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**Legitimacy Intermediation
in the Multilevel European Polity
and Its Collapse in the Euro Crisis**

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Abstract

This essay re-examines the dual – republican and liberal – foundations of democratic legitimacy in the Western traditions of normative political theory. Considered in isolation, the European Union conforms to liberal standards but cannot satisfy republican criteria. Given these conflicting standards, debates on the alleged European democratic deficit have remained inconclusive. Moreover, they have failed to pay sufficient attention to the multilevel character of the European polity and to the normative potential of legitimacy intermediation in its two-step compliance and legitimating relationships. I argue, however, that the capacity of democratic member states to legitimate the exercise of European governing functions is being destroyed in the present euro crisis, and I briefly discuss the implications of this new constellation.

Zusammenfassung

In der westlichen Tradition der normativen politischen Theorie beruht demokratische Legitimität auf der doppelten Grundlage republikanischer und liberaler Prinzipien. Für sich betrachtet entspricht die Europäische Union zwar liberalen Kriterien, aber eben nicht den republikanischen Anforderungen. Angesichts so unterschiedlicher Kriterien konnte es auch im Streit über das angebliche europäische Demokratiedefizit keine Einigung geben. Überdies ignorierte diese Diskussion den Mehrebenen-Charakter der europäischen Politik und das normative Potenzial der Legitimationsvermittlung zwischen Union und Bürgern durch die demokratisch verfassten Mitgliedstaaten. Die gegenwärtige Eurokrise allerdings zerstört die Fähigkeit demokratischer Mitgliedstaaten, die Ausübung europäischer Herrschaftsfunktionen zu legitimieren. Der Aufsatz erörtert die Implikationen dieser neuen Konstellation.

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Legitimacy Intermediation in the Multilevel European Polity and Its Collapse in the Euro Crisis

1 Introduction

European integration has created a multilevel polity in which governing powers are exercised at the European, national, subnational and local levels. But whereas in EU member states there is generally a clear hierarchical relationship in which the political and legal bases of legitimate authority at the national level dominate those at the regional and local levels, the relationship between the EU and its member states is much more ambivalent. European law, it is true, claims supremacy over all national law, but EU political legitimacy seems to be highly problematic: failed constitutional referenda, low and falling voter turnout at European elections, an absence of public debates about European policy choices, but also increasing resentment of EU interference in national policies and institutions and continuing worries about a “European democratic deficit.” These issues are coming to a head in the present euro crisis, which seems to challenge not only the viability but also the legitimacy of the existing architecture of governing in the multilevel European polity. This essay attempts to respond by confronting the dual traditions of legitimacy discourses in Western political theory with the governing structures of the existing European polity, and with their incipient transformation under the challenges of the present crisis.¹

2 Legitimacy discourses

Legitimacy is a normative and highly contested concept. Its pragmatic importance in political systems is best clarified from a functional perspective (Scharpf 1999): in exercising their powers, governments must claim resources and constrain actions in ways that will often conflict with the interests and political preferences of their subjects. As a consequence, compliance must be an underlying problem in all political systems. It may be brought about through coercion, based on credible threats, effective surveillance and punishment; or it may be brought about through inducements, based on credible promises and attractive rewards. Coerced and induced compliance do indeed play a role in all political systems. But government will be oppressive, ineffective and wasteful

1 This paper will be published in 2013 in a *Festschrift* for Manfred G. Schmidt. Since Manfred Schmidt has been the most insightful critic of my earlier work on normative democratic theory, I feel encouraged to use an essay in his honor to return to those efforts with a view to their relevance for the current challenges of European integration. In doing so, however, I must apologize for an improper amount of self-citation.

where these mechanisms play more than a supportive role in stabilizing a general pattern of voluntary compliance that is not based on the explicit cost-benefit calculations of self-interested subjects.

Most of the time, of course, law abidance is habitual. But when the discrepancy between required behavior and personal interests and preferences increases, and when low-risk opportunities for evasion exist, legitimacy beliefs may become a crucial factor contributing to the voluntary compliance with undesired rules or decisions of governing authority (Easton 1965: 278–319; Kielmansegg 1971; Beetham 1991; Scharpf 1999, 2007; Höffe 2002: 40). Such beliefs, however, are not primarily a matter of individual consciences. To create a sense of moral obligation and to provide justification for the “losers’ consent” (Anderson et al. 2005), they need to be socially shared and reinforced through justifying narratives and discourses. Where they are effective, they will reduce the need for and the cost of controls and of negative or positive sanctions that would otherwise be needed to ensure compliance. In other words, socially supported legitimacy beliefs should be seen as a functional prerequisite for the existence of governments which are, at the same time, effective, efficient and liberal.

But before turning to the substantive discourses supporting legitimating beliefs in Western political systems, I need to introduce three conceptual presuppositions which I will use in subsequent discussions without being able to fully develop and justify them in this paper. The first concerns David Easton’s (1965: Ch. 10) *hierarchy of legitimating references*. Support for a political system may relate to the characteristics of the *authorities* exercising acts of government, to the characteristics of the political *regime* that empowers these authorities, or to the characteristics of the political *community* that is governed through this regime. The implication is that potential noncompliance may be countered not only by arguments justifying the specific *policy* in question but also by arguments asserting the legitimacy of higher levels of the political system in question. But there is also a reverse implication which will play a role in my discussion of legitimacy in the multilevel European polity.

Second, if the function of legitimacy is to ensure the acceptance of unwelcome acts of government, it also follows that the *need for legitimation* increases with the severity of the sacrifices imposed and/or the political salience of the issues at stake. If policies match my interests and preferences, my compliance does not depend on legitimating arguments. On the other hand, normative appeals will also vary in their *legitimizing capacity*. Thus, where vital interests and deeply held normative convictions are at stake, very powerful arguments may need to be invoked if potential defectors are to be persuaded to refrain from noncompliance, civil disobedience or violent protest. In other words, legitimacy should be understood as a *relational concept*, rather than as an invariant characteristic of policies or polities. This will also play a role in the later discussion of the alleged European democratic deficit.

Finally, I will also refer to the distinction between *input-oriented and output-oriented* legitimating arguments (Scharpf 1970, 1999; M. G. Schmidt 2008; Ruffing 2011). These concepts resonate with discussions of “representative and responsible government” (Birch 1964; Mair 2008, 2009) or of governments as “agents” and as “trustees” of the people (Alter 2008). What matters, in other words, is the *responsiveness* of governors to the collective preferences of their constituencies and their capacity to serve the *common interest* of the political community in accordance with its norms and values.

From a historical and intercultural perspective, the arguments invoked in legitimating discourses vary widely. In the specific context of constitutional democracies in the European Union, however, their premises and implications may be elaborated and clarified through reference to the core arguments of two distinct traditions in Western political philosophy – for which I will use the labels “republican” and “liberal.”² Whereas the former emphasizes the common good of the polity and the collective self-determination of its citizens, the latter highlights the protection of individual rights and the need to base the exercise of governing powers on the consent of those who are affected.

The republican discourse

Republicanism is rooted in the Aristotelian tradition – whose contemporary vitality is manifest in the communitarianism of Alasdair MacIntyre (1984, 1988) or Charles Taylor (1992) and others.³ Here, man is understood as a *zoon politikon* who could not exist in isolation and who can only grow to realize his own intrinsic *telos* within a *politeia* that provides the preconditions for the *eudaimonia* of its members. In that sense, the polity is prior to the individual (Aristotle 350 B.C.: Book 1, 1253a). In order to realize the common good – which is the precondition for the good life of its members – the polity needs to be governed, and it needs to be governed well. In principle, good government may be achieved in monarchic, aristocratic or democratic constitutions – but each of these is also vulnerable to characteristic perversions if the powers of government are employed to serve private or partisan advantages. Given the overriding importance of the common good, however, the remedy could not be constraints on the powers of government. Instead, Aristotle’s focus is on the need for virtuous governors and on conditions and institutional arrangements that would favor their selection and continuing commitment to the common good of the polity (Aristotle 350 B.C.: Book 3).

2 In the literature, these labels are not used consistently, and contemporary discussions of democratic legitimacy tend to combine arguments derived from both traditions. I hope to show, however, that it is theoretically and pragmatically useful to identify the distinct logics of these discourses.

3 This is not meant to deny differences within the tradition. Lovett and Pettit (2009), for instance, take pains to differentiate their own “neo-republicanism” from the communitarian literature – and within the former camp, “neo-Athenian” and “neo-Roman” positions will also differ on some points (Schäfer 2011).

From his output-oriented focus on the common good, Aristotle, who like Plato was unimpressed by the performance of Athenian direct democracy during the Peloponnesian War (M. G. Schmidt 2008: 41–43), saw little reason to place higher trust in the continuing virtuousness of citizens (in the role of democratic governors) than in that of aristocrats or monarchs. On balance, he thought that orientation to the common good might be most secure in a mixed constitution that combined elements of democracy and aristocracy. But if there was to be democracy, the common good would require the free and equal participation of all citizens (among whom women and slaves were not included) in public debates over the laws through which they would mutually govern each other (Aristotle 350 B.C.: Book 3; Book 6, 1317b).

The concern for the common good of the polity, the virtuousness of governors, and its institutional preconditions had also shaped the political philosophy of republican Rome. Going beyond Aristotle's institutional relativism, however, Roman republicanism rejected the option of monocratic power and insisted on civic participation in the mixed constitution of a self-governing *res publica* (Cicero 51 B.C.). A millennium later, the Roman aspirations reappeared in the Florentine Republic, where Machiavelli's *Discorsi* (1531) also reflected on the frailty of the virtues that were required for maintaining a *civitas libera* (Pocock 1975). From there, one branch in the history of political ideas leads to James Harrington (1656) and other "neo-Roman" theorists of an egalitarian "free commonwealth" during the short-lived English republic (Skinner 1998, 2008) who, in turn, had a powerful influence on the political thought of the American Revolution and on Jeffersonian and Jacksonian democracy in the early history of the Union (Pocock 1975; Dahl 1989: Ch. 2; Pettit 1997). In contemporary Anglo-American political philosophy, these emphases on republican liberty, democratic self-determination and political community are of vital importance in "neo-republican" as well as "communitarian" discourses.⁴

The other branch in the history of republican thought leads to the democratic radicalism of Rousseau's *Contrat Social* (1762), which shaped the political thought of the French Revolution and continues to have a powerful influence on Continental democratic theory. With the classical heritage, Rousseau shares the primacy of the political community, the output-oriented emphasis on the common good, and the absence of institutional limitations on the powers of government (M. G. Schmidt 2008: 94). At the same time, however, he radicalizes the aspirations of republican liberty, and his institutional preferences are shaped by the input-oriented practices of Athenian democracy. Liberty for all, in his view, could only be achieved through general laws which are determined by the equal participation of all in collective choices (*Contrat Social*, Book 1, Ch. 6; Book 2, Chs. 1, 4). His assumption was that such laws would be adopted by majority vote.⁵ But then, as it had for Aristotle, the "virtuousness" of citizens in the role of

4 Cf. Michelman (1989); Pettit (1997); Skinner (1998); Kramer (2004); Bellamy (2007); Lovett/Pettit (2009) on the one hand, and Walzer (1983); MacIntyre (1984); Taylor (1992); Sandel (1982, 1996) on the other.

5 In fact, Rousseau anticipated the analytical argument of the "Condorcet jury theorem" several decades before its publication: assuming that the common interest was objectively given, its

the collective legislators became the critical problem. For Rousseau this meant that the aggregate concerns of self-interested individuals (*volonté des tous*) needed to be transformed into common-interest oriented collective choices (*volonté générale*). Since – unlike the English and American “aristocratic republicans” (Dahl 1989: 25–26) – he was unwilling to consider a non-egalitarian mixed constitution,⁶ he had to restrict the potential application of his normative postulates to relatively small communities with a high degree of pre-existing social homogeneity (*Contrat Social*, Book 2, Chs. 8–10).

That precondition, however, was obviously lacking when, after 1789, Rousseau’s political philosophy came to shape the ideals of the democratic revolution in France. Nevertheless, in the subsequent evolution of representative democracy, the theoretical difficulty was pragmatically resolved by an institutional architecture which combined the medieval representation of estates (which Rousseau had rejected as unequal) with the egalitarian aspirations of democratic self-government (Pitkin 1972; Dahl 1989: 28–30), and could thus claim to satisfy the output- and input-oriented criteria of republicanism at the same time. Here, legislation was delegated to representatives who were expected to exercise their mandates as “trustees” for the common interest of the community. But these mandates would be established and withdrawn through periodic general elections based on universal and equal suffrage – with the consequence that representatives could be held accountable for their exercise of governing powers by the electorate at large. Moreover, to ensure the common-interest orientation of legislative and electoral choices alike, policy-making and politics were to be shaped by continuous discussions in the public space of the political community (Habermas 1962; Elster 1998).

The liberal discourse

Republican liberty insists on the prevention of arbitrary or partisan rule, and basic individual rights and civil liberties are necessary preconditions for political participation and self-determination. Beyond that, however, the extent to which individual interest positions are to be protected is to be determined in the political processes that will define the common good of the community as well as the standards of justice and the reach of individual rights. In liberal political philosophy, by contrast, the normative order is reversed.⁷ Here, the individual is prior to the political community, individual

identification may be equated to a search for truth. Since individual perceptions of truth may vary somewhat, the larger number of (sincere and independent) votes should identify the best approximation (Berg 1996; Grofman/Feld 2006).

- 6 Equality, for Rousseau, was only required for the legislative function. The executive might well be monarchic or aristocratic.
- 7 In the words of Michelman (1989: 446–447): “In a republican view, a community’s objective, common good substantially consists in the success of its political endeavour to define, establish, effectuate, and sustain the set of rights (less tendentiously, laws) best suited to the conditions and *mores* of that community. Whereas in a contrasting liberal view, the higher-law rights pro-

self-determination limits the domain of legitimate collective action, and the protection of individual interests takes the place of the republican commitment to a holistically defined common good.

These, at any rate, are the premises of the Anglo-American tradition of liberal political philosophy. Its roots do not go back to antiquity but, paradoxically, to Thomas Hobbes' efforts to justify the restoration of monarchical prerogatives after the English Revolution. To achieve this purpose, Hobbes had to attack the republican concept of liberty as freedom from domination (because it implied collective self-government) and replace it with the individualistic concept of liberty as freedom from interference (Skinner 2008). In a hypothetical state of nature, so the basic argument of the *Leviathan* (1651), this liberty was continuously threatened by the *bellum omnium contra omnes*. To escape from it, individual self-interest would dictate submission to a sovereign authority with unconstrained power to ensure the security of life, liberty and property of its subjects. From this remarkably unpromising start, however, liberal political philosophy – from John Locke (1690), Adam Smith (1776) and Jeremy Bentham (1789) to Friedrich A. Hayek (1960), Milton Friedman (1962) or Richard Nozick (1974) – has developed normative precepts which would continuously extend the domains of individual liberty and justify ever tighter constraints on the governing powers of the political community.

The intellectual and political success of liberal political philosophy was due, to a large extent, to its symbiotic co-evolution with classical, neo-classical and institutional economics. Sharing individual self-interest as their normative and methodological premise, liberal political theory and classical economic theory also converged in their conclusions: the republican concept of a holistically defined “common good” was, of course, rejected. And while utilitarian welfare economics proposed to replace it by the maximization of aggregate individual interests (Kaldor 1939), that solution is regarded as unacceptably collectivistic by libertarian political philosophers (e.g., Hayek 1976), who would only consider Pareto efficiency as a liberty-preserving criterion of legitimate political action. Moreover, where the republican tradition had considered virtuous government as a necessary precondition of societal and individual well-being, classical economic theory claimed to show that the “wealth of nations” was brought about by the uncoerced (and morally unencumbered⁸) interactions of self-interested private individuals guided by the “invisible hand” of free markets. And if individual interests in material well-being could be realized by the market, it was also possible to reduce the threatening omnipotence of the Hobbesian sovereign to those governing functions that were essential for the maintenance of external and internal security, the establishment and protection of property rights, and the enforcement of contracts. In other words, it

vide the transactional structures and the curbs on power required so that pluralistic pursuit of diverse and conflicting interests may proceed as satisfactorily as possible.”

8 Adam Smith, it is true, had introduced a moral philosophy based on “sympathy” among the members of a community in his “Theory of Moral Sentiments” (1759). But the economics of his “Wealth of Nations” (1776) presuppose rational egotism and provide theoretical respectability for the “private vices – public benefits” hyperbole of Mandeville’s “Fable of the Bees” (1714).

was the symbiosis with classical economic theory that allowed liberal political philosophy to shift its focus from the republican concern with the preconditions of “virtuous” government to institutional solutions that would reduce the domain of governing powers and constrain their exercise.

But that was not the only effect of the symbiosis. Given the Hobbesian switch to “negative liberty” – understood as the “freedom of pursuing our own good in our own way” (Berlin 1958: 11) – restraints imposed by governing authorities needed to be justified in all spheres. And since market interactions are considered to be voluntary by definition, and hence compatible with negative liberty, the sphere of legitimate government action is reduced to functions that could not be performed by the market. In other words, the correction of analytically defined “market failures” is seen as circumscribing the domain of permissible public purposes. Even within this domain (which is generally circumscribed by welfare economics), however, the legitimacy of political choice is further challenged by the “Public Choice” variant of libertarian political theory.

Just as the “private vices–public benefits” logic of classical economic theory did not postulate virtuous economic actors, the Public-Choice theory of politics also does not base its expectations on the republican postulate of common-interest oriented governors. In the absence of an “invisible hand”, therefore, models assuming purely self-interested politicians, bureaucrats and citizens inevitably came to expect massive “government failures” (Niskanen 1971; Buchanan 1986; Mueller 1989). And compared to these, even the market failures identified by welfare economics would often appear as the lesser evil. On the basis of these models, the normative political theory of modern liberalism generally supports the deregulation and privatization of a wide range of state functions that had formerly been considered necessary remedies for market failures. Beyond that, radical libertarian theorists like Nozick (1974) and Hayek (1960, 1976) also challenge the legitimacy of redistributive government functions. They do not deny that even ideal markets may generate massive inequalities of wealth, incomes and life chances. But since (economic) theory cannot derive “objective” standards of distributional justice from its models, all political attempts to correct market outcomes would be qualified as arbitrary and hence illegitimate interferences with negative liberty.

In institutional terms, therefore, the foremost concern of liberal political theory is to limit the potential reach of governing authority through the constitutional protection of individual rights. And where the need for governing powers cannot be generally denied, the liberal ideal is government by a consensus of the affected interests. Ideally, therefore, the decision rule ought to be unanimity (Buchanan/Tullock 1962). But since that is not usually practicable, liberalism’s main concern is to prevent the “tyranny of the majority” through the checks and balances postulated by James Madison in the *Federalist No. 51* (Madison/Hamilton/Jay 1788), through super-majoritarian decision rules, multiple veto positions, and pluralist patterns of interest intermediation (Truman 1951; Dahl 1967).

The ideological triumph of market liberalism has overshadowed a second tradition of liberal political philosophy, originating in the Continental rather than the English and Scottish Age of Enlightenment. Immanuel Kant's premises were as individualistic – and hence as anti-republican – as those of Hobbes, Locke and Adam Smith. But Kant's starting point in his *Grundlegung* (1785) was the moral autonomy of the rational individual, rather than the sanctity of individual self-interest. Finding himself (women were still not considered) with the capacity of reason, man must become aware of his own freedom and the concomitant duty to act on the basis of his own cognitive and normative judgments. But reason will also tell him that the same conditions apply to all other human actors as well, and that the exercise of his own freedom must be limited by the equal freedom of all others. As for Hobbes, therefore, the basic problem is the potential incompatibility of individual actions. For Kant, however, the solution cannot be the sacrifice of individual autonomy to the hierarchical authority of a sovereign. Instead, voluntary self-coordination can be achieved by reason itself – which, guided by the “categorical imperative,” will only allow the choice of actions whose maxims the rational actor could want to see established as a general law.

Assuming what game theorists call “complete information,” and allowing the even more heroic assumption that different actors will converge in their assessment of the normative appropriateness of particular rules of conduct, self-coordination through the categorical imperative might indeed work in a model world. But Kant is too realistic to ignore the “crooked timber” of human nature – meaning the fact that individual action may also be driven by passions and self-interest, rather than being guided by pure reason. Hence the moral imperative by itself would not ensure the practical compatibility of autonomous actions. In practice, therefore, individual choices need to be constrained by binding laws which are so effectively sanctioned that they would work even for a “society of devils.” But if these laws are to nevertheless approximate a state of universal freedom, they must be laws of general application and they must prescribe rules of conduct to which all who are affected should and could freely agree in their capacity as morally autonomous and rational actors. In other words, Kant moves the coordination problem from the level of individual action to the level of general rules, and he deals with the problem of normative convergence by moving from the un-coerced agreement of real actors to a criterion of virtual consensus.

In contrast to its Anglo-American sibling, Kantian liberalism did not develop in symbiosis with classical and neo-classical economic theory.⁹ And since its basic criterion of legitimacy was the generality and consensual acceptability of binding rules, it also did not postulate the existence of inviolable individual interests or impose dogmatic limits

9 It is true, however, that ordoliberal economists and lawyers, whose work was influential in shaping the normative foundations of a “social market economy” in postwar Germany, did draw on Kantian philosophy for some of their precepts – for instance, for insisting on general competition rules rather than discretionary state interventions in the economy. See, e.g., Böhm (1950); Eucken (1960, 1969); Mestmäcker (1994); Schlecht (2000).

on the potential domain of governing functions. Thus John Rawls' (1971) search for criteria of distributive justice would be fully compatible with Kantian liberalism – but incompatible with Hayek's or Nozick's libertarian principles. Moreover, if my freedom excludes all choices that could violate the equal freedom of others, the categorical imperative could also justify very stringent restrictions on negative liberty. And as Isaiah Berlin (1958: 29–39) pointed out, the virtual-consensus test through which its meaning is to be ascertained may well depend on information and analyses for which ordinary citizens or democratic majorities seem poorly qualified and which might thus be best left to the vicarious judgment of experts. In other words, like Rousseau's republicanism, Kantian liberalism also has an authoritarian dimension and it may be invoked to legitimate laws that depart widely from the empirical preferences of ordinary citizens (Somek 2008).

But then, Kant was a well-established professor writing under a regime of enlightened absolutism in eighteenth-century Prussia, and he had no intention of designing either the constitution of a liberal democracy or the ground rules of a liberal market economy. Nevertheless, his insistence on government through laws of general application continues to have a powerful influence on the constitutional theory of liberal democracies, and there is at least a formal correspondence between Kant's criterion of virtual consensus and the liberal preference for unanimous or super-majoritarian decisions, checks and balances, pluralism and stakeholder democracy. At the same time, however, Jürgen Habermas' (1992) influential concept of “deliberative democracy” – which could not be farther removed from the normative models of market-liberal political theory – also has obvious Kantian roots, and may in fact be seen as an attempt to provide a republican solution to a problem that Kant had failed to resolve.

Kant expected individual reason to ensure the compatibility of individual actions if these are guided by the generalizing logic of the categorical imperative. Conflicts, in other words, could only arise from the non-rational and selfish impulses of human nature. Since these ought to have no influence on legislation, the criterion of reason-based consensus, which would legitimate state-imposed general laws, could be seen as a matter of objective determination. Habermas starts from a similar position when he insists that deliberative democracy should only admit arguments representing “generalizable interests.” In contrast to Kant, however, he allows for an initial plurality of *bona fide* generalized preferences. As a consequence, the determination of legitimate laws cannot be the object of vicarious analyses. It requires a participatory solution where policy choices should emerge from processes of uncoerced and consensus-seeking public debates in a shared political space. In other words, though starting from Kant's idealistic individualism, the aspirations of deliberative democracy have less in common with liberal political theory than with the republican ideal of collective self-determination.¹⁰

10 There is a caveat, however. The absence of theoretically specified institutional preconditions and the emphasis on consensus-oriented deliberation have contributed to the attractiveness of the Habermasian approach for students affirming the democratic legitimacy of present governing institutions “beyond the state.” There is a temptation to ignore the postulates of egalitar-

Differences

It has become clear that both republican and liberal political philosophy rely on *output-oriented* as well as *input-oriented* legitimating arguments – but that they use these with different references. In the republican tradition, output-oriented arguments emphasize a holistic notion of the common good of the polity. Its substantive content, however, cannot be derived from normative theory but must be defined by virtuous governors (and, in a democracy, virtuous citizens) in the governing process itself. Liberal theory, by contrast, offers positive as well as negative specifications of output legitimacy. Positively, the basic function of government is to protect the security of life, liberty and property against external and internal threats. Beyond that, however, output-oriented liberal arguments have a negative thrust, emphasizing normative constraints on exercises of public authority that would interfere with individual liberty. More specifically, market liberalism denies legitimacy to all state functions that could potentially be substituted by free markets or that interfere with the free operation of markets.

These choices on the output side will also shape, or at least constrain, the dominant input-oriented legitimating arguments of both traditions. For liberalism, the choice seems straightforward: the function of ensuring external security and internal law and order is best entrusted to a Hobbesian executive power whose decisions are placed beyond the reach of partisan politics. Moreover, the function of protecting individual liberties against the “tyranny of the majority” is best ensured by delegating potentially divisive governing functions to the non-political trusteeship of independent (ordinary and constitutional) courts, independent central banks and independent regulatory agencies. With the domain of “political” choices thus drastically narrowed, liberal political philosophy is free to define individual autonomy as the supreme value and government by consensus as its institutional ideal. It is approximated in institutions with super-majoritarian decision rules, multiple veto positions and free access for the widest range of “civil society” groups and organizations. If the consequence is a structural bias favoring the defenders of the status quo and handicapping the proponents of political change, this is welcomed as a protection of negative liberty – except, of course, in situations where the status quo is defined by state-imposed rules that interfere with the exercise of individual liberties (Ganghof 2009). As a consequence, liberalism has a “thin” concept of “citizenship” which, essentially, ensures protection for a range of individual rights that is wider and more secure than the set of universally recognized human rights. And it provides no explicit normative reasons for an obligation to comply with acts of government imposing sacrifices to which one has not consented.

ian participation and publicness and to treat the mere discovery of deliberation (or “arguing”) among participants in international or supranational decision processes as evidence of a democratically legitimating practice (Joerges/Neyer 1997; Schmalz-Bruns 1999; Dryzek 2002).

In republicanism, by contrast, “citizenship” implies not only the rights, but also the obligations of membership in a self-governing political community (Karolewski 2010). Civic rights need to be protected to ensure the capacity, the equal standing and the freedom of citizens to participate in political processes; and civic obligations include the moral duty to exercise rights of participation with a view to the common interest of the community (Schäfer 2011),¹¹ and to accept the burdens and sacrifices imposed by legitimated political processes. Hence input-oriented legitimacy has to bear heavier burdens than is true in liberalism. The “no-domination” principle of republican liberty rules out Hobbesian executive powers, and it puts limits on the delegation of governing powers to non-accountable courts and agencies. Instead, the principles of collective self-determination and equal participation would allow majority rule within the constraints of constitutionally protected civic rights. At the same time, however, input-oriented republican legitimacy is constrained by the output-oriented criterion of “*buon governo*” (D. Schmidt 2003), requiring virtuous governors to practice justice and pursue the common good of the polity. In principle, therefore, legislators and governments in representative democracies are confronted with conflicting requirements – they are oath-bound to act as trustees of the common interest and, at the same time, they are treated as accountable agents of constituents who are free to grant or withdraw governing mandates in general and periodic elections.

The solution to this dilemma of democratic republicanism is John Stuart Mill’s ideal of “government by public debate” (Habermas 1962, 1992): public affairs should neither be managed by non-accountable trustees nor by agents guided solely by the fear of sanctions imposed by self-interested and poorly informed electorates. Instead, governors and citizens should be engaged in debates and controversies in a shared public space where proponents and opponents will justify and criticize specific choices through reference to the common good and the common norms and values of the political community. Under these conditions, republicans expect that voters will also respond as public-interest oriented citizens – which then allows them to accept majority rule without provoking the liberal fears of “tyranny” or “populism” (Riker 1982).

Clearly, the requirements for input-oriented legitimacy are more demanding in republican theory than they are in liberalism. And so they should be, given the different dividing line between what must be left to private autonomy and what may potentially become the subject of public affairs. Republican self-government may legitimately attempt to shape socioeconomic and sociocultural conditions that liberalism would place beyond public interference. And whereas liberalism, even of the Kantian variety, faces great theoretical difficulties in justifying corrections of market-allocated life chances (Rawls 1971), solidaristic redistribution among the members of the political commu-

11 Kimpell (2009) argues that nineteenth-century republican theorists replaced “civic virtue” with “enlightened self-interest.” In my view, this should be seen as a move from republicanism to liberalism.

nity has become a core issue of twentieth-century republican politics. It follows that republicanism must be more concerned with the quality of the inputs and politics that shape the exercise of such far reaching potential powers.

In the context of discussions about a European democratic deficit, however, the most important difference concerns the place of “*political community*” in liberal and republican legitimating arguments. Referring back to David Easton’s (1965) hierarchy, it appears that liberal arguments focus on the quality of *policies* and on institutional safeguards at the level of governing *authorities* and constitutional *regimes*. But given their individualistic premises, the reference to *political community* has no legitimating function in liberal discourses. Human rights and individual interests may be effectively protected within any aggregate of persons that happens to be assembled under a “decent” (Rawls 1999) constitution. If properly constrained governing action should nevertheless violate individual preferences, “exit” rather than “loyalty” and “voice” (Hirschman 1970), and “voting with the feet” (Tiebout 1956) are seen as appropriate remedies. In that sense, liberalism appears as a truly universalistic or cosmopolitan political philosophy whose insistence on the security of life, liberty and property rights, tightly circumscribed political functions and consensual decision making could define “good governance” within any aggregate of individuals anywhere and at any time.

By contrast, republicanism (and even more so, its “communitarian” variant) must appear inherently particularistic. From its Aristotelian origins onward, the focus has been on specific political communities with a remembered past and an anticipated future, and with a commitment to shaping the common good of these communities with the support of and in response to their citizens.¹² And “republican liberty,” understood as a principle of “non-domination,” is meant to ensure the collective self-determination of citizens, rather than the negative liberty of individuals. Hence the polity as a political community of self-governing citizens with a specific collective identity has remained the ultimate referent of republican legitimating arguments (Miller 2000). And the more the functions of government are extended, and the more they may interfere with individual preferences, the more the relational character of legitimating arguments comes into play. It increases the relative importance of appeals to the “we-identity” and the solidarity of citizens and it emphasizes the orientation of public debates to a common interest and shared norms of justice that may legitimate the sacrifice of self-interested concerns. That is why republican perspectives on European integration must pay attention to information about the historical factors facilitating state and nation building (Rokkan/Eisenstadt 1975) or about the breakup of established states like the former Yugoslavia or Czechoslovakia and the current difficulties of majoritarian democracy

12 In Easton’s (1965) terminology, what matters here is not merely the existence of a political community defined by frequent political interactions (177), but a “sense of political community” (184–189) – defined as “... the feeling of belonging together as a group which, because it shares a political structure, also shares a political fate ... [T]o the extent there is a *feeling* of political community, the members will possess mutual sympathy and loyalty with respect to their participation in a common political unit” (185, emphasis in original).

in polities with conflicting collective identities like Belgium (Billiet/Maddens/Frogner 2006; Swenden/Jans 2006), Canada, Spain or Northern Ireland, for that matter. By the same token, the erosion of national boundaries and the difficulties of recreating conditions of “boundedness” on a European scale (Bartolini 2005; Ferrera 2005) will be of concern only in the context of republican legitimating discourses (Karolewski 2010).

3 Constitutional democracies – and the European Union?

The discussion above has accentuated the differences between the dual traditions of Western political philosophy. But conceptual distinctions do not rule out either pragmatic coexistence or normative complementarity. On the contrary: the institutions and practices of Western constitutional democracies and their normative beliefs are based on the combination of principles that have been asserted separately in the republican and in the liberal traditions. They are all liberal polities in the sense that the state is responsible for external and internal security and the protection of property rights, that governing powers are distributed and constitutionally constrained, that individual rights are protected by an independent judiciary, and that plural interests have access to the policy-making processes by which they are affected. At the same time, however, Western constitutional democracies are all republican in the sense that they are representative democracies where governing authority is directly or indirectly obtained and withdrawn through regular, universal, free and equal elections, where policy choices are shaped through public debates and the competition of office-seeking political parties, and where institutions that are exempt from electoral accountability will still operate in the shadow of democratic majorities or, at least, of a democratic *pouvoir constituant*. Moreover, public policy everywhere is heavily involved in replacing or correcting market outcomes by providing education, health care, social services and social transfers either directly or through redistributive regulations and subsidies. And interventions in the market are more frequent everywhere than market-liberal doctrines would allow.

In other words, republican and liberal principles coexist, and they constrain, complement and reinforce each other in the constitutions and political practices of all Western democracies (Michelman 1999; Habermas 2001; Bellamy 2007). Nevertheless, the actual institutions vary in the extent to which they facilitate liberal or republican practices – and these practices will, in turn, shape the emphases of the prevailing discourses on political legitimacy (Lijphart 1999; V. A. Schmidt 2006). But these differences seem to fade in importance if we now turn our attention from the world of democratic nation-states to the European Union. When seen by itself and judged by the standards discussed here, the Union appears as the extreme case of a polity conforming to liberal principles but which, at the same time, lacks practically all republican credentials.

The EU's liberalism is most obvious in the priority it accords to the protection of (certain) individual rights and the tight institutional constraints on majoritarian political action: the European Court of Justice (ECJ) is more removed from correction by politically accountable actors than the constitutional court of any democratic state. From early on, it has interpreted the Treaty commitment to establish a Europe-wide market and the free movement of goods, persons, services and capital not as a programmatic goal to be realized through political legislation, but as a set of directly enforceable individual rights that will override all laws and institutional arrangements of EU member states. Moreover, the ECJ has also begun to protect non-economic human rights (Weiler 1999), and it is now dynamically extending their reach (Wollenschläger 2007; Scharpf 2010, 2012).

At the same time, the European polity's capacity for effective political action is impeded by the existence of multiple veto positions in European legislation; and the input side of its political processes could not be more pluralist and less majoritarian in character. The Commission itself, which has a near monopoly of legislative initiatives, relies on an extended infrastructure of committees and expert groups allowing access to a wide range of interest associations and "civil society" organizations. Moreover, through the Council of Ministers, whose agreement by at least a qualified-majority vote is required for all legislation, all interests that have access to the national ministries in charge will also have access to the European level. Finally, the European Parliament, whose role in legislation has been considerably expanded in recent Treaty revisions, also prides itself on giving voice to interests and concerns that might possibly have been ignored in the Commission and the Council. In short, it is extremely unlikely that significant stakeholder interests could be victimized by a "tyranny of the majority" at the European level.

But if the EU does qualify by liberal standards, it definitely fails by the criteria of republican democracy. On the output side, the Union's capacity to promote the common good is constrained by the consensus requirements of a multiple-veto system (Scharpf 1988; Falkner 2011). These requirements prevent effective collective action in response to many problems that member states could not deal with nationally. The EU's notorious difficulties in developing a common foreign and security policy and its inability to regulate competition over taxes on company profits and capital incomes are just the most glaring examples (Howorth 2007; Ganghof/Genschel 2008a, 2008b). Moreover, these same decision rules are responsible for an extreme conservative bias in EU policy. While new legislation must have broad political support, once it is adopted, it cannot be abolished or amended in response to changed circumstances or changed preferences as long as either the Commission refuses to present an initiative or a few member states object. Beyond that, all rules derived from the judicial interpretation of the Treaties can only be corrected through Treaty amendments, which must be adopted unanimously by member governments and ratified by parliaments or popular referenda in all member states. In other words, once EU law is in place, the *acquis* is nearly irreversible, and its correspondence with the common good of the Union (or contemporary political preferences) becomes progressively more tenuous as time goes on (Scharpf 2009).

From an output-oriented republican perspective, therefore, the European polity suffers from a problem-solving gap where member states find their policy space constrained by European law, while the capacity for political action at the European level is constrained by very high consensus requirements. In theory, of course, the multiple-veto constraints could be relaxed through a move to majoritarian decision rules for European legislation. But from a republican perspective, this remedy could only deepen the European legitimacy deficit.

In the absence of a strong collective identity, the peoples of the 27 member states do not constitute a political community that could legitimate a regime of Europe-wide majority rule on politically salient issues. And if it were installed nevertheless, political interactions would not meet republican standards: there are as yet no Europe-wide media of political communication and debates, no Europe-wide political parties to articulate and aggregate citizen interests and preferences, no Europe-wide party competition focused on highly salient European policy choices – and thus no way in which the citizens of European member states could respond collectively to proposed or actually adopted policy choices at the European level or to their effects. Regardless of the increasing powers of the European Parliament, therefore, there are no European governors (or governing parties¹³) that must anticipate and respond to the egalitarian control of Europe-wide election returns (Greven 2000; Harlow 2002; Follesdal/Hix 2006; Hix 2008). While some republican authors hope that these deficiencies might be overcome through institutional reforms facilitating the politicization of European policy choices, they seem to pay insufficient attention to the EU's lack of “political-community” foundations¹⁴ – which republican theory must treat as a crucial precondition for collective self-determination by majority rule (Karolewski 2010). And for the time being, at any rate, even optimistic empirical assessments will only assert the existence of a “thin” and unevenly shared European collective identity that will not support the majoritarian resolution of highly salient and divisive issues at the European level (Risse 2010).

4 Legitimacy intermediation in the multilevel European polity

From a republican perspective, therefore, challenges to European acts of government cannot be met at the higher levels of David Easton's (1965) hierarchy of legitimating arguments. As a political community, the European Union has at best very weak claims

13 In multi-party or “consociational” polities, voters may not be able to oust a government, but they may be able to punish individual governing parties.

14 More optimistic authors should at least pause to reflect on the present state of Belgian politics, where political mobilization in the Flemish and Walloon communities seems to commit political leaders to policies maximizing the perceived interests of each community – and to drastically reduce their freedom to agree to compromises at the national level (Berge/Grasse 2003; Billiet/Maddison/Frogner 2006; Swenden/Jans 2006; Bursens/Sinardet 2009).

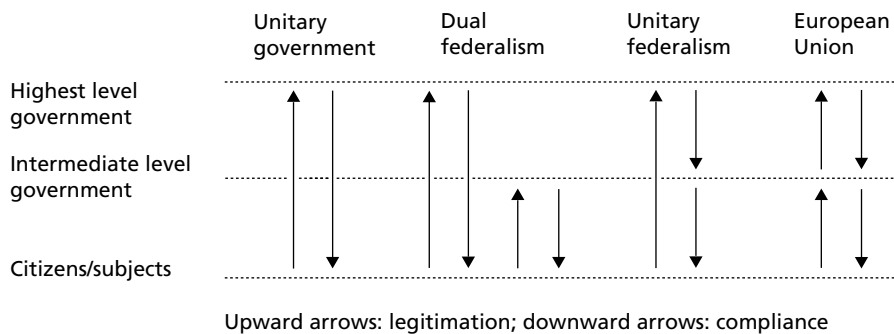
on the loyalty of disaffected citizens; as a political regime, it does not conform to democratic standards of political interaction; and while the legality of EU authorities is not in question, they lack the legitimating essential of electoral accountability. Nevertheless, academic concerns over the alleged European democratic deficit have only recently begun to provoke political discussions outside of the European Parliament. And in light of the rapidly increasing volume of European policy output, observers assuming republican criteria of political legitimacy might truly wonder why political protests and demonstrations against EU policies were extremely rare before the present crisis, and why open noncompliance, civil disobedience and active resistance were practically unheard of.

From a republican perspective, this puzzle could be resolved by two connected hypotheses. The first one starts from the relational concept mentioned above, which suggests that the supply of legitimacy need not be greater than the demand for it. Thus, European policy-makers, being aware of the weakness of EU legitimacy at the “community” and “regime” levels, may have avoided highly intrusive and politically controversial policy choices. At the same time, and perhaps more plausibly, the multiple-veto constraints of EU policy processes may have prevented the adoption of policies that would violate the highly salient concerns of member-state constituencies. In either case, EU policies would avoid manifest challenges testing the legitimacy of European governing powers.

In spite of its surface plausibility, however, this hypothesis does not seem to address the fact that even before the onset of the euro crisis, there were European policies which had a massive impact on the economies, institutions and policy legacies of EU member states, and which have been analyzed – and sometimes celebrated – in the literature on “Europeanization” (see, e.g., Cowles/Caporaso/Risse 2001; Münch 2008; Höpner/Schäfer 2008; Graziano/Jacquot/Palier 2011; Kelemen 2011). While the overall transformation of European economies, societies and polities must surely be the cumulative effect of a multitude of proactive and reactive interactions of public and private agents, many of the most salient changes can be traced directly to specific policy choices at the European level. Hence the puzzle remains; and in order to account for the absence of manifest legitimacy crises, a second hypothesis and a more complex normative model need to be considered.

This hypothesis starts from the recognition that the EU is not a free-standing, single-level state, but part of the two-level constellation of the European polity. In it, the member states are indeed expected to conform to the full range of liberal as well as republican criteria of legitimacy – and it is their legitimacy which, until very recently, has protected the Union against direct challenges to its policies (Scharpf 2007, 2009). To clarify this argument, it is useful to distinguish between an enforcement–compliance relationship and a legitimating relationship between governments and citizens. They are congruent in unitary states and in states corresponding to the model of “dual federalism” (where central and regional governments are responsible for different policy areas and rely on their own, separate enforcement structures). Even in German “unitary federalism,” where compliance with federal law is enforced by *Länder* authorities, con-

Figure 1 Compliance and legitimation in multilevel governments



gruence is ensured by the fact that the dominant legitimating relationship runs between citizens and the national government, and that *Länder* elections are generally treated by political parties and the media as “second order national elections” in which the performance of the federal government is treated as a salient issue (Burkhart 2008; Moore/Jacoby/Gunlicks 2008).

The two-level polity comprising the European Union and its member states shares some important structural characteristics with German federalism (Scharpf 1988). As in Germany, citizens do not confront the higher-level government directly. From their perspective, compliance is demanded almost exclusively by the administrative agencies, tax authorities and courts of their national polities. And from the Union’s perspective, what matters is the willingness and ability of its member governments to ensure the implementation of European law. This is the compliance which the Commission keeps monitoring, and which is also the subject of a growing body of compliance research (Falkner et al. 2005; Zürn/Joerges 2005; Börzel et al. 2007).

In contrast to Germany, however, we also see a two-step legitimating relationship in the European polity. Whereas in German federalism, public debates and party competition focus on national policies and politics, and citizens are used to addressing their demands and their electoral responses to the higher (national) level of government, the higher level of the European polity is generally beyond the horizon of citizens’ expectations and political demands; it is not the target of public debates and party competition, and most importantly, it is not vulnerable to electoral sanctions (Mair 2008). Citizens will not usually know the origin of the rules with which they are asked to comply, but they know that the only government which they might hold politically accountable is their own. In effect, therefore, national governments must generally bear the full burden of political accountability for unwelcome exercises of governing authority, regardless of how much European law may have contributed to these.

In a republican framework insisting on collective self-determination and democratic accountability, therefore, the EU must be legitimated not as a government of citizens, but as a government of governments.¹⁵ What matters first and foremost is the willingness and ability of member states to implement EU law and to assume political responsibility for doing so. But if that is the case, normative discussions of EU legitimacy also need to reflect the limits of their capacity to justify the European policies they must implement. At a superficial level, the answer to the first question is easy. Democratically accountable governments unanimously agreed to create the European Union with its competences, institutions and decision rules – or they joined it later in full knowledge of the *acquis* and its obligations. They did so to realize purposes and to deal with problems that are beyond the reach of national policy choices. At the same time, however, these benefits of membership – and ultimately European integration itself – are highly vulnerable to the temptations of free riding. Hence, there are very good normative arguments obliging member states to comply with European law (Garrett 1992, 1995).

In relation to their own citizens, however, governments remain responsible for protecting and advancing the common good. If they find it necessary to participate in international or supranational institutions in order to deal with problems that could not be resolved in the national domain, there ought to be good output-oriented arguments supporting integration. Where that is so, governments should be able to justify European policies in “communicative discourses” (V. A. Schmidt 2006) if these are challenged in national politics. And if they do not succeed, they will have to bear the political cost.¹⁶ In any case, however, they will remain accountable to their citizens for the policies they implement. From the perspective of republican legitimacy, that is as it should be. The electoral responsibility of national governments could only end – as is true in unitary German federalism – if and when the higher-level government becomes politically accountable for its own policy choices.

Since this is not yet so in the European Union, governments are likely to use their roles in EU legislation to avoid European policies whose immediate impact would provoke politically salient opposition at the national level. Nevertheless, input-legitimacy will be weakened by the need to find compromise solutions that will deviate from pre-existing domestic preferences in order to accommodate the positions of other member states as well (Scharpf 2000). Moreover, the multiple-veto system that limits the political sa-

15 This is not meant to say that a purely “intergovernmentalist” model would be either empirically or normatively sufficient (Eriksen/Fossum 2009). Much of what the EU is in fact doing cannot be explained as the outcome of pure intergovernmental bargaining (Falkner 2011). And for much of what the EU is in fact doing, it makes no sense to postulate a meaningful legitimating chain linking European policy choices to governments, governments to national parliaments, and these to national elections (Hix 2008). What I am saying is that in the absence of a direct legitimating relationship with its citizens, the EU must rely not only on the compliance of its member governments, but also on their legitimacy.

16 Since voters and political opponents are not obliged to be fair, blaming the EU and confessing their own impotence is unlikely to be a useful strategy for embattled governments.

lience of individual EU decisions will also prevent national governments from intervening against their cumulative impact if negative effects of “Europeanization” should become politically salient in national constituencies.

There is no question, then, that legitimacy intermediation in the two-level European polity is no equivalent for the legitimating potential of democratic self-government in the unitary or federal nation-state. But since the preconditions of republican legitimacy do not (yet) exist at the European level, it is the best we can rely on for the time being. And until recently, at any rate, the moderating influence of national governments on EU legislation, and their continuing accountability for its implementation, has shielded the Union against the legitimacy crises which authors and politicians castigating its democratic deficit should have expected. In the present euro crisis, however, the shield of legitimacy intermediation has been pushed aside as citizens are directly confronted with the massive impact of European policies – and with their manifest lack of democratic legitimacy.

5 The end of legitimacy intermediation in the euro crisis

By its own logic, legitimacy intermediation cannot support those “supranational” European governing functions in whose exercise member-state governments (or the European Parliament, for that matter) are not involved. Most prominent among these¹⁷ is the power of judicial legislation exercised by the European Court of Justice and the European Central Bank’s power over monetary and exchange rate policies in the Monetary Union. In the literature, their legitimacy is often taken for granted, since national constitutional democracies are also respecting the political independence of constitutional courts, central banks and some regulatory agencies (e.g., Majone 1996; Moravcsik 2002). But the analogy is misleading. At the national level, the independence of central banks and regulatory agencies is supported and could be modified by democratically accountable governments and parliaments, and even the independence of judicial review is exercised in the context of common public space as a horizontal dialogue among (in the language of American constitutional law) “co-equal branches of government” (Bickel 1962). In the EU, by contrast, the horizontal dialogue is transformed into a vertical, hierarchical relationship between supranational authorities and national agents.¹⁸ And efforts to correct the ECB’s policy or the rule announced in a Treaty-based ECJ decision would require Treaty amendments that must be ratified by parliaments or referenda

17 The Commission’s power to define and apply competition rules for the private and public sector should also be included here.

18 Some observers might detect traces of a virtual dialogue between some judgments in Luxembourg and in Karlsruhe. But how could the ECJ interact with similar interlocutors in all 27 member states?

in all 27 EU member states. In other words, the ECJ and the ECB are much further removed from the influence of democratically accountable governors than is true of their formally “independent” counterparts in constitutional democracies.

As a consequence, supranational EU government cannot be legitimated, even indirectly, by input-oriented arguments. Its justification can only be derived from output-oriented arguments. In other words, it must depend on the belief that the common good of the community is better served by authorities that are not under the direct control of parliaments and governments exposed to electoral accountability and the temptations of partisan politics. Thus, the independence of judicial review, in particular, is supported by the deeply entrenched (liberal as well as republican) conviction that the democratic process itself depends on the protection of civic rights. By contrast, broad support for politically independent central banks is a more recent achievement, owed to the intellectual ascendancy of monetarist economics. When invoked at the European level, however, both justifications appear deficient.

The ECJ has had little or no opportunity to protect civic rights and the institutional foundations of democratic processes. Instead, its authority did benefit from a general respect for the rule of law and a more specific admiration for its role as the “motor of European integration.” At the same time, however, its vigorous protection and extension of individual (and mainly economic) rights has been the major force in a liberal transformation of the political economies of EU member states. Whether the overall impact of the ECJ’s judicial legislation has been to serve the common good of the European polity is certainly not obvious. But since I have explored these issues elsewhere, I will relegate them here to a footnote.¹⁹

While the ECJ’s judicial legislation may arguably have exceeded its intended mandate, this was certainly not true of the ECB. The institutional structure of the Monetary Union, the ECB’s mandate and the constraints on member-state autonomy were unani-

19 Initially, “integration through law” (Cappelletti/Seccombe/Weiler 1985) was widely applauded as an effective way of removing political blockades at the end of the 1970s. Empowered by its early and largely uncontested assertion of the supremacy and the direct effect of European law, the ECJ was in fact able to go beyond the original intent of member governments by advancing the “negative integration” of European economies through its very extensive interpretation of individual economic liberties (Alter 2001, 2009; Stone Sweet 2004; Scharpf 1999, 2011a; Höpner/Schäfer 2008; S. K. Schmidt 2011). As a consequence, ECJ decisions have progressively reduced the domain of allowable national policy choices (Kelemen 2011). And since “positive integration” through European legislation was and is still impeded by high consensus requirements (Falkner 2011), judicial legislation has been a major factor in the liberal transformation of political cultures in EU member states (Scharpf 2010). Promoted in individual cases of very low political salience, this transformation has largely proceeded below the threshold of public attention. It was only when a series of ECJ decisions seemed to upset national rules of industrial relations (Joerges/Rödl 2008; Rödl 2009) that some political actors began to take notice – but apparently with little effect (Blauberger 2012). So even though integration through law imposes increasingly tight constraints on democratic policy choices at the national level, its own legitimacy has not (or not yet) become a politically salient issue.

mously adopted by governments and ratified after much public debate by parliaments or referenda in all EU member states. And the ECB was perfectly complying with its mandate to ensure price stability in the eurozone. If the outcome is nevertheless a euro crisis that seems to be threatening European integration itself, its cause was neither “agency drift” nor even the noncompliance of member governments, but deficient theoretical assumptions that had supported the legitimating belief that creating the Monetary Union would serve the common interest.²⁰

Monetary Union and the failure of output legitimacy

These beliefs could be described as a “monetarist fallacy.” For national economies, monetarist economic theory predicts inflation-free economic growth if the stability-oriented monetary policy of an independent central bank assumes the leading role in macroeconomic management and if governments avoid inflationary budget deficits. That assumes, of course, that the bank’s policy will be targeted on the actual conditions of the national economy. With regard to a European Monetary Union, however, monetary economists (mainly American) pointed out that monetarist assignment of governing functions presupposes an “optimal currency area” (Mundell 1961), and that the monetarist model could not work in a eurozone comprising extremely heterogeneous national economies (Eichengreen 1990; Feldstein 1997). But in the political drive for more European integration, these warnings were disregarded. Instead, it was believed that more intense interaction in the Monetary Union itself would also ensure the convergence of economic conditions (Dyson/Featherstone 1999; Issing 2002; Marsh 2009; Heipertz/Verdun 2010). On theoretical grounds, however, one should instead have expected a reinforcement of divergent dynamics (Enderlein 2004).

As it turned out, theory was the better predictor: uniform ECB interest rates pushed low-inflation economies like Germany into a prolonged recession while stimulating the former soft-currency economies of Greece, Ireland, Portugal, Spain and Italy (the GIPSI countries) into credit-financed overexpansion and real estate bubbles. In its first decade, therefore, the Monetary Union generated an increasing divergence of unit labor costs, current-account balances and compensating capital flows between surplus and deficit economies. Thus, when the global economy was shaken by the international financial crisis following the collapse of the Lehman bank in 2008, the credit squeeze was most disastrous in the GIPSI economies that had come to depend on the availability of massive capital imports. And as domestic demand fell and unemployment increased steeply, governments intervened and public-sector deficits escalated, as they did everywhere. However, in the GIPSI countries, some of which had reduced public-sector debt to extremely low levels before the crisis, the rise was steeper than elsewhere. At this point, fi-

20 My account is based on the research presented in Scharpf (2011b) and a number of later but unpublished papers and presentations.

nally, investors began to worry about the ability-to-pay of euro states whose economies depended on capital imports to compensate negative current accounts. And as the risk premia of government bonds increased and debt refinancing became more expensive, the danger of state insolvency – first in Greece and then in other GIPSI states – has turned into a crisis of the euro itself.

What we have, then, is a major step in European economic integration which deprived democratic member states of macroeconomic controls over their national economic fates by establishing a strictly non-democratic supranational regime whose claim to output legitimacy depended on the “monetarist fallacy.” Since this belief was mistaken, uniform supranational monetary policy was wrong for Germany, where it caused a deep recession between 2001 and 2005, and it was wrong for the GIPSI economies, where it generated the preconditions of the present crises. Initially, however, political blame was allocated at the national level. Since the effects of misspecified monetary impulses are indirect, and were politically invisible while the ECB was ostensibly following its mandate, and since voters are not obliged to be fair, national governments had to pay for the massive failure of European policy – first in Germany in 2005, and then in Greece, Ireland, Portugal, Spain and Italy as well. But that has not been the end of the story, and in the process, the role of European policy has become much more visible and problematic.

Rescuing the euro through supranational intervention

The threat of state insolvency first arose in Greece at the beginning of 2010, and for a few months it seemed possible that its government would be left to cope with it. But it soon became clear that Greek bankruptcy might undermine the solvency of creditor banks in France and Germany, that it might trigger domino effects in other GIPSI states, and that a Greek exit from the Monetary Union might provoke currency fluctuations that could reduce the competitive advantage that German exports enjoyed in the Monetary Union. By May of 2010, therefore, the German government had come to see the Greek government-debt crisis as a threat to the euro, and a collapse of the euro as a threat to European integration. And in the same spirit, all eurozone governments were ready to ignore the “no-bail-out clause” and other constraints of the Maastricht Treaty in order to save the euro at any cost. In the process, however, they also have destroyed the precarious preconditions of legitimacy intermediation in the European polity.

There is no point in detailing here the sequence of rescue operations, the still ongoing efforts of institutional reform and the economic effects these have brought about by the time of this writing (July 2012). From a democratic theory perspective, what matters most are two basic characteristics:

First, the rescue operations themselves have been exclusively targeted at the state-credit crises, rather than at the crises of the real economies of the GIPSI states. Their focus is on the insolvency threat caused by escalating costs of (re)financing public debt in international credit markets. And apart from interventions by the ECB in secondary markets, relief is provided through the reduced-rate credits from rescue funds which are supported by direct contributions and guarantees burdening the budgets of all eurozone states.

Second, these rescue credits are associated with “conditionalities” whose ostensible purpose is to reduce or eliminate the need for state credit in the short term, and to prevent its recurrence in the future. Thus the “memoranda of understanding” defined by the Commission, controlled by the “Troika” and sanctioned by the Ecofin Council have imposed severe budget cuts, public-sector layoffs and increased consumption taxes – which further reduced aggregate demand, employment and tax revenues in depressed real economies.

Since these effects could have been easily foreseen, one must assume the influence of counterfactually stabilized cognitive and normative “frames.” One reason must have been the fact that the rescue credits must ultimately be backed by the commitments of taxpayers in the creditor states (rather than by enabling the ECB to play the role of “creditor of last resort” for all euro states). Thus, creditor governments accountable to their taxpayers surely had reason to insist on conditions, controls and sanctions.

Even more important, however, seems to have been the persistent intellectual and political influence of the monetarist fallacy: if stability-oriented monetary policy in national economies works best when excessive public-sector deficits are avoided, the failure of stability-oriented ECB policy must have been caused by excessive national deficits. And since the Greek case seemed to fit the pattern (at least to some extent), the dogma was reinforced, even though Germany had also found itself compelled to violate the Maastricht criteria during its deep recession, and even though Ireland and Spain had reduced their public debt far below the Maastricht requirements. In this spirit, austerity dictates could not be relaxed even though real economies continued to shrink while mass unemployment escalated to levels unheard of since the Great Depression of the 1930s.

Moreover, at German insistence, most EU governments have now agreed to a “Fiscal Pact”²¹ that is meant to permanently enforce fiscal discipline by requiring the adoption of balanced-budget rules in all national constitutions. At the same time, some of the EU’s “Six-Pack Regulations”²² have tightened the Excessive Deficit Procedures of the Stability Pact by introducing stringent European supervision and quasi-automatic sanc-

21 Treaty on stability, coordination and governance in the economic and monetary union (signed on March 2, 2012).

22 Council Directive 2011/85/EU; Regulation (EU) No 1173/2011; Regulation (EU) No 1174/2011; Regulation (EU) No 1175/2011; Regulation (EU) No 1176/2011; Regulation (EU) No 1177/2011.

tioning mechanisms in case of noncompliance, and they have also extended supervision, direction and sanctioning in a new Excessive Imbalances Procedure that will allow the Commission to control a wide range of national economic and social policy choices.

More generally, the lessons which European policy-makers have drawn from the euro crisis did not include a re-examination of the economics of monetary centralization or a reflection on the monetarist fallacy (De Grauwe 2009; Feldstein 2011). They continue to ignore the disastrous role of one-size-fits-all monetary policy, and they insist on blaming the crisis on national policy failures. In effect, they seem to have convinced themselves that democratically accountable national governments and parliaments simply cannot be trusted to adopt and implement the kind of policies that would make the euro work.

From this, it might also follow that creating the supranational Monetary Union was a case of premature and excessive institutional integration. But given the unconditional political commitment to save the euro, that conclusion would not be policy relevant. Instead, the dominant view has come to the belief that the Monetary Union was insufficiently supranational and lacked the powers to create the preconditions for the success of the monetarist model at the level of the eurozone.

In hindsight, therefore, it is seen as a fatal mistake that the deficit rules of the Stability Pact were not rigorously enforced against Germany and France. And if heterogeneous national economies failed to converge as expected, governments should have been forced to adopt policies that would have ensured convergence. The primary goal should have been major increases in economic flexibility – even if these would have required major economic, institutional and social transformations. In most member states, this would have included politically controversial measures to increase the profitability of private investment, to eliminate rigidities of the labor and service markets, to privatize public enterprises, and to generally reduce the burdens of the welfare state on the economy.

This, at any rate, was the logic of the “supply-side” reforms adopted by Margaret Thatcher and Ronald Reagan after their conversion to monetarism in the 1980s. It was also the logic of the somewhat milder Hartz IV program which Germany, under the constraints of euro-monetarism, adopted in response to the long recession of 2001–2005. And much harsher versions of such supply-side reforms have, in fact, been defined and enforced through the “conditionalities” imposed on the GIPSI governments that had to apply for rescue credits in the euro crisis.

From an economic perspective, the elective affinity between monetarism and supply-side policies seems quite plausible. And if the monetarist model should ever be made to work in the eurozone, it would indeed depend on a much greater degree of convergence among the heterogeneous member economies. It also seems plausible that greater convergence would require much greater degrees of economic flexibility, which could not be achieved without major supply-side adjustments in most or all euro states. In other

words, if the euro is to be defended at all costs, economic logic does seem to suggest that the combination of fiscal discipline and liberalizing “structural” reforms may be the price that must be paid.

Whether the present strategy is likely to succeed in rescuing the euro, and whether its potential success would outweigh its costs in terms of mass unemployment, social inequality and societal disintegration, are not issues that I will explore here. Instead, I wish to discuss its implications for political legitimacy in the European polity. What matters here is the fact that, practically for the first time in the history of European integration, European policies have a direct and massive impact on the lives and concerns of citizens or on their highly salient political preferences, while European policy-makers are perfectly visible as the authors of these policies.

In this regard, the situation in countries where fiscal discipline and supply-side reforms were externally imposed and controlled differs from constellations where similarly unwelcome policies were chosen and defended in national elections by the politically accountable Thatcher, Reagan or Schröder governments. Quite obviously, national democratic processes were disabled as ever more detailed and highly publicized instructions on welfare cutbacks and labor market deregulation had to be implemented by successive Greek governments and parliaments without even the opportunity for face-saving gestures – let alone the permission to call a referendum. Or take the Portuguese experience, where in May 2011, all potential governing parties were required to promise that they would carry out the “memorandum of understanding” regardless of the outcome of the upcoming national election. Moreover, from the citizens’ perspective, the authors of these dictates are not anonymous market forces; they have the faces of Merkel, Schäuble, Sarkozy, Barroso and Trichet – none of whom, however, can be taken to account by Greek or Portuguese voters.

But if the loss of autonomy is obvious for debtor states, it is no less true for the parliaments of creditor countries, which are asked to accept ever more staggering commitments to cover the ever increasing financial risks associated with a succession of rescue funds. And in spite of negative majorities in opinion surveys, spectacular gains by anti-European parties, the collapse of coalition governments or the injunctions of constitutional courts, it is clear that agreement will ultimately be “*alternativos*”: summit resolutions and Ecofin agreements on the rescue of the euro have the character of take-it-or-leave-it offers that no member-state parliament could afford to reject.²³

23 This may be different in countries like Germany and Finland whose governments have either taken a leading role in shaping European agreements or have succeeded in gaining special arrangements protecting salient national interests. Under either condition, national accountability may still have some substantive meaning. But neither of them could possibly be generalized.

In other words, the European responses to the euro crisis have disabled national democratic legitimacy, and at the same time, they have destroyed the possibility of legitimacy intermediation on which the European polity so far had depended. For the first time, therefore, the exercise of European governing functions must depend on its own legitimacy.

6 Legitimate supranational government?

But on which arguments could it be based?

Output-oriented justifications of present rescue measures have lost most of their plausibility after having failed over the course of more than two years. And even the optimistic expectations associated with supply-side reforms could only envisage a long and difficult road to the eventual recovery of the GIPSI economies. At the same time, there is also no chance that claims to output legitimacy could support radical alternatives suggesting the exit of Greece and perhaps other GIPSI states, or even a return from the Monetary Union to the more flexible European Monetary System of 1979–1999. Exits might nevertheless happen, and they would restore political autonomy at the national level. But their economic, social and political effects are still shrouded in radical uncertainty. And if they were now proposed as European policy choices, they could not generate the trust in responsible government on which output legitimacy must depend. The same could be said of the vision that would try to use the euro crisis as an opportunity to achieve a breakthrough to a European federal state. On the one hand, it is unclear how such efforts might contribute to a resolution of present economic crises, and on the other hand it seems entirely unrealistic that political integration, in contrast to the economic integration of the last century, could now be promoted as progress to an uncontroversial “common good.”

So if “rescuing-the-euro” policies are not supported by output-oriented legitimating arguments, could they be justified by input-oriented criteria?

Input-oriented European legitimacy?

“Rescuing-the-euro” policies had – and still have – major impacts on citizens’ personal interests and highly salient preferences in debtor and creditor countries alike, and if they should have to be justified in input-oriented terms, it is necessary to specify the type of policies and the institutions and processes in which these are determined.

The Monetary Union has totally removed the competences of monetary and exchange rate policies from its member states, and it has tried to constrain their fiscal competences. In the euro crisis, debtor states have completely lost fiscal autonomy, and the exercise of wide ranges of their economic, social and labor-market competences has been subjected to direct European control. Creditor states, on their part, have been required to carry the main burden of rescue credits through direct contributions and financial guarantees from their own budgets and at the expense of their own taxpayers. Moreover, with the recent adoption of the Six-Pack Regulations and of the Fiscal Pact, European control over fiscal policy and over an indefinite range of other national competences is being generalized to apply to all member states, regardless of any applications for rescue credits. What needs to be legitimated, therefore, are European controls over national policy choices and national resources, rather than choices about common European policies and the allocation of European resources.

In order to appreciate the implications, it seems useful to consider the “Excessive Imbalance Procedure” that was adopted as a directly applicable EU regulation by the Council and Parliament in November 2011 (EU 1176, 2011). In contrast to the dominant obsession with past budget deficits, the regulation does perceive the euro crisis as a consequence of the extreme divergence of macroeconomic balances that had developed among the economies of the eurozone. But avoiding any reference to the negative impact of uniform monetary policy on heterogeneous economies, the regulation focuses entirely on the need to control national policies. To this effect, the Commission has defined a “scoreboard” of internal and external statistical “indicators,” ranging from current-account balances, real effective exchange rates and export market shares to house prices, private sector debt and unemployment rates.²⁴ If Commission-defined upper or lower thresholds are exceeded, the Commission will investigate and, upon finding excessive imbalances, will issue “recommendations” which may become binding and entail quasi-automatic sanctions in case of noncompliance.

In contrast to rules on budget deficits, however, practically all the balances listed in the scoreboard are not under the direct control of governments. Before entering the Monetary Union, national policy-makers would have influenced them indirectly through the monetary, fiscal and exchange-rate instruments available for macroeconomic management. Since these instruments are no longer available at the national level (and since their use by the ECB will continue to increase imbalances²⁵), it is certainly not obvious what governments should have done to avoid the rise of macroeconomic imbalances in the past.²⁶ And the regulation does not even try to specify the measures through

24 Alert Mechanism Report, COM (2012) 68 final.

25 At the time of this writing (July 2012), ECB interest rates (and even more so, real interest rates) are too high for the depressed GIPSI economies and too low for Germany.

26 In the German recession of 2001–2005, union wage restraint and supply-side reforms helped, albeit at the cost of a drastic increase of social inequality (OECD 2011). But it is much more difficult to see what GIPSI governments could have done to prevent the expansion of credit-financed private demand.

which they should prevent the rise of house prices or of private sector debt in the future. It merely requests that they should comply with the Commission's recommendations which "*should be addressed to the Member State concerned to provide guidance on appropriate policy responses. The policy response of the Member State should use all available policy instruments under the control of public authorities*" (EU 1176/2011 at § 20).

Remarkably, the most troubling constitutional implications of this regime seem to have been totally ignored: regardless of the Treaty's allocation of governing functions between the Union and its member states, the Commission will be free to specify any and all national measures which it may consider economically useful – and it may do so without reference to any predefined rules nor even a shared theoretical paradigm of the kind that Keynesian as well as monetarist macroeconomics had provided. And once the recommendations are effective, it is the Commission who will decide to impose severe penalties for noncompliance – unless a qualified majority of governments in the Council can be mobilized to reject these.

What has been established here is not an improved system of Keynesian or monetarist macroeconomic management (that would operate in the context of established economic theory, research and public criticism) but a discretionary regime of supranational intervention in the management of national economies and societies. While the EU regulation was – albeit on a disputable Treaty base (Höpner/Rödl 2012) – adopted by the community method of EU legislation, it does not and could not by itself specify any general rules that member states should follow. Instead, it leaves it to the Commission to define not only performance criteria for national economies but also the specific measures that governments should adopt to correct imbalances. And given the extremely diverse and contingent conditions to which economic interventions must respond, it would indeed be counterproductive from a problem-solving perspective if governments, or the Commission for that matter, were required to apply predefined rules. But under the criteria of liberal as well as republican constitutionalism, discretionary authority must either be narrowly circumscribed or subject to democratic accountability.

Since the Commission itself lacks any kind of input-oriented legitimacy, the regulation did assign formal authority to the eurozone Ecofin Council, even though its actual influence is minimized by the "reverse-qualified-majority" rule for the adoption of recommendations and the imposition of sanctions.²⁷ But even if a positive Council vote were required, that would not suffice to create intergovernmental input legitimacy.²⁸ The decisions in question do not (and could not) adopt common rules for all member states. Instead, they impose directions and sanctions on individual member states

27 Regulations EU 1176/2011 at Art. 10(4) and EU 1174/2011 at Art. 3(3). The European Parliament would even have preferred automatic sanctions.

28 The problem, at this point, is not simply the domination of "executives" in all processes of rescuing the euro – which is condemned by Habermas (2011) and other promoters of European democracy. It would persist if all Council decisions were ratified by national parliaments.

in matters which are generally within their constitutional domains. Concededly, the governments represented in the Council may be constitutionally and democratically legitimated to agree to common rules binding, and obligations burdening, their own polities. But there is no way in which German or Finnish voters and parliaments, or the voters and parliaments of most member states,²⁹ could authorize their governments to impose special sacrifices on the citizens of Greece or Portugal or of any other member state. In other words, intergovernmental input legitimacy may sustain general rules applying to all member states, but it cannot legitimate discretionary interventions in individual member states.

This is different in unitary states organized by the principle of “democratic centralism,” where legitimate authority is concentrated at the top and may legitimately intervene in any and all matters at regional or local levels. In federal nation-states with democratically legitimate federal and regional governments, by contrast, the instances of allowable federal intervention in matters reserved to the regions are rare and carefully circumscribed by the Constitution. The European Union, however – let alone the eurozone – is still far from being a federal state with a democratically legitimated central authority. If that is so, the discretionary authority claimed by the Commission in the Six-Pack Regulations is neither legitimated by intergovernmental agreement nor could it be supported by arguments invoking the legitimacy of democratic centralism.

In short, the Monetary Union, the euro crisis and the policies defending the euro have created an institutional constellation in which the control of democratic member states over their economic fate has been largely destroyed. Since the effective instruments have been removed, the loss cannot be compensated by ever more intense European controls of the remaining national options. Instead, effective macroeconomic control at the European level would require the capacities of a federal state with a large central budget, centralized capital taxation and social and employment policies – and with the capacity for democratically legitimated majoritarian policy-making.

Some pro-European theorists, publicists and politicians seem to hope that the euro crisis itself might provide the push for overcoming the resistance of self-interested governments to political integration (Habermas 2011). But even if, under the pressure of an escalating crisis, governments should agree not only to further transfers of sovereignty, but also to the direct election of the Commission President, or if the European party families should present candidates for that office in EP elections, that would not yet create the political community which, from a republican perspective, would allow for legitimate majority rule. On the contrary: the euro crisis, its dominant framing as a consequence of fiscal irresponsibility, and the disastrous impact of rescue policies designed by creditor governments on the basis of this frame have provoked conflicts of interest and identity, mutual distrust and recrimination, and widely diverging public

29 Like the defendant in a criminal trial, the government of the “member states concerned” will of course have no vote in the decision: EU 1174/2011, Art. 5; EU 1176/2011, Art. 12.

discourses in national polities. These effects are counteracting the evolution of a “sense of political community” that could sustain advances of European political integration and democratic legitimation. There is a risk, therefore, that attempts at institutional reforms that would respond to the failure of the supranational Monetary Union by attempting to create the political infrastructure for a much wider extension of supranational governing powers may provoke political reactions that could, in the end, destroy the past achievements of European integration as well.

7 Reducing the burden on European legitimacy

Now if present policies to rescue the euro and the more permanent regime that is being established to prevent future crises of the Monetary Union lack democratic legitimacy – what is to be done? The obvious solution would be to stop defending the euro, to acknowledge the common responsibility for having created a dysfunctional supranational regime, and to seek agreement on a common, organized and orderly return to the more flexible regime of an (improved) European Monetary System, which had worked reasonably well between 1979 and 1999. Unfortunately, however, all European policymakers have categorically ruled out this option, so we have neither plausible scenarios of how it might be implemented nor plausible estimates of the inevitably high costs of a possible transition.

But if we are stuck with the Monetary Union and with European institutions whose weak claim to political legitimacy does not match the need for legitimating highly visible European interventions in matters that have great political salience in debtor and creditor countries alike, a continuation of present policies could indeed provoke a manifest legitimacy crisis in the multilevel European polity. At this point, however, the logic of the theoretical concept of relational legitimacy introduced above may contribute a somewhat cynical suggestion to the search for pragmatic coping strategies: if the capacity for legitimation cannot be increased, the imbalance might still be avoided if the demand for legitimacy could be reduced by lowering the political salience of European policies. These, after all, were the conditions under which the European Union was able to avoid manifest challenges to its legitimacy before the present euro crisis.

Theoretical logic, of course, can only suggest directions for the search. It cannot define economically effective and politically feasible pragmatic solutions. But just assume that direct ECB credits, or a banking license of the ESM, would eliminate the need to combat the state-credit crisis of the GIPSI countries through budgetary commitments at the expense of taxpayers in creditor states. This would, of course, require a departure from the Maastricht prohibition of monetary state financing. At the same time, however, it would drastically reduce the political salience of rescue credits in the public opinion of creditor states – and it would, by the same token, defuse the populist pressures insisting

on dictates of drastic fiscal retrenchment in return for the rescue credits. As a consequence, conditionalities could be relaxed somewhat, and some commitments to present rescue funds might be converted into transfers to stabilize the atrophied social systems of the GIPSI states.

If something like that were indeed to happen, the euro crisis would not be over, and the basic contradiction between monetary centralization in a heterogeneous eurozone would still persist. But the intensity of the acute crisis would be reduced, and European policy would contribute to its resolution, rather than merely increasing its non-legitimated demands and constraints on member-state polities. In other words, interactions in the multilevel European polity might again return to lower levels of political salience – which would grant European and national policy-makers, policy intellectuals and policy researchers the time to explore more sustainable long-term solutions.

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