if there is great heterogeneity of socioeconomic conditions among the member states, which is likely to be the case in a large federation, also the powers of the union would have to be severely constrained. Whereas most federalists saw in the European federation the solutions to all the problems of the continent, Hayek argued that under the hypothesis of socioeconomic heterogeneity a federal government would be unable to undertake policies with identifiable winners and losers in different countries:

[T]he existing sovereign national states are mostly of such dimensions and composition to render possible agreement on an amount of state interference which they would not suffer if they were either much smaller or much larger….Planning, or central direction of economic activity, presupposes the existence of common ideals and common values; and the degree to which planning can be carried is limited to the extent to which agreement on such a common scale can be obtained or enforced. It is clear that such agreement will be limited in inverse proportion to the homogeneity and the similarity in outlook and tradition possessed by the inhabitants of an area. Although, in the national state, the submission to the will of a majority will be facilitated by the myth of nationality, it must be clear that people will be reluctant to submit to any interference in their daily affairs when the majority which directs the government is composed of people of different nationalities and different traditions. It is, after all, only common sense that the central government in a federation composed of many different people will have to be restricted in scope if it is to avoid meeting an increasing resistance on the part of the various groups which it includes….There seems to be little possible doubt that the scope for the regulation of economic life will be much narrower for the central government of a federation than for national states (Hayek 1948: 264-5, footnote omitted).

The implications of such apparently common-sense observations are far reaching:

The conclusion that, in a federation, certain economic powers, which are now generally wielded by the national states, could be exercised neither by the federation nor by the individual states, implies that there would have to be less government all round if federation is to be practicable. Certain forms of economic policy will have to be conducted by the federation or by nobody at all. Whether the federation will exercise these powers will depend on the possibility of reaching true agreement, not only on *whether* these powers are to be used, but on *how* they are to be used…In many cases in which it will prove impossible to reach such agreement, we shall have to resign ourselves rather to have no legislation in a particular field than the state legislation which would break up the economic unity of the federation. Indeed, this readiness to have no legislation at all on some subjects rather than state legislation will be the acid test of whether we are intellectually mature for the achievement of suprastate organization (ibid.: 266).

Hayek was writing these words before the rise of the expansive welfare states of the post-war years. His argument is even more relevant today since it implies that a European federation would be unable to pursue precisely those policies which characterize and legitimate the contemporary nation state: health, education, social policy, industrial policy, income redistribution, and, more generally, all policies favouring particular socioeconomic groups at the expense of other identifiable groups. But a European super-state unable to provide these and other public goods would lose whatever popular support it may have enjoyed initially. To emphasize this important point, let us assume that in a moment of federalist enthusiasm a majority of EU citizens expressed themselves in favour of full political integration. Given sufficiently broad popular support, the new federal entity would certainly be established on democratic principles, so that the democratic-deficit problems of the present EU would be resolved—at least initially. As explained by Hayek, however, the federation would be unable to provide the variety of public goods that Europeans are accustomed to expect of their own national welfare state, and hence could not retain for long the loyalty of its citizens. In turn, this loss of legitimacy would prevent the federal government from acting energetically even in areas, such as foreign policy and defence, where the European national states do need to pool their sovereignty in order to play a more incisive international role (Majone 2009: 66).

In identifying the distributive, cultural, and ultimately political constraints that would limit the powers of a federation, Hayek also uncovers the fundamental flaw of neofunctionalism, as of much early federalism: the inability to imagine a united Europe other than as a national state "writ large". But as Eric Jones has convincingly argued, for most of its history Europe formed a cultural, economic, even a political unity. But it was not the unity of a centralized system of government; rather, it was unity in diversity, embodied in a system of states competing and cooperating with each other. Such a system realized the benefits of competitive decision-making and the economies of scale of the centralized empire, giving Europe some of the best of both worlds. In the words of the British historian: "This picture of a Europe which shared in salient respects a common culture…and formed something of a single market demonstrates that political decentralisation did not mean a fatal loss of economies of scale in production and distribution. The states system did not thwart the flow of capital and labour to the constituent states offering the highest marginal return" (Jones 1987: 117).

I have already suggested that the failure to recognize the existence of political and normative limits to the piecemeal, but continuous, growth of European competences is explained, at least in part, by the neofunctionalists' belief that all important decisions are made by elites, so that popular support is not strictly necessary for the long-term viability of the integration process. This view, in

turn, led to the obliteration of the ancient distinction between laws made for the benefits of the people, and laws approved and enacted by the people itself. It is true that in our days secondary legislation (rules, regulations), as well as monetary policy, are made, supposedly for the benefit of the people, by bodies that are not directly accountable to the voters—non-majoritarian institutions. Yet even in this case it makes a good deal of difference whether such institutions are embedded in a democratic system, or whether they operate in a political and social vacuum.

Politically independent but socially embedded: non-majoritarian institutions in a democracy

A distinctive feature of the governance structure of all contemporary democracies is the delegation of significant powers to institutions that are not accountable to the voters or to their elected representatives: courts, independent central banks, or regulatory authorities operating outside bureaucratic hierarchies. An important, if not the main, reason for delegating policymaking powers to institutions independent of the electoral cycle is to increase the credibility of long-term commitments. The delegation of powers to non-majoritarian institutions is meant to restrain the temptation of democratic politicians to assign greater weight to short-run considerations and to default on long-term commitments. However, in a democracy policy choices are supposed to be made by electorally accountable leaders, so that delegation to non-majoritarian institutions inevitably raises problems of democratic legitimacy. How are such problems resolved? The answer is that they have never been satisfactorily resolved in terms of general democratic theory, but that different pragmatic solutions have been worked out, more or less successfully, by different countries according to their own constitutional traditions and political culture. Thus, in the United States the propriety of delegating legislative powers to independent regulatory authorities is now regarded as having been settled by the practice of more than one century. In the past, a "non-delegation doctrine" enjoyed such widespread acceptance that it came to be regarded as the traditional model of American administrative law. The model conceived the regulatory authority as a mere transmission belt for implementing legislative directives in particular cases. Hence, when passing statutes Congress should decide all questions of policy, and frame its decisions in such specific terms that administrative regulation will not entail the exercise of broad discretion by the regulators (Stewart 1975).

The non-delegation doctrine had already found widespread acceptance when the first institutionalization of the American regulatory state, the Interstate Commerce Commission, was established by the 1887 Interstate Commerce Act. The Act's detailed grant of authority seemed to follow the transmission-belt model. However, the subsequent experience of railroad regulation revealed the difficulty of deriving operational guidelines from general standards. Thus, the Federal

Trade Commission, established in 1914, received essentially a blank cheque authorising it to eliminate unfair competition. The New Deal agencies received even broader grants of power to regulate particular sectors of the economy “in the public interest”. The last time the Supreme Court used the non-delegation doctrine was in 1935, when in *Panama Refining Co. vs. Ryan* (293 US 388) and in *Schecter Poultry Corp. v. United States* (295 US 495) it held the delegation in the National Industrial Recovery Act unconstitutional. The Court has subsequently upheld many delegations of legislative powers that were no more specific than those found wanting in 1935. The Supreme Court’s failure to repeal the non-delegation principle, coupled with its very sparing use to strike down legislation, illustrates a continuing judicial effort to harmonize the modern regulatory state with traditional notions of separation of powers, representative government, and the rule of law (Mashaw, Merril and Shane 1998).

For historical, institutional, and political reasons explained in some detail elsewhere (Majone 1996), the development of statutory regulation by independent agencies is a much more recent phenomenon in Europe, but this mode of regulation quickly became the leading edge of public policymaking in the 1980s and ‘90s. Compared to traditional forms of state intervention, such as public ownership, American-style statutory regulation was increasingly perceived as being less bureaucratic and more independent of political influences; more committed to a problem-solving, rather than a bargaining, style of policymaking; and better able to protect the diffuse interests of consumers rather than the concentrated interests of producers. At the same time, the legitimacy and democratic accountability of independent regulatory bodies soon emerged as a significant topic of political discourse also in Europe. While European governments acknowledged the importance of policy credibility in an increasingly interdependent world, and were thus prepared to accept the independence of regulators, in practice the prevailing political culture often induced governments to limit regulatory discretion. For example, even though the German competition regulator—the Federal Cartel Office—has considerably more extensive powers than the competition authorities of most other European countries, the government retains considerable powers of intervention in competition policy, especially in merger cases. In such cases, the Minister of Economics can overrule a negative decision of the Cartel Office. Moreover, in granting exemptions from the prohibition of mergers and cartels, the Minister seems to be driven more by political and social considerations than by efficiency criteria (Baake and Perschau 1996).

Also the old *Bundesbank*—Germany’s central bank as it operated before monetary union—was considered not only the most powerful, but also the most politically independent central bank in Europe, if not in the world. Yet, this independence had only a statutory basis--a law which the German Parliament could have changed overnight if it felt that the policies of the Bank were

contrary to the public interest or to the policy preferences of the majority of the voters. Thus, in 1978 chancellor Helmut Schmidt threatened to have the parliament limit the independence of the *Bundesbank* by modifying the 1957 law (*Bundesbankgesetz*) should the Bank continue to oppose the establishment of the European Monetary System (Marsh 1992). The fact that the independence of the Bank has never been limited, despite frequent frictions with both conservative and social-democratic governments, shows that the real foundation of the Bank's legitimacy was not its statute-based independence, but rather the support of a public opinion traditionally averse to inflation. At the same time, Germany's central bankers were well aware that to lose contact with the national government meant to lose the possibility of exerting a significant influence on the economic governance of the country. In sum, despite frequently repeated assertions that the *Bundesbank* has served as the model for the European Central Bank, the differences between the two institutions are much more significant than the similarities, see the following section.

Also the U.S. Federal Reserve (Fed) enjoys a well-deserved reputation for independence, which is guaranteed by the Federal Reserve Act, a statute originally passed in 1914. However, no Fed chairman, no matter how independent-minded, can safely ignore the vigorously expressed wishes of a strong American president. As Peterson and Rom point out (1989: 155-163), the Fed knows that its statutory powers, with all the independence and autonomy they confer, can be altered at any time by new legislation. If a U.S. president, backed by loyal supporters in Congress, wished to restructure the Board of the bank, the Fed could not prevent him from doing so. Nor does the chairperson of the Fed often has to guess at what the administration wishes: professional and social contacts frequently occur between the executive branch and the Fed. For example, the chairman has lunch at the Treasury every week, and there are frequent exchanges between the Fed's senior staff and the Office of Management and Budget (OMB) as well as the president's Council of Economic Adviser. It is not easy to ascertain the direction of influence at such meetings but, Peterson and Rom conclude, Fed policy is usually quite consistent with administration policy and presidential disagreements with the Fed tend to be marginal and short-lived. Again, the Federal Reserve is technically subject to congressional control. Congress could at any time pass new legislation changing the Fed's terms of reference, and actually in virtually all sessions of Congress legislation is introduced that would have exactly that effect. But if Congress potentially has the authority to restructure the Fed, only minor changes in its operating procedures have had any realistic chance of congressional passage. Any major alteration in the workings of the Fed would require vigorous presidential support. Lacking that, most efforts to limit the authority of the Fed or reorganize its operating procedures fail to negotiate the complex congressional maze.

Independent regulatory authorities and central banks may be the best-known contemporary examples of non-majoritarian institutions. Historically, however, courts of law are the prototype of such institutions. Even in England the complete independence of judges was not fully secured until the early 18th century (Georgian period) when the judges, though appointed by the Crown, were no longer subject to its influence in their decisions: they could be removed only on an address from both houses of parliament. The problem of the democratic legitimacy of judicial decisions has been especially felt in the United States, where any federal court may strike down a law enacted by Congress, and so presumably expressing the preferences of the majority of American voters. The legitimacy problem is particularly acute when the US Supreme Court engages in "non-interpretive" review, i.e. when it makes the determination of constitutionality of a given policy by reference to a value judgment other than one embodied, even if only implicitly, either in some specific provision of the Constitution or in the overall structure of government as set up by the Constitution.

However divided are the opinions of constitutional scholars about judicial activism, few observers would deny that the Supreme Court is inescapably a participant in the larger political process of the American democracy. To begin with, U.S. Presidents tend to appoint justices who are not hostile to their own views on public policy, nor could they expect confirmation of a justice whose stance on key issues was flagrantly at odds with that of the dominant majority in the Senate. It is also the case that "the policy views dominant on the Court will never be out of line for very long with the policy views dominant among the law-making majorities of the United States… it would be most unrealistic to suppose that the Court would, for more than a few years at most, stand against any major alternatives sought by a law-making majority" (Dahl 1972: 206). The fact is that acting solely by itself with no support from the president and Congress, the Court is almost powerless to affect the course of national policy. In order to come as close as possible to the goal of imposing its policy preferences on society the Court must therefore defer to the preferences of Congress. Nor is it only a question of imposing the preferences of the Court as a privileged interest group. In order to confer legitimacy, the Court must itself possess legitimacy. However, the Court jeopardizes the legitimacy attributed to its interpretations of the Constitution if it flagrantly opposes the major policies of the dominant majority. To the extent that the legitimacy of every political institution in a democratic system of government depends finally on its consistency with democratic principles, the legitimacy of judicial review and the Court's exercise of that power must stem from the presumption that the Court is subject to popular control. Thus, Dahl concludes:

The more the Court exercises self-restraint and the less it challenges the policies of law-making majorities, the less the need or impulse to subject it to popular controls. The more active the Court is in contesting the policies of law-making majorities, the more visible becomes the slender basis of

its legitimacy by democratic standards, and the greater the efforts to bring the Court's policies into conformity with those enacted by law-making majorities (ibid.:209).

In fact, the Supreme Court justices are acutely aware of the limitations of the court's powers and its dependence on voluntary acquiescence to its decisions. Hence, the Court's concern with its authority makes it reluctant to depart too far or for too long in its decisions from prevailing public opinion. A sophisticated statistical analysis of Supreme Court's decisions for the period 1956-1989 indicates that for most of this period " the Court has been highly responsive to majority opinion. Its decisions not only have conformed closely to the aggregate policy opinions of the American public but have thereby reinforced and helped legitimate emergent majoritarian concerns" (Mishler and Sheehan 1993: 97). The same political scientists even inferred from their data that there is a five-year lag between changes in majority opinion and the reflection of those changes in the Court's decisions. This lag suggests that the Court " also serves as a temporary buffer against public opinion, shielding the policy process from public caprice and the passions of the moment" (ibid.). Other studies, using game-theoretic models to study the interactions between the U.S. Supreme Court and Congress, come to the conclusion that Supreme Court justices will frequently defer to preferences of Congress when making decisions, particularly in statutory cases in which it is presumably easy for Congress to reverse the Court (Segal 1997). European legal scholars have reached similar conclusions, arguing that a constitutional court cannot for any long period run either too far ahead of or too far behind the fundamental political and social currents of a society without losing its credibility (Friedbacher 1996: 237).

Independent and disembedded: non-majoritarian institutions in the EU

As the preceding pages have indicated, pragmatic solutions of the legitimacy problem of non-majoritarian (or even anti-majoritarian) institutions depend very much on the institutional traditions and the political culture of different countries. A common feature of the different national solutions, in addition to the crucial role of public opinion, is the interaction between the independent institutions and the branches of a democratically legitimated government—a mixture of competition and cooperation. Because of the absence, or very limited scope, of such interactions at the European level, the role and behaviour of non-majoritarian institutions in the EU is quite different from that of their national counterparts. Absent the risk of being subject to direct democratic control and unconcerned about a weakly developed European public opinion, such EU institutions have few incentives to exercise the self-restraint mentioned in particular by Dahl with reference to the U.S. Supreme Court. In the case of the ECJ, for example, the lack of self-restraint is revealed by such

recent cases as *Viking, Laval*, and *Rueffert*, where the supranational Court asserted the supremacy of the right of free access to the European single market over national labour laws and constitutionally protected social rights.

It is important to note that the impossibility of interacting with a fully fledged European government affects not only the legitimacy of the supranational institutions but also their effectiveness. The case of the ECB provides a particularly clear illustration of the compounded costs of operating in a political vacuum. As we saw, the delegation of powers to a politically independent central bank is meant to restrain the temptation of democratic politicians to assign greater weight to short-run considerations and thus to default on long-term commitments. In the area of monetary policy, where credibility is essential to success, delegation of policymaking powers to an independent central bank can be an effective way of achieving a credible long-term commitment to monetary stability. Let us now consider how the commitment problem has been tackled in the EU. The willingness of integrationist leaders to sacrifice democracy for the sake of deeper integration was revealed once more when it was decided to give quasi-constitutional status (i.e., a treaty basis) to the independence of the European Central Bank. This means that changing the rules under which operate the ECB and the national banks as members of the European System of Central Banks, requires a treaty revision acceptable to all the member states—a complex and politically hazardous procedure. The net result is that the parliaments and governments of the members of the euro zone have lost control over monetary policy, while the European Parliament has no authority in this area. Unlike the U.S. Federal Reserve which is placed within a political structure where Congress, the President, and the Treasury supply all the necessary political counterweights, the ECB is free (indeed, is supposed) to operate in a political vacuum, without a European government to balance its powers, and in the absence of effective mechanisms to coordinate the fiscal policies of the member states. This situation is not only highly problematic in terms of democratic legitimacy, but also entails a significant loss of policymaking efficiency.

In this connection it should be recalled that the ECB enjoys both *instrument* independence and *goal* independence. When a central bank enjoys only instrument independence, it is up to the government to fix the target—say, the politically acceptable level of inflation—leaving then the central bank free to decide how best to achieve the target. Because of the grant of both instrument and goal independence to the ECB, some scholars have raised the issue of the democratic deficit of the Bank, arguing that in order to reduce this deficit the ECB should evolve toward a governance model excluding goal independence (Gormley and de Haan 1996). The idea that central bankers, or other economic experts, may know what rate of inflation is in the long-run interest of a country (and, *a fortiori,* of a group of countries at very different levels of socioeconomic developments such as

the EU) is indeed extraordinary. Politicians and elected policymakers, rather than experts, can be expected to be sensitive to the public's preferred balance of inflation and unemployment. If the public wants to reduce unemployment at the cost of a somewhat higher rate of inflation, it can make this preference known by electing candidates who stand for such a policy.

The fact that the EU offers no such possibility to its citizens proves again that the democratic-deficit problem is rooted in the integration methods followed for half a century, and hence that no solution can be found without a radical revision of the methods themselves. It is not enough to argue that the democratic accountability of the ECB is poorly organized, and that monetary policy ultimately must be controlled by democratically elected politicians. Such a change in the governance structure of the euro zone would require a treaty amendment, which most likely would face a German veto. Like many other writers on the democratic deficit, Gormley and de Haan do not tell us how their goal of a European monetary policy ultimately controlled by elected politicians could be achieved without jettisoning the traditional approach to European integration—starting with Jean Monnet's strategy of fait accompli (Majone 2009: 74-76). The decision to pursue monetary integration in the absence of agreement, not only on political union but even on exchange-rate policy and other crucial institutional and policy issues has produced a level of policy rigidity unknown at the national level. Since the beginning of the debt crisis the policy rigidity of the recent past has been replaced by confusion of ideas, profound dissensions on strategy, and by attempts to enforce a level of policy integration never endorsed by the peoples of Europe.

Coming back to the question of policy credibility, it is now widely recognized that the "optimal" central banker should strike a balance between credibility and flexibility, for example by following a non-linear decision rule according to which in case of large disturbances the bank would follow the government's preferences. As a distinguished Princeton economist has argued "if the government is not free to respond to adverse future conditions flexibly, that can create its own cost in terms of future economic performance" (Dixit 1996: 66). Hence the solution suggested by Dixit and by other experts combines some of the advantages of both commitment and flexibility. It consists in using an unconditional rule at some times, keeping flexibility at others, and defining threshold levels of contingencies at which policy would switch from one regime to the other: "A switch from the commitment regime to the flexible regime should be made when the disequilibrium becomes so large, and the net advantage of flexibility over commitment grows so large, that it provides a sufficient rate of return on the sunk lump-sum cost of switching. The reverse switch should be made when the disequilibrium is small enough to justify that move using a similar calculation" (ib.:67-8). Of course, the solution suggested by the experts presupposes a close cooperation between the central bank and a full-fledged, democratically accountable government.

The implication of models combining commitment and flexibility is that monetary policy, by itself, cannot guarantee a satisfactory level of stability and steady growth. Hence, from the point of view of aggregate welfare the government should have the option of overriding the central bank's decisions--under particular conditions and following well-defined procedures. Such flexibility is unachievable at European level: without a democratically legitimated European government to counterbalance the central bank, or at least a European finance minister to interact with the monetary policymakers, how could transparent procedures for overriding ECB decisions be designed and enforced? Under present conditions authority over the entire domain of monetary policy will continue to flow, by default, to the ECB—or to a few member states acting as self-proclaimed saviours of the common currency. In any case, the present crisis of the euro zone has shown that any serious rescuing operation must violate the spirit and the letter of the monetary constitution, in particular the no-bail-out clause, Article 125(1) of the Lisbon Treaty.

Already in 1971 Samuel Brittan had written: "An attempt to freeze the pattern of [exchange] rates before there is a European political authority or common budget…would threaten the degree of trade and other liberalization already achieved; it would thus be a classic example of putting the cart before the horse" (Brittan 1971: 46). The prescient quality of Brittan's warning was revealed some ten years after the final decision to go ahead with monetary union was taken, when French President Sarkozy and other EU leaders became convinced that the national governments should have a bigger say in the making of European monetary policy, especially in decisions concerning exchange rates with other currencies. An excessive appreciation of the euro, these leaders complained, is damaging the national economies. In March 2008, while the euro was reaching new record levels against the dollar, the then managing director of the International Monetary Fund, Dominique Strauss-Kahn, joined the debate attributing the overvaluation of the European currency to the excessive power of the ECB. According to Strauss-Kahn the ECB fulfils its statutory duty of containing inflation, but the absence of a finance minister of the EU means that at the European level concerns about inflation de facto prevail over concerns about growth: the ECB is overpowering precisely because it has no political counterweight.

At that time Germany was resolutely opposed to any change in the existing framework of economic governance, and the ECB itself strongly resisted any external interference. Precisely for this reason, for a long time the Bank resolutely opposed any proposal to being named a "European institution", fearing that having the same legal status as the Council, the EP, the ECJ, or the Commission, could entail commitments--such as expectations of inter-institutional cooperation and consultations before taking certain decisions--which could threaten the ECB's independence. Nevertheless, the crisis of the euro zone has revealed that the ECB could be forced to renege, in

practice, the very principles it had been preaching since its creation. The truth is that the formal powers of an institution count for little of they are not supported and legitimated by public opinion. In this connection it is instructive to compare the independence of the old *Bundesbank*--with its statutory basis which the German Parliament could have changed overnight—with the quasi-constitutional independence of the ECB—a good deal greater on paper, but lacking the support of public opinion. What has been noted in this and in the preceding section explains why not only the ECB but all EU institutions failed to achieve the same kind of legitimacy enjoyed by many non-majoritarian institutions operating at the national level.

The history of European integration also shows that most significant institutional and policy developments have preceded, not only voters' demands for more integration, but even any serious assessment of the functional needs of deeper economic integration. In fact, European institutions where already "state-like" when the European Economic Community was established. The 1957 Treaty of Rome had just been ratified when some German legal scholars started to argue that the institutions of the EEC had been designed with the idea of replicating the model of the Federal Republic of Germany. The Council of Ministers, the organ for the participation of the member states in the decisions of the Communities, was said to correspond to the German *Bundesrat*; the European Commission, as the body responsible for implementing the Council's decisions, and the would-be kernel of the future government of a politically united Europe, was the analogue of the federal executive; finally, the European Court of Justice was simply the Constitutional Court of the future federation. Hans Peter Ipsen, the author of one of the first treatises on Community law, warned in vain his colleagues about the risk of taking such analogies too seriously. In a purely organizational perspective, he pointed out, one may compare the institutions of the EEC with certain institutions of the German federation: if such comparisons are not very useful, neither are they dangerous. What *is* methodologically wrong, Ipsen insisted, is the tendency to derive from such analogies conclusions about the federal, or pre-federal, nature of the Community--to argue that the founding Treaty contains an inherent, automatic tendency toward a federal outcome of the integration process (Ipsen 1972: 190-1).

In spite of such warnings, the notion of a federal end-state prefigured by the European institutions is still alive, although today the belief in an ongoing process of federalization is supported less by arguments about structural similarities than by appealing to such developments as the steady expansion of the powers of the European Parliament, the introduction of the Union citizenship and, especially, the achievement of monetary union. Early federalists like Paul-Henri Spaak and Altiero Spinelli were convinced that two world wars in half a century had made the national state utterly obsolete, and that Europe could survive and still play a significant international

role only as a United States of Europe. Today's integrationist leaders keep insisting that the aim of the integration project launched in the 1950s is not a super-state, yet they seem unable to imagine something different from a large-scale replica of the old national state. In addition to the analogies that already impressed some German scholars in the 1970s, we have now: a President of the EU; a EU Minister of Foreign Affairs (modestly renamed High Representative for the Common Foreign and Security Policy after the rejection of the Constitutional Treaty); a diplomatic service of sorts, the External Action Service; a European Security and Defence Policy with its Political and Security Committee; a European Central Bank and a common currency; not to mention the standardized passport and driver's licence, and the European logo and flag. These and other institutional and symbolic innovations simply mimic the institutions and symbols of the existing nation states—precisely the model integrationist leaders seek to transcend.

Rethinking the European project

It is easy to foresee that after the debt crisis of the euro zone the EU will never be the same; it is more difficult to guess how it will change. As already indicated, there are those who see the crisis as an opportunity to complete the process of piecemeal integration by transferring to the supranational level, not only responsibility for fiscal policy, but also for key aspects of social policy such as pension systems. In the words of the German finance minister, Wolfgang Schaeuble, as reported by the *International Herald Tribune* of 3 October 2011: "In recent months it has become clear: the answer to the crisis can only mean more Europe….Without…further steps toward stronger European institutions, eventually Europe will lose its effectiveness. We have to look beyond the national state". Thus, the goal of political union that never succeeded in attracting broad popular support could, paradoxically, be now within reach. It is, however, hard to imagine that a political union imposed on sceptical European voters in order to rescue a premature monetary union could ever achieve sufficient legitimacy. Moreover, the closer the final goal appears to be, the greater the relevance of Hayek's redistributive limits on political integration. Thus, the difficulty of reaching agreement on measures to aid Greece provides new, compelling evidence in support of the thesis that in a federation characterized by high socioeconomic heterogeneity of the member states, the central government would be unable to undertake policies with identifiable winners and losers in different countries.

Any serious effort to define a new course of European integration must be preceded by a clear understanding of the limits of the model of piecemeal integration. For Monnet and his followers, the great advantage of the model was the possibility of transferring increasingly important elements of national sovereignty to the European level without the explicit consensus of

the sovereigns—the peoples of the member states. However, the permissive consensus of the past—when European publics took the integration project for granted as an accepted part of the political landscape—could last only as long as the integrationist elites managed to keep European issues out of the political debate. Even before the present crisis, the quantum jump represented by monetary union has radically changed the situation. Unlike most policy decisions taken in Brussels, the decisions taken in Frankfurt by the ECB are widely advertised, and their consequences, e.g. on the cost of home mortgages, have a direct impact on the welfare of all the citizens of the euro zone, indeed of the entire EU. For the first time, the practical implications of a European policy are immediately perceived not just by experts or special-interest groups, but by the average citizen. At this point, the separation of politics and economics, on which piecemeal integration thrived, became increasingly difficult to maintain; and with the debt crisis the difficulty has turned into an impossibility. The failure of the strategy of "disembedded" integration seems to allow only two alternatives: either to get an explicit and sufficiently agreement of the peoples for what has been done so far should be preserved; or to revise the entire *acquis communautaire* with a view to determine what is really needed in order to implement the goals of the founding Treaty of Rome. Under this Treaty, national governments were required to abstain from measures that would create unjustified obstacles to free movement in the common market, and European institutions were to rely primarily on measures of negative integration rather than mimicking the interventionism of the national policymakers. It is a fact that the issue of a "democratic deficit" was never raised before subsequent treaties, starting with the Single European Act, greatly expanded the powers of the EC/EU. EU leaders should become aware of the radical difference between *thesmos* and *nomos*, and never again move too far ahead of what the voters are prepared to support and, if necessary, to defend.

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