London School of Economics and Political Science

Banking on Sovereignty: A Genealogy of the European Central Bank's Independence

Hjalte Christian Lokdam

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Declaration

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Abstract

This thesis analyses the idea of central bank independence, how it shaped the creation of the European Central Bank (ECB) and its management of the Euro Crisis. Based on a genealogical analysis, the thesis identifies the central normative commitments undergirding the insulation of monetary policy from ordinary democratic politics. It argues that central bank independence is an institutional response to the 'problem of politics' in relation to money: the problem that money is simultaneously founded on political authority and fundamentally threatened by the ordinary exercise of this authority. Central bank independence, then, constitutes a way of grounding the value of money politically while at the same time depoliticising its government. The form that central bank independence takes in practice, however, differs substantially, reflecting different ways of wedding the idea to broader constitutional imaginaries. Drawing comparisons to other major central banks, the thesis details the ECB's form of independence and argues that the creation of the ECB not as a government agency (as the Fed) or a societal power on a par with the government (as the Bundesbank), but as a sovereign representative on a par with the Member States altered the constitutional make-up of the Eurozone. As the existential crisis of the euro shows, general tensions within central bank independence become irresolvable contradictions in this constitutional construct. Without institutional mechanisms for resolving them through ordinary politics, the emergency politics of the Euro Crisis placed the ECB centre-stage, engaged in the 'higher lawmaking' of changing the Eurozone's constitution in order to save it. In doing so, however, the ECB redefined the meaning of its independence and reignited 'the problem of politics' by undermining its underlying social contract.

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Introduction

What justifies the central bank's ability to say 'no' to a democratically elected government? What gives it the authority to do so?

These are questions that go to the heart of the contemporary notion of central bank independence, a political idea that has been extraordinarily influential since the so-called 'neoliberal revolution' of the late 1970s. In the European Union, the idea was taken to its extreme, but in many ways logical, conclusion by constituting an independent central bank, the European Central Bank (ECB), outside the framework of a state. This thesis presents an analysis of the problem that this idea responded to; how it emerged in practice and theory; what its conceptual underpinnings and normative justifications are; how it was institutionalised in the Eurozone; and, finally, what problems its institutionalisation in the Eurozone have given rise to. Above all, however, this thesis is about the foundations of the independent central bank's authority: what gives it the right and the power to act against democratic governments?

The thesis approaches central bank independence as a political idea, a way of thinking about politics (Freeden 2013), that is realised through the institutional form of the central bank and its governmental practices. It expresses a set of normative commitments and conceptions about the relationship between politics and the activity of governing, on the one hand, and the economy and the monetary order, on the other. As a particular strand of political thinking, it has distinct ideological overtones, but it is neither a full-blown ideology in its own right nor reducible to a component part of any one ideology. It is as such that I approach and analyse it. The thesis does not develop 'a theory of central bank independence,' but analyses the discursive and institutional practices that have, over time, established central bank independence as a theory of politics and political economy.

Independent central banks are public institutions and are inscribed within a general framework for the exercise of public powers. Within this framework, however, they occupy a peculiar position. Detached from ordinary politics, their governmental practices are not directly controlled by elected representatives in governments or parliaments. The nature of their distance from the ordinary political process, however, differs from central bank to central bank depending on the (constitutional) form and political culture of their respective political communities. This means that even though the idea of central bank independence takes on a relatively uniform expression, its manifestation in institutional form differs markedly. This difference, I argue, concerns the source of their power and authority.

The question of the central bank's foundation of authority demands not only an analysis of the idea, but also an analysis how central bank independence is created through law and political practice. The thesis thereby combines a genealogical analysis of public and theoretical discourses on central bank independence with a reconstructive analysis of its legal forms. In both respects, the thesis works through deconstructing and reconstructing 'texts' relating to the normative as well as institutional foundations of central bank independence.

The idea of central bank independence is not based on a single 'great work.' It emerges from a variety of practices and 'texts' (speeches, legal documents, press releases, theoretical and empirical academic literature, etc.). No one 'text' can be considered the authoritative statement of the idea. The central concepts and logics are developed over time in dispersed works and are never comprehensively combined in a coherent theoretical framework. The notion of central bank independence nevertheless expresses a relatively coherent way of thinking about politics and political economy. This relative coherence, however, can only be established through moving between close textual analyses of individual texts that express the idea in some form and the broader societal context in which they are situated. In reconstructing the idea on the basis of dispersed claims and justifications relating to central bank independence, the thesis moves from the descriptive level of observed (discursive) practices to the exposition of the normative-theoretical underpinnings that make them meaningful from the perspective of the actors themselves in a particular context. That is, the analysis presented seeks not only to give an account of what actors say and do but also of the broader ideas, concepts and presuppositions that the saying and doing express and are based on.

The analysis of the idea of central bank independence is not concerned with evaluating its normative defensibility. Rather, it approaches the idea as a system of knowledge that 'thinks' in particular ways about societal problems and how to address them. It analyses both the idea and its different institutional expressions as responses to 'urgent demands' arising out of particular historical conjunctures (Foucault 1980). The analysis does thus not address whether or how the ideals embodied in the idea of central bank independence can be realised, but what kinds of problems the idea responds to and how. It asks, furthermore, what kinds of problems such responses give rise to themselves. The analysis presented, then, is not a critique of the idea of central bank independence in the sense of establishing whether it is 'right' or 'wrong,' 'just or 'unjust.' It is a critique in the sense of expounding the logic informing this particular way of thinking as well as the contradictions it gives rise to.

The first stage of the genealogical analysis consists in identifying the basic problem that the idea of central bank independence responds to. This, I argue, is the problem of politics in relation to money. Chapter 1 discusses how the collapse of the gold standard in the interwar period undermined the intellectual foundations of economic thinking at the time and sparked new currents of economic and monetary thinking. With the collapse of the gold standard, the idea that monetary value and the basic principles of the monetary order were based on something outside the realm of politics lost credibility. In a concrete sense, the value of money and its government came to be founded on politics and political authority in the wake of the collapse of the gold standard.[1]

The political rather than 'natural' foundations of the value of money introduced the problem of politics with regard to money in two distinct senses.[2] On the one hand, the foundations of the monetary order had to be explicitly based on political decisions. The question, then, became what kind of monetary order to constitute through political action. On the other hand, monetary policy became subject to competing political convictions as to its objectives and how it ought to be conducted in response to concrete developments. The question in this regard was what principles and ends monetary policy ought to be conducted on the basis of.

These problems can be addressed in a variety of ways. In chapter 1, I present three main approaches to doing so: the Keynesian, the German ordoliberal, and the American neoliberal. To Keynes (and others whose ideas resembled his), the problem

[1] As noted in chapter 1, this is not to say that the gold standard was not 'political.' But it was so in a different sense from the fiat currency regime that followed it. The ideology of the gold standard 'naturalised' the value of money, whereby the foundations of the monetary order as well as the orientation of monetary policy were seen as being external to the political process. With the collapse of the gold standard, this fiction could no longer be sustained. The foundation of monetary value became explicitly tied to political decisions on the monetary order and its government.

[2] My use of the term 'problem' is not intended to convey a situation that is necessarily unwelcome or harmful. I use the term in the more technical sense ('*problematique*') of marking out a basic condition from which something follows. As I discuss in detail throughout this thesis, however, from some perspectives the problem was indeed something unwelcome that needed to be overcome.

of politics was welcome. It allowed for the political control of monetary policy in accordance with general economic objectives. Such thinkers stressed the 'primacy of politics' with regard to monetary policy. To thinkers associated with ordo- and neoliberalism, however, the introduction of the problem of politics meant that the stability of monetary value was threatened by politics. They therefore sought to overcome the political control of monetary policy though establishing automatic mechanisms or rules governing its exercise.

Despite their differences, the three 'ways of thinking' discussed in chapter 1 all shared the notion that the question of the monetary order is inseparable from the wider question of the economic order. Particular monetary regimes make certain economic practices possible and others impossible. Any particular position on the monetary problem of politics entailed also a position on the role of politics and government in the economy. Another notable similarity between the three is that none promoted a vision of central bank independence as a response to the problem of politics in relation to money in the absence of a gold standard. Such a vision only emerged in the post-World War II period, most notably in West Germany. Chapter 2, then, analyses the emergence of central bank independence in Germany.

The emergence of central bank independence in post-WWII West Germany was highly contingent. It was not obvious that the German central bank would become independent. That it did owed much to a narrative about Germany's monetary past – the hyperinflation of the 1920s in particular but also the repressed inflation of the war and immediate post-war period. This narrative postulated a causal link between a politically controlled central bank and hyperinflation, on the one hand, and hyperinflation and societal collapse, on the other. Through this 'political myth,' the meaning and importance of central bank independence was grounded in something beyond its economic expediency. 'The myth of the hyperinflations,' in turn, came to inform the German public imaginary on the central bank and its relationship to the government.

The broad public acceptance of the myth of the hyperinflations provided the German central bank with a source of authority to act against the government of the day in conflicts over monetary policy. This was based on the notion that electoral representation was an incomplete way of representing the will of the people. It could only express a partial will. The central bank, on the other hand, represented the people's foundational will for price stability. As such, it was a representative of the people on a par with the government. This structure of 'dual representation' is crucial both in terms of the normative justification for the central bank's ability to say 'no' to government as well as its authority to do so. It was in this direct and 'organic' (i.e., not formalised) representational relationship between the central bank and the stability-conscious people that the solution to the problem of politics in relation to money was found in the German context.

As highlighted in chapter 4, the dual representation of popular will was reproduced, but in a different form, in the Eurozone context. The notion will therefore be unpacked throughout the thesis. A few remarks on it from the outset are nevertheless in order.

At a basic level, political representation refers to the exercise of public power on behalf of others. The people as the foundational subject of public authority in political modernity (Canovan 2005) is made present in the activity of governing through representation (see Pitkin 1967). Representatives, in turn, must exercise public power not for themselves but "in the interest of the represented" (Manin et al 1999: 2). This minimal conception of representation, however, can give rise to many different conceptions of what representation entails (see Pitkin 1967; see also Urbinati and Warren 2008). In this thesis, I focus on a conception of representation derived from Hobbes' theory of sovereignty (see also chapter 4). By positing the sovereign, whether King or assembly, as a representative of the people, Hobbes "used the idea [of representation] to ground a secular conception of political authority" (Runciman 2010: 15; see also Pitkin 1967; Loughlin 2003). From Hobbes we thus get the notion that government is legitimate because it acts on behalf of the people. It may not be democratic, but the activity of governing is always performed based on the relationship of political representation between the people and its governmental apparatus. What is represented, in turn, is *the will* of the people, whether expressed in elections, constitutions or in the basic will for survival.

The notion of dual representation, then, refers to a structure of making the people present in the activity of governing not through one highest governmental authority but two equally empowered such authorities. The dualisation of representation, in turn, is accomplished through a conception of the representational relationship being differentiated according to different orders of popular will. While representing the same political subject, the people, the representatives do not represent the same kind of will.

On the one hand, elected representatives (governments and parliaments) represent the periodic and changing expressions of popular will through the ballot box. From the perspective of dual representation this is a perfectly legitimate form of representation, but it is only partial. It is, for one, the will of the majority that is represented, leaving the will of the minority unrepresented in the activity of governing. More importantly, however, it expresses political will on the subjects of the day and governs according to short-term considerations. The expression of political will through electoral representation may, furthermore, be corrupted by incentives arising from the electoral process itself (see chapter 3). If electoral representation monopolises the representation of popular will, in short, it will be fleeting and ever-changing.

The idea of central bank independence is based on a conception of the stability of the monetary order being a precondition for a viable democratic, political life (see chapter 2). Securing monetary stability, in turn, demands far-sightedness and expert management. Subjecting monetary policy to electoral representation risks not only undermining the foundational will of the people for price stability but also the very structure of electoral representation as such. Popular will must, therefore, also be represented through ('impartial,' non-partisan) governmental institutions that govern according to long-term considerations (see chapters 2 and 3). These institutions must, in turn, be able to say 'no' to elected representatives. While there may be other such representative institutions, this thesis focusses only on the central bank as a 'monetary representative' of the people. In this conception, the central bank exercises not an authority delegated to it by elected representatives, but one derived directly from the people.

Within a state, dual representation refers to the same underlying political subject: the people. Dual representation is thereby institutionalised within the framework of the state as the general sovereign representative of the people. In conflicts between the central bank and government, the people must, somehow, decide. Dual representation beyond the state, however, takes on a different form and creates different kinds of problems. As I highlight in chapter 4, the ECB was constituted as a direct representative of the peoples of Europe, who transferred the right to exercise sovereign powers with regard to monetary affairs to the ECB through the constitutional contract of the Maastricht Treaty. By constituting it outside the framework of an existing state and vesting it with sovereign powers within its sphere of policymaking, the ECB was constructed as a sovereign representative on a par with the Member States of the euro.

This is highlighted by the fact the ECB's monetary policy decisions become directly effective throughout the Eurozone's territory without the involvement of Member State representatives or the possibility of Member State veto. Instead of the dual representation of a people's will within the structure of unified sovereign representation, sovereign representation itself is thereby dualised. Every people of the Eurozone is made present in the activity of governing through two governmental institutions exercising sovereign powers: the ECB within the sphere of monetary policy and its Member State in other spheres of policymaking. Both kinds of sovereign representation are thereby limited – the ECB's more limited than the Member State's. This constitutes the Eurozone's peculiar response to the monetary problem of politics: the central bank's authority is founded on the constitutional separation of the sovereign powers to conduct monetary policy, on the one hand, and general economic policy, on the other. This separation is justified by the theory of central bank independence that emerged in the 1970s and 1980s, as discussed in chapter 3.

The separation of the sovereign power to conduct monetary policy from the realm of the state creates a peculiar order of exercising governmental powers within the Eurozone (discussed in chapter 5). While sovereign representation may be divided and limited, the fundamental political right of the individual peoples to authorise governmental activity is not. The fundamental condition of the constitutional construction of the Economic and Monetary Union (EMU) is based on the continued sovereignty of the peoples as separate foundational subjects. This, according to its founding constitutional imaginary, creates limits on the exercise of sovereign powers by both the ECB and the Member States. In short, the exercise of governmental powers is constrained by law, which concretises the founding will of the peoples. The ECB, however, exercises technocratic discretion to fulfil its mandate; its *telos* of price stability. Technocratic discretion is envisioned as a rules-based approach to governing that, in the spirit of the law, fills the inevitable gaps of the legal order. The democratic expression of political will through electoral representation at the Member State level, finally, is constrained by both the rule of law and the technocratic authority. According to the imaginary, however, this constraint is not to be understood as an external limitation on democracy but one arising from the peoples themselves. The three governmental logics – the rule of law, technocracy and democracy – are thereby supposed to be mutually reinforcing.

As highlighted in chapter 5 and spelled out in more detail in chapter 6, there are important tensions between the three governmental logics. In the Eurozone Crisis, these tensions manifested themselves as contradictions. On the one hand, the Crisis revealed the inherent ambiguity of the ECB's legal mandate: fidelity to the law might compromise fidelity to the *telos.* There was, in other words, a tension between the formal expression of political will in the past and the governmental necessities of the present. This was highlighted by the ECB's Outright Monetary Transactions (OMT) programme. On the other hand, the Crisis revealed the difficult relationship between the representation of political will at the Member State level and the general governmental order of the Eurozone. In the Greek crisis of 2015, this came to a head and the ECB played a crucial role in this regard.

More than anything, the Eurozone Crisis revealed that the constitutionalisation of price stability and the structure of dual sovereign representation had not eliminated the problem it was created to overcome, namely, the problem of politics with regard to the monetary order. Ordinary politics at the Member State level continued to constitute a threat to the monetary order (and its embodied ideology). Moreover, the need for governmental flexibility in the face of an unprecedented crisis raised the problem of the fundamental political authorisation of the governmental order. As I highlight in chapter 7, then, the contradictions inherent in the EMU's governmental order introduced the 'necessity' of realigning sovereign representation. The problem of politics thereby became not one of limiting the exercise of political authority but of generating it in order to secure the requisite governmental capacity to protect and enforce the stability of the monetary and economic order.

This thesis approaches central bank independence as a political, rather than economic, project. The analysis, however, is not only about central bank independence as such. It is about a particular way of thinking about political and governmental issues. The constellations of practices, theories and normative premises that go into the doctrine of central bank independence as a conceptual apparatus address the basic question: *how ought we to govern*? The idea of central bank independence responds to this question, but its answer expresses an approach to the organisation of governmental powers and the limits of politics that is more general. It expresses the notion that there are some spheres of societal life that ought not to be subject to politics, but which need nevertheless to be governed by public authority. It gives expression to the distinct strand of political theory and political philosophy that promotes the ideal of government without politics.

Few of the 'texts' analysed and discussed in this thesis are political theoretical in any sense of the term. Their underlying political theoretical assumptions and commitments are nevertheless often clear. While the central sources remain those produced by 'second-hand dealers in ideas,' the thesis seeks to underline the theoretical aspect of the texts discussed by relating them to established works of political theory and philosophy. This is not to say that the texts so analysed derive or develop their crucial ideas from or against such works. Rather, situating such texts in relation to 'great' works can bring out certain aspects of these ways of thinking through resemblance and difference in terms of posing and answering key questions. Central bank independence is thus employed as a lens for approaching a particular way of thinking about politics.

Chapter 1

The Monetary Order and the Problem of Politics

Introduction

One of the most significant events in the history of Western economic thought was the Great Depression. It challenged the very foundational assumptions undergirding established ways of thinking about economic and monetary matters and sparked new economic ideas as well as radical revisions of the ideas of old. In the course of this crisis, it became clear that the principles on which the pre-World War I political and economic order was founded could not be recreated. Something new had to take its place. The monetary order in particular had to find a new foundation.

In this chapter I focus on three theoretical approaches to the question of the foundations of the monetary order that emerged in the inter-war period: Keynesianism, the German ordoliberalism of the Freiburg School and the American neoliberalism of the Chicago School.[1] While commonly understood as contributions to economic theory, (the quality of) their economics is not my concern here. What is relevant for the present purposes is the political thinking informing or derived from the economic theories. Or rather, I approach the theories as political theories that address the relationship between politics, the government of money, and the wider economic order.

Despite their differences, the three approaches share the view that the question of the government of the economy is key to establishing and maintaining a good society. The stakes involved in 'getting the economics right' are not limited to increasing economic prosperity or securing monetary stability. These are but the means for constructing a more just society. As Adam Przeworski and Emmanuel Wallerstein

[1] The three schools should be considered along the lines of 'thought collectives' rather than as fully coherent and uniform theoretical apparatuses and within each school of thought there are important differences between thinkers. Thinkers within each thought collective nevertheless share a certain general outlook on the role of politics in relation to economic and monetary policy and it is this outlook that I focus on in this chapter. The three approaches are thus presented not through comprehensive or exhaustive reviews but through *exemplary* works and thinkers within each tradition; works and thinkers that "can 'stand in' for a general logic, because [they illustrate] it in a paradigmatic fashion" (Bickerton and Invernizzi Accetti 2017: 189; see also Ferrara 2008). The objective, in other words, is not to provide full account of the three traditions but to highlight certain ways of thinking about and approaching a set of common problems.

(Przeworski 1985: 206) note: "Behind economic alternatives lurk visions of society, models of culture, and thrusts for power. Economic projects entail political and social ones."

The three approaches have, with varying intensity across time and space, been highly influential in post-war economic thinking and practice (see, e.g., Kaldor 2015 [1983], Hein and Joerges 2017; Van Horn and Mirowski 2009). This is no less true when it comes to central banking in the post-WWII period. Their influence on the idea of central bank independence, however, is not straightforward. As I highlight below, none espoused central bank independence from politics in the form it was later to take. And yet, as I discuss in chapters 2 and 3 in particular, central bank independence in theory, practice and public law has, more or less consciously, incorporated central elements from each of the schools while leaving others out.

The three theoretical approaches discussed in this chapter were to a large extent developed in response to the experiences of the interwar period, most importantly the Great Depression and its social and political consequences. One crucial consequence of the Depression was the conclusive collapse of the gold standard and the firm belief that the value of money rested on being convertible into gold at a fixed rate. For the thinkers discussed here, this introduced a crucial challenge: from that point on, the foundations of the monetary order were openly and inescapably political. The problem of politics with regard to the monetary order, which to a large extent could be ignored during the heyday of the gold standard, had to be tackled head on. As I come back to throughout this thesis, the challenges associated with an explicitly politically founded monetary order that the three approaches identified in this context are still some of the central concerns in terms of the relationship between the government of money and the wider question of politics and societal organisation. As highlighted in chapters 2 and 3, furthermore, central bank independence emerged in important part as an institutional response to such challenges. Before turning to the discussion of the idea of central bank independence as a response to the problem of politics in the next two chapters, this chapter seeks to identify what that problem consists in and how different theoretical approaches have sought to respond to it.

The first section of the chapter presents a brief discussion of the collapse of the gold standard and the emergence of the problem of politics in relation to the monetary order. I then turn to how the Keynesian approach addressed this. While I focus mainly on Keynes, the 'Keynesian approach' was not limited to Keynes himself but was shared by other political actors and movements such as the New Dealers in the US and the social democrats in Scandinavia. This approach stressed the importance of steering the economy towards ends decided upon politically and it can be summarised under the heading of 'the primacy of politics' (Berman 2006).

In explicit opposition to Keynes, different strands of new economic liberalism, neoliberalism, sought to overcome both the shortcomings of laissez-faire liberalism and present alternatives to economic planning (Keynesianism as well as Communism). While Keynes may not have been necessary for this tradition to emerge, his ideas represent the radical, even 'catastrophic', alternative to their own. After a brief aside on Hayek's notion of 'denationalising' money and its irrelevance to the discussion of central bank independence, the chapter proceeds to present the ordoliberal approach to 'curing the Keynesian illness' before turning to the approach of the American neoliberals. While both these approaches seek to stifle the influence of politics on monetary policy, they do so in different ways. Rules rather than political or technocratic discretion are important to both approaches, but the nature of the rules differs. While the ordoliberals developed the concept of an 'economic constitution' – thereby stressing the political origins of the rules and principles guiding economic and monetary policy – the neoliberals developed a method for guiding all forms of decision-making on the basis of the supposedly immanent rules and regularities of 'the economy.' The three approaches discussed can be summarised as follows: Keynesianism emphasises political rule and focusses on influencing the content of *policy*-making; ordoliberalism focusses on *polity*-making and emphasises the rule of positive law; and neoliberalism emphasises the natural laws of the economy and focusses on shaping the way people think about both policy- and polity-making.

Money and Politics in the Interwar Period

One of the notable intellectual victims of the Great Depression was the ideology of the international gold standard, the "gold-standard mentality" (Eichengreen and Temin 2000: 183). While the gold standard may not have been the cause of the Great Depression, it was only overcome after the gold standard was finally abandoned in the 1930s (Eichengreen 1996). Its abandonment, in turn, meant that the monetary order had to be confronted nihilistically, without an absolute.[2] The value of money was no longer grounded in something that represented the ultimate symbol of stability and value. Fiat currency was no longer among "the lesser types of money" (Schwartz 1987: 364), but the defining form. In contrast to money based on a commodity standard, fiat currency's only claim to value is found in a political authority making such a claim. The value of money is essentially grounded in a political promise and the general belief that this promise will not be broken.

In response to this sea-change in the Western monetary imaginary, new forms of economic thinking emerged which sought not only to make sense of the collapse but also to construct theories of a capitalist economic and monetary order which did not rely on gold as an absolute standard outside the realm of politics. This, in turn, meant that politics became the defining problem of the monetary order.

The Death of Gold and the 'Old' Central Bank Independence

The gold standard was a product of the 19th century and it "prevailed in its most pristine form between 1880 and 1914" (Bordo 1981: 2) but the interwar period saw repeated attempts to reintroduce it (see Eichengreen 1996). Under the gold standard, central banks played a crucial role in managing (the effects of) gold and capital flows and were allowed considerable independence in doing so. Their decisions, however, were largely "regarded as obscure" and uncontroversial (Eichengreen 1996: 9). This relative political unimportance of independent central banks under the gold standard owed much to the widespread perception that "[u]nder a strict gold standard, there is no need for a central bank" (Bordo 1981: 5). As a former Bundesbank president, Karl Blessing (1966: 89, my translation), put it: under the gold standard "nobody demanded of the central bank that it should stabilise the price level." Thus, while "[a] central bank, independent of the government, became the ideal of all who held respectable views [during the era of the gold standard]" (Bopp 1946: 309), the meaning of central bank independence under a functioning gold standard is very different from its meaning under a fiat monetary

[2] It ought to be noted that even before the interwar collapse of the gold standard, a number of thinkers had challenged the theoretical and historical accuracy and coherence of the metallic theory of money. Before World War I, Georg Friedrich Knapp, for instance, had presented his *State Theory of Money* in 1905 and Alfred Mitchell-Innes his credit theory of money in 1914. The gold standard mentality, however, continued to dominate economic thinking, the international monetary order and governmental practice well into the interwar period.

regime. Theoretically at least, it is simply considered the agent of automatic mechanisms associated with international trade and self-regulating markets (Polanyi 2001: 31). As such, the central bank is simply "supposed to follow the rules of the game" (Bordo 1981: 5), whereby the creation of money is regulated by 'natural' forces outside its control (Polanyi 2001: 141). The central bank can mediate the domestic effects of sudden monetary changes, but it is essentially the dedicated 'servant' of a system that would exist and function even without it. In that sense, the central bank is indeed independent of politics but only because the system as a whole is.

This independence of money from politics was of course a myth (Polanyi 2001; Eichengreen 1996). As a monetary order, it was no less 'political' than fiat currency. Without the commitment of major political and economic powers to "take whatever steps were required to defend the central bank's gold reserves and maintain the convertibility of the currency into gold" (Eichengreen 1996: 5), the gold standard would have been meaningless.[3] The gold standard rested no less than fiat money on political authority. This observation, however, is akin to observing that the divine right of kings, no less than the sovereignty of the people, is founded on a combination of beliefs, conventions and interests. For the purposes of understanding contemporaneous thinking, such an approach would obscure that these ideas were largely taken for granted and considered inherent in the order of things at the time. In a society governed by an absolute monarch on the basis of anointment like in a society whose currency rests on gold, there is ordinarily no questioning of the underlying truth of the arrangement. "Belief in the gold standard was the faith of the age ... Where Ricardo and Marx were at one, the nineteenth century knew not doubt" (Polanyi 2001: 26).[4] Regardless of the partisan constellation of government, the commitment to the policies demanded by the gold standard was unquestioned.

Only once the order of meaning within which this made sense entered a crisis, as it did with the outbreak of World War I, was the gold standard fundamentally

[3] Scholars disagree on the relative importance of the different forces working to maintain the gold standard at the time. Whereas Kindleberger (1973) stresses the role of the UK as the hegemonic power, Polanyi (2001) stresses the importance of the transnational network of *haute finance* and its influence on national governments, and Eichengreen (1996) highlights the importance of great power cooperation in the realm of monetary affairs. Whatever the forces working for the maintenance of the gold standard were, however, they were largely undermined with the outbreak of WWI.

[4] Marx accepted Ricardo's commodity theory of money almost to the letter, replacing only Ricardo's conception of the value of gold being based on scarcity and usefulness with his labour theory of value, which attributed value to gold on the basis that it embodied a certain quantity of labour.

questioned. In a sense, the collapse of the gold standard did for money what 'the death of God' (or natural law) did for politics: it forced confrontation of the question of its ultimate foundations in the absence of an external absolute. This analogy is reflected in Blessing's (1966: 88, my translation) notion that "in the good old time of the gold standard there was no problem of the stability of monetary value in today's sense." While changes in the general price level could occur, these changes were "more or less accepted, like the weather, as something God-given." What is at stake with the collapse of the gold standard, as with the secularisation of the foundation of political authority, is a turn to a system of monetary-political thinking and acting that must replace a transcendent absolute with a self-consciously social and political construction. In the final instance, the value of money, like the legitimacy of political authority, now rested on nothing but mutual promises, agreements and social imaginaries. This, of course, did not mean that the search for a grounding of value was abandoned but rather, as Hannah Arendt (2006; see also Moyn 2008) emphasised in relation to the modern revolutions, that value had to find its grounding in the realm of human action. "[The currency problem of our time consists in ... replacing by acts of will and cooperation what the gold standard accomplished more or less automatically" (Blessing 1966: 91, my translation).

The collapse of the gold standard was radical in itself as well as symptomatic of a wider revolutionary change. As Polanyi (2001: 21) put it,

> The breakdown of the international gold standard was the invisible link between the disintegration of world economy which started at the turn of the century and the transformation of a whole civilization in the thirties.

The 1920s, in Polanyi's reading, had sought in vain to recreate the 19th century international economic system through a reconstruction of some of its crucial elements, including the gold standard. As such, it was tied to the 19th century in intellectual terms. The truly revolutionary decade was the 1930s, which along with the Great Depression saw the final abandonment of gold and "entirely new elements entered the pattern of Western history" (ibid: 24).[5] Included in these was the simultaneous recognition of the political foundations of the value of money and the elevation of the currency question to one of the fundamental problems of politics.

[5] Polanyi (2001: 24) lists "the abandonment of the gold standard by Great Britain; the Five-Year Plans in Russia; the launching of the New Deal; the National Socialist Revolution in Germany; [and] the collapse of the League [of Nations] in favor of autarchist empires" as "the landmarks" of this change.

The Problem of Politics in Relation to the Monetary Order

A comprehensive account of the factors supporting the 19th century gold standard mentality is beyond the scope of this thesis. It is, nevertheless, worth stressing one important factor that has a direct bearing on the emergence of the problem of politics in relation to the monetary order. In the 19th century, as Eichengreen (1996: 6) notes, the problem of unemployment had yet to emerge as a systemic problem. Or rather, political elites conceptualised unemployment not as a political problem but as a problem of individual failings (see also Polanyi 2001). In so far as there were social movements that demanded a break with this conception,[6] the 'age of liberalism' criminalised, jailed and denied them political representation (Polanyi 2001: 234; Hobhouse 1944 [1911]: 214; Berman 2006: 12). The gold standard in the age of economic liberalism rested in large part on the political illiberalism of the ruling class. Significant interests and classes of the population were excluded from political representation. Only this could make it possible to consider the often recessionary policies demanded by the gold standard as being consistent with "domestic prosperity" (Eichengreen 1996: 6; see also Keynes 1920: 18-22).[7]

Among the crucial differences between the 19th century and the interwar period are the extension of the franchise, the recognition of trade unions and the emergence of the labour movement as a potent, albeit often reluctant (Przeworski 1985), electoral political force. These factors altered the political dynamics considerably. Unemployment and the general question of economic adjustment became a politically salient issue. The automatic adjustments demanded by the gold standard were no longer tolerated by an important proportion of the electorate, which could now find political

[6] Marx famously conceptualised the unemployed as the 'reserve army of labour' and presented an analysis of the capitalist system of production and extraction of profit as being premised on the presence of a 'surplus population' alongside an ideological individualisation of the responsibility for unemployment (*Capital* vol. 1, chapter 25 in particular).

[7] In Keynes' (1920: 18) post-WWI analysis, the Europe of the gold standard was "so organized socially and economically as to secure the maximum accumulation of capital. While there was some continuous improvement in the daily conditions of life of the mass of the population, Society was so framed as to throw a great part of the increased income into the control of the class least likely to consume it". This age of growing inequality, more recently documented by Piketty (2014), was, according to Keynes, the essential driver of capitalism at the time and it rested on "a double bluff or deception." "[T]he labouring classes accepted from ignorance or powerlessness, or were compelled, persuaded, or cajoled by custom convention, authority, and the well-established order of Society into accepting, a situation in which they could call their own very little of the cake that they and nature and the capitalists were co-operating to produce" (Keynes 1920: 19-20).

representation in the form of mass parties – Social Democratic as well as Fascist and National Socialist – that promised 'work and bread.' Governments that allowed economic forces to run their course, producing mass unemployment and hunger in the process, could no longer count on the population to accept this fate as the inevitable outcome of natural processes or just punishment for prior excesses. They faced the very real threat of being ousted by political movements promising a radical reorganisation of the economy (see Berman 2006).

Reflecting on this condition in the immediate post-WWII period, the ordoliberal Walter Eucken captured the problem succinctly: "Governments of countries where mass unemployment occurs and persists are unlikely to be re-elected. *The Economist* expressed the general feeling when it said in 1942: 'If liberal democracy is incompatible with full employment, then it has to go'" (Eucken 1989 [1948]: 43). Under modern conditions, losing the battle for the economy spelled, like losing a war, the certain end for a particular government and potentially even for a certain governmental form. The 'double movement' (Polanyi 2001) had set in and the 'masses' had become an important political force. In the process, economic and monetary policy became politicised (Eichengreen 1996: 10). In relation to the monetary order, the partisan composition of government was no longer irrelevant.

This change did not come about overnight. During the 1920s, leftist governments would often flounder – when they were not ousted by conservative forces invoking a state of exception – on the contradiction between their social policies and electoral base, on the one hand, and their adherence to the gold standard, on the other (Polanyi 2001: 236-237). In the 1930s, however, this changed, not least due to Roosevelt's New Deal, which sacrificed the international gold standard for domestic employment policies. From then on, the monetary order in a very concrete sense rested on partisan politics and the government of the day. The standard of value had been displaced from the unchanging naturalness of gold to the ever-fluctuating artificiality of political life. The fundamentals of the monetary order were explicitly linked to the vagaries of (partisan) politics.

In addition to the politicisation of the monetary order at a foundational level, the purposes for which monetary policy was to be conducted were no longer the subject of general agreement. Currency stability was no longer the only overriding objective of monetary policy but became relativised in relation to unemployment in particular. Since a government committed to full employment could not tolerate a central bank conducting a policy with recessionary effects in the name of monetary stability, the very foundation on which the pre-WWI notion of central bank independence rested had disappeared.

While there were clearly legitimate reasons for governments to take control of monetary policy, the collapse of a fixed standard of monetary value also introduced greater scope for governments to manipulate the currency for incendiary purposes (Keynes 1920: 236). While the governments performing such manipulations were rarely socialist, the threat that they posed to capitalism and private property was linked to the communist threat. As Keynes (ibid: 235) famously attributed to Lenin, "the best way to destroy the Capitalist System was to debauch its currency" (ibid: 235).[8] Through a "continuing process of inflation" induced by governments seeking to "confiscate, secretly and unobserved, an important part of the wealth of their citizens," the very spirit of capitalism was in danger of being undermined. This problem, however, was not necessarily linked to the economic ideology of a particular government. It was a general problem of government under a fiat or managed currency regime (ibid: 237). Government as such, in other words, constituted a perennial threat to the monetary order and, thus, to the liberal capitalist political-economic order.

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The collapse of the gold standard introduced the problem of politics in relation to money. Monetary thought had to confront the question of politics and government. The general problem manifests itself in two distinct but interrelated ways: in relation to the foundations of the monetary order and in relation to the ordinary government of money or monetary policy. The general problem and its two manifestations will be discussed throughout the thesis but on the basis of the discussion so far, its elements can be summarised as follows.

When the value of money is politically determined and controlled, the monetary order can no longer be understood as being natural and beyond the control of the political authorities of the state. The monetary order is artificial and has to be instituted and maintained through the exercise of political authority. Political authority defines

[8] The evidence for Lenin ever having expressed this view is not conclusive (see Fetter 1977; White and Schuler 2009). The notion is reproduced in both Eucken's (2004 [1952]: 255) and Friedman's (Friedman and Friedman (1990 [1980]: 268) work. Interestingly, the former attributes the statement to Lenin, while the latter attributes it to Keynes.

monetary value and constitutes the monetary order. The question, then, is how foundational political authority is exercised and what kind of monetary order is established. Because the monetary order is explicitly founded on political authority, the possibility of political change can never be ruled out. In a foundational sense, then, the stability of the monetary order is subject to political authority.

Because the monetary order is political, not natural, it is manipulable. It is not only subject to changes of fundamental political will but remains also inescapably subject to the expression of political will through the ordinary political process. Thus, the monetary order is at the mercy of the expression of political will through government policy. This can manifest itself directly through the political control of monetary policy or indirectly through conflicts between monetary objectives and other economic objectives of the government. In the absence of 'absolutes' grounding the meaning of any given policy objective, those objectives can be redefined at the whim of governments and electorates. Monetary policy is thereby subject to, and 'threatened' by, ordinary (democratic) politics.

The thinkers discussed below all start from this condition. The question is what follows from it: should politics and political authority be embraced or ought it, somehow, to be overcome anew?

The Primacy of Politics in Keynesianism (and Beyond)

Keynes' approach to economic problems, including the problem of politics in relation to money, was not entirely unique at the time. Aggregate demand management, for instance, was a crucial aspect of Swedish social democratic policy already before *The General Theory* was published. Interwar social democrats, furthermore, often adopted a perspective that positioned them, like Keynes, in opposition to the economic determinism of both orthodox Marxism and laissez-faire liberalism (Berman 2006: 6, 169; 2009: 562). There is in particular a close affinity between Keynes and the Stockholm School economists whose work inspired Swedish Social Democracy (Blyth 2002: 96). Before turning to the discussion of Keynes' ideas, I will therefore briefly discuss the approach of the Stockholm School, exemplified by the economist and Social Democrat Gunnar Myrdal.[9]

Social Democracy

In a series of lectures given in 1928,[10] Myrdal (1953: x) developed an immanent critique of (neo)classical economics, which sought to uncover its foundations in an ideological commitment often "only present as tacit assumptions, implicit in the conclusions." This ideological commitment amounted to a corruption of the "economic science" whose task, he claimed, "is to observe and describe empirical social reality and to analyse and explain causal relations between economic facts." "To determine what our fears and wishes ought to be," he argued, is "outside the realm of science" and "the proposition that one state of society, actual or imagined, is politically preferable to another can never be inferred from the results of scientific work" (ibid: 1).

Myrdal's (ibid: 13) critique was directed specifically at the tendency to present "specific political recommendations ... as results of scientific analysis." The consequence of the critique is clear: the values according to which society is governed ought to be determined politically, not by a 'science' founded on the principles of natural law and utilitarianism. This, in turn, had important consequences for monetary policy: it had to "be set within the framework of economic policy which in turn must be set within an overall political frame of reference" (Dostaler 1990: 208). By advancing visions of an normatively superior economic order, the (neo)classical economists were leaving economic science behind and entering the realm of politics.

The economic and monetary order, then, is inescapably a political order and the policies that shape its concrete form should depend on the values that the political community wants realised. Government cannot achieve whatever it wants in terms of economic outcomes because policies have unintended consequences. But it is the role of economists to help politicians understand these, not to prescribe the values according

[9] Myrdal's work not only inspired the policies of the Swedish Social Democrats, he was also active in developing and implementing them as an MP (elected in 1934) and later as Trade Minister (1945-7). In his 'intellectual biography' of Myrdal, William Barber (2008: xi) notes that: "If his contribution had been available to readers of English before 1936, it is interesting to speculate whether the 'revolution' in macroeconomic theory of the depression decade would be referred to as 'Myrdalian' as much as 'Keynesian.'"

[10] Under the title *Vetenskap och politik i nationalekonomien* ['Science and politics in (macro)economics'], published in Swedish in 1930 and in English, with the title *The Political Element in the Development of Economic Theory,* in 1953.

to which the community governs itself. The economy is not a fixed order operating according certain universal and unalterable principles, whereby government intervention becomes distortive by definition. The economy is inescapably politically constituted and governed according to political choices.

What characterises this perspective is that it locates the driving force of history in political action rather than economic processes. It asserts "the ability of collective action to shape history" (Berman 2009: 562). This means that the question of the 'best' economic order can only be answered with another question: best in terms of what? And this, in turn, can only be answered through the formation of political will. While this point may seem obvious, even banal, Myrdal highlighted that even though most economists claimed to adhere to it, their theories and policymaking did not. The economic 'experts' were not neutral arbiters of technical knowledge but active promoters of particular political-economic ideologies.

Keynes and the Capitalist Economy

Keynes (1978a [1936]: 383-4) to a large extent shared this view and *The General Theory* provides a comprehensive re-examination of the fundamental tenets of modern economics in this light. The classical doctrine of economics held that macroeconomics was merely the aggregation of processes and mechanisms at the level of individuals. Adam Smith's (*Wealth of Nations,* bk. 1, ch. 2) famous notion that "It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest" was elevated to the general principle guiding all economic activity. Any distortion of the principle of the general interest emerging from the pursuit of private interests was consequently viewed with suspicion.

Keynes rejected this. By considering the economy as a whole as the starting point, Keynes arrived at the notion that what is rational for the individual may be irrational for the community. Furthermore, in failing to take a comprehensive view of the economy, classical economics failed to acknowledge its political foundations and preconditions. For instance, in relation to the question of international peace, Keynes (1978a: 382, emphasis added) noted that

> under the system of domestic *laissez-faire* and an international gold standard ... there was no means open to a government whereby to mitigate economic distress at home *except through competitive struggle for markets*.

To Keynes, then, like to some of his socialist contemporaries – Lenin (2010 [1917]) and Luxemburg (2003 [1913]) in particular (see also Arendt 2017 [1951]) – the classical theory neglected the question of the relationship between the capitalist economy's inside and its outside; the question of imperialism, in other words. In its focus on equilibria, it failed to acknowledge capitalism's inherent need for ever expanding markets for products and factors of production to overcome its internal tensions.[11] While Lenin and Luxemburg saw this as an inherent and inescapable feature of capitalism, Keynes perceived the problem as one of ideas about state policy. The problem was that the 19th century capitalist state did not, for ideological reasons, address the problems associated with the domestic class conflict and power-imbalances between capital and labour but operated on the tacit premise that such problems could be overcome through the external expansion of markets. WWI and the Great Depression dispelled this illusion (Keynes 1978a: 383) and the crisis opened the door for a paradigm shift that would redefine the ideational and ideological outlook of the state (Polanyi 2001; P. Hall 1993; Blyth 2002).

The comprehensive view of the economy has a direct bearing on the question of monetary order and monetary policy. Keynes' theory takes its point of departure in a critique of the Quantity Theory of Money and its failure account for crises. A laissez-faire theory, the Quantity Theory, which Friedman would later revisit and reformulate (see below), conceives of money as essentially neutral. Changes in money supply will only affect the price level, leaving 'real' economic variables unchanged. The conclusion is therefore that government should refrain from conducting an active monetary policy; it would, at best, be ineffective. As such, public authority should not react to monetary developments but simply *laisse-le passer*. Keynes' (1978b [1923]: 65, emphasis in original) critique of this is summarized in a famous passage from *A Tract on Monetary Reform*:

> Now 'in the long run' the Quantity Theory is probably true ... But this *long run* is a misleading guide to current affairs. *In the long run* we are all dead. Economists set themselves too easy, too useless a task if in tempestuous seasons they can only tell us that when the storm is long past the ocean is flat again.

[11] As Arendt (2017) draws attention to, political elites at the time also failed to acknowledge the political tensions that imperial expansion outside Europe entailed within Europe.

The long run assumption does not hold because the damage caused in the short run may destabilise the economy to such an extent as to completely alter its shape. History, as Keynes saw it, is made up of short runs and politics can change its course. Economic theory, then, must develop an understanding of crises that can serve as a guide to government action.

The crisis, according to Keynes (1978a: 315), is in large part caused by "the sudden collapse in the marginal efficiency of capital." This, in turn, is accompanied by a "dismay and uncertainty as to the future" which then again leads to a "sharp increase in liquidity-preference" (ibid: 316). That is, economic actors tend to hoard money rather than engage in the consumption or investment necessary to counter crisis tendencies. "In conditions of *laissez-faire* the avoidance of wide fluctuations in employment may, therefore, prove impossible" (ibid: 320). On this basis, Keynes (ibid.) concludes "that the duty of ordering the current volume of investment cannot safely be left in private hands." "[T]he common will, embodied in the policy of the State" (ibid: 377) must intervene "to expand output" (ibid: 325) and exercise "a guiding influence on the propensity to consume." Furthermore, "a somewhat comprehensive socialisation of investment will prove the only means of securing an approximation to full employment" (ibid: 378).

Keynes' response to the Depression entails an agenda for transforming the relations of power in capitalist society. This is particularly clear with regard to the state's role in increasing investment, which is associated with "the great social advantages of increasing the stock of capital until it ceases to be scarce" (ibid: 325). The power of the capitalists to dictate the terms of production would thereby be limited and it would, in the final instance, "mean the euthanasia of the rentier, and, consequently, the euthanasia of the cumulative oppressive power of the capitalist to exploit the scarcity-value of capital" (ibid: 376). What *The General Theory* provides is thus a justification for using state power to transform the antagonistic relationship between capital and labour, whereby the inherent tendency of capitalism to address its domestic problems through external expansion would be stifled. Keynes' theory, in other words, allows for detaching the domestic from the international, whereby also the internationality of the monetary order cedes importance and monetary policy becomes a domestic political concern.

Keynes (ibid: 372) explicitly situates his theory as a response to the problems emerging in the twilight years of the 'gilded age': "[t]he outstanding faults of the economic society in which we live are its failures to provide for full employment and its arbitrary and inequitable distribution of wealth and incomes." Monetary policy plays a crucial role correcting these. Inequality in wealth and income, Keynes (ibid.) claims, is mainly justified by the "belief that the growth of capital depends upon the strength of the motive towards individual saving and that for a large proportion of this growth we are dependent on the savings of the rich out of their superfluity." Keynes (ibid: 372-3), however, shows that "the growth of capital depends not at all on a low propensity to consume but is, on the contrary, held back by it." "The justification for a moderately high rate of interest" (ibid: 375) thereby collapses along with the argument for a monetary policy pursuing price stability above all else. Instead, he claims to demonstrate that "the extent of effective saving is necessarily determined by the scale of investment and the scale of investment is promoted by a *low* rate of interest" (ibid: 375, emphasis in original). In terms of monetary policy, then, "it is to our best advantage to reduce the rate of interest to that point relatively to the schedule of the marginal efficiency of capital at which there is full employment" (ibid.). Private saving, in turn, ought to be replaced in the main by "communal saving through the agency of the State," which would allow for "the growth of capital up to the point where it ceases to be scarce" (ibid: 376).

Transferring the task of capital accumulation from the private to the public entails the separation of capital from capitalists. Capital, in this perspective, should not be considered the sacred private property of the capitalist but as something inherently social. To the extent that capital is privately held, it ought to be disposed of in a manner beneficial to the community as a whole. In Scandinavian social democratic legal theory, this was known as 'functional socialism' (see Adler-Karlsson 1967). Capital ownership, according to this approach, should be considered an absolute right neither of the individual (as in capitalism) nor the state (as in communism) but should be disaggregated into its component parts and functions in society. Embodying the common will, the state then determines the scope of private ownership and initiative as well as the distributions of its rewards. The task of state policy, then, is not to stifle individual initiative but to correct it of its excesses and ensure the "conditions of [its] *successful* functioning" (Keynes 1978a: 380, emphasis added). As such, it is not

> the ownership of the instruments of production which it is important for the State to assume. If the State is able to determine the aggregate amount of resources devoted to augmenting the instruments and the basic rate of reward to those who own them, it will have accomplished all that is necessary (ibid: 378).

In this conception, the state does not take full control of the means of production but determines the broad outlines of their use. As such, this approach constitutes, as Adler-

Karlsson (1967) noted, an 'alternative between capitalism and communism,' and both Keynesians and social democrats "held out the prospect that the state could reconcile the private ownership of the means of production with democratic management of the economy" (Przeworski 1985: 207; see also Berman 2006: 180). Politics, in other words, would allow for and should seek a compromise between capitalism and democracy.

The Dependent Independence of the Central Bank

Keynes' (1978a: 379) theory, which involved "a large extension of the traditional functions of government," informed his attempts to educate political leaders across the political spectrum in the UK and beyond, including on questions of currency reform, monetary policy and central banking (see, e.g., Keynes 1978c: 1-203). A notable example of the latter is Keynes' (1978d [1932][12]) sympathetic critique of the Labour Party's 1932 proposal for monetary reform.

Labour's proposal had asserted the primacy of domestic considerations in monetary policy. In doing so, it had pitted itself against the policy priority of the Treasury and the Bank of England, who remained committed to "an ultimate return to gold" because "they conscientiously disbelieve in the whole order of ideas for which the alternative policy stands for" (Keynes 1978d: 129). Keynes supports this aspect of Labour's proposal because it would reverse the hierarchy of norms and allow monetary policy "to be rid of the tie with gold" (ibid.), particularly in the crisis situation.

The choice of monetary order has important implications for the institutional relationship between the central bank and the government. Should the monetary order be reformed, Keynes (ibid., emphasis added) claims, "it will, in fact, be the doubting [Governor of the Bank of England] Mr Norman ... who will have the first shot at trying to carry out the policy *which is not his own choice.*" The central bank is thus subjected to political authority and would not be in a position to say 'no.' The "successful management" of the currency, however, is "not so easy" (ibid: 129-30). The new monetary regime will "require the exercise of a new technique, including, especially, a large measure of control over the volume of new investment" (ibid: 130). In line with the argument of *The General Theory,* monetary policy needs to be considered in

[12] The article was published in two parts in *The New Statesman and Nation* on 17 and 24 September 1932.

conjunction with the role of the state in controlling investment, a coordination without which "the business of controlling the value of sterling ... is likely to prove beyond our powers" (ibid: 136).

Labour's proposal entails that the Bank be put completely under the auspices of the political representatives, with only "the day-to-day business of the Bank being carried on by the Governor and his subordinates" (ibid: 130). Keynes, however, sets out an alternative vision of the central bank's position: "The management of the Bank," Keynes (ibid: 131) agrees with Labour, "should be ultimately subject to the Government of the day" and the "principles of the currency system ... should be determined by Parliament." Keynes thus places the political authority to determine the monetary order with the legislative power and the power to determine the objectives of monetary policy with the executive. However, "[t]he less direct the democratic control and the more remote the opportunities for parliamentary interference with banking policy the better it will be" (ibid.).

Keynes thereby presents a particular notion of central bank independence. The objectives of monetary policy are to be determined politically, but its execution should be left in the hands of the experts at the Bank. Keynes (ibid.) justifies this on the grounds that "If the Bank of England is to carry out the monetary policy which is proposed, it will be engaged in the practice of a very difficult technique, of which the Parliament will understand less than nothing." "[D]emocratic interference" in the day-to-day practices of the Bank should be avoided because "[a] planned economy will be impracticable unless there is the utmost decentralisation in the handling of expert controls" (ibid.). For a comprehensive economic policy to work, in other words, deference to technocratic expertise is necessary. The central bank is dependent on the democratic process and the government of the day for its objectives but requires independence for achieving them. As such, the Bank's "independence and its prestige are assets [worth preserving]" (ibid: 132).

In Keynes' (ibid.) analysis, the "demand for [the Bank's] subjection to the democracy largely arises ... out of the peculiarities of recent years" in which "the country has possessed no defined standard and not even a defined monetary policy laid down by Parliament." The consequence of this is that "the Bank of England has been left free to exercise ... a wider discretion than it ought to have ... on matters which go far beyond the practice of a technique for the attainment of a purpose, the general character of which has been laid down by a higher authority" (ibid.). The problem is not the independence of the Bank but that the political authorities have shirked their responsibility for economic and monetary policy. If the Bank is acting otherwise than the government desires, it is not the Bank that is at fault but the government. "The widespread feeling that the Bank of England is an irresponsible body exercising arbitrary power without marked success" (ibid.) is therefore misdirected. The problem is not the Bank's independence, but that the government has allowed the Bank to decide autonomously on the objectives of monetary policy. Keynes' response to the problem of politics in relation to the monetary order and monetary policy is thus to embrace it. At the same time, however, he called on political authorities to recognise their own (cognitive) limits. To Keynes then, central bank independence was not a response to the problem of politics but a means of enhancing the technical execution of political objectives.

Intermezzo: The Irrelevance of Hayek

Friedrich von Hayek is perhaps the most famous critic of Keynes and the notion of political control of money. In *Choice in Currency* (1976a) for instance, Hayek explicitly blames the Stagflation Crisis of the 1970s on Keynes, whose theory, according to Hayek (1976a: 14), justified the practice of "government control of the quantity of money." As Hayek (ibid.) saw it, there was "not the slightest hope that any government, or any institution subject to political pressure, will ever be able to [secure monetary stability]." In democracies governed by the majority of the day, governments would "have no choice but to use their powers for the benefit of particular groups" and those groups invariably demand more money (ibid.). The problem of monetary instability and inflation is inherent to (democratic) politics and the only viable solution is "*to find a way to protect money from politics*" (ibid: 16, emphasis added). While Hayek revered the gold standard for its automaticity and ability to provide monetary stability, he did not believe it could be reintroduced politically. Instead he advocated a system of free currency competition, whereby no state would be able to monopolise the issuance of legal tender within its territory. In this system, there would be no need for a central bank.

The 'denationalisation of money' (1976b), however, encounters the problem that it requires conscious political action to introduce it. Hayek (1976a: 22) envisions that this could be done through an international treaty. Hayek's currency regime is thereby as dependent on political will as the Keynesian currency system that he is criticising, only not at the domestic but at the international level.[13] The main difference is that the daily control of monetary matters is removed from the political process of individual states and subjected, through international law, to the disciplining force of competition. Hayek does not escape the problem of politics, but simply relocates it to a different level.[14] A political decision on the currency regime must still be made. The question for Hayek is how the 'right' decision will be made. In this regard Hayek, like Keynes (and Simons and Friedman, see below), seeks to change people's way of thinking about the role of politics in society and in relation to money. In the final instance, then, Hayek places his trust in the "great struggle of ideas" (Hayek 2011 [1960]: 48).

Like Hayek, German ordoliberalism and American neoliberalism sought to overcome the problem of politics in relation to money and positioned themselves against the Keynesian embrace of politics in the government of money. In contrast to Hayek's ambiguity on the question, however, these approaches explicitly recognised the necessity of public authority as the foundation of the monetary order. They thus rejected the possibility that a stability-oriented monetary order might emerge spontaneously from the workings of market forces. The problem of politics was there to stay. The question was only how to address it. In this regard, the two approaches developed theories and frameworks that explicitly sought to establish principles and rules governing the exercise of public authority with regard to monetary affairs. As such, they are of greater relevance to the question of monetary order and monetary policy than Hayek. Their respective approaches to the nature of the principles and rules governing monetary affairs, however, differed.

The Primacy of the Constitution in Ordoliberalism

Ordoliberal thinking did not abandon the gold standard and the principles informing it easily. In the inter- and post-war periods, however, the historical situation could not be

[13] Both *Choice of Currency* and *Denationalisation of Money* are at least partly written as interventions in the debate on European monetary union and specifically on the question of whether to introduce a single currency (1976a: 17; 1976b: 17-18). The notion of an international treaty governing monetary relations was thus presumably inspired by the European Economic Community and its ability to introduce a rules-based order enforced by "international bodies" rather than "international authorities possessing powers of direction" (1976a: 22), that is, without a sovereign power.

[14] Somewhat paradoxically, Hayek subjects the monetary order to executive discretion by trusting states to enshrine the monetary order in international law. Perhaps more than anything, this reveals that it is not political authority as such that Hayek is afraid of but the democratic process and its potential for empowering anti-capitalist governments.

ignored and the question of the general economic and political conditions of the monetary order had to be confronted (Lutz 1989 [1935]: 219[15]). In response to this, ordoliberals developed an approach which sought to reintroduce the principles of the gold standard through an authoritative political decision.

For ordoliberals, the structural connection between the monetary order and "the overall economic system" (ibid.) is decisive. The question of monetary order must be addressed in relation to the wider socio-economic order. The principles governing each aspect of the general order must not conflict. In this regard, the primary principle of the gold standard is its automaticity, it "is a mechanism," a "machine" (ibid: 220). Properly conceived and supported, the gold standard eliminates political discretion in relation to monetary policy. "[T]he essence of the gold standard" (ibid: 225-6, emphasis added) is an impersonal and apolitical mechanism. It is a "*strict order* of international finance" in which political discretion is constrained by a mechanism that ensures that the money supply is always "'appropriate'" to the needs of the economy and "almost nothing at all is left to the planning initiative of [central] bank managers." In contrast to Keynesian monetary policy, the gold standard "makes few rather than many demands on the human intellect" (ibid: 226).

The automatic monetary system, however, can only emit signals to guide government action. The implementation of those signals rests on public authority. But the freedom of public authorities to interpret those signals is constrained and government cannot, "with *impunity*" (ibid: 236, emphasis added), affect core variables of economic policy in a manner contrary to those signals. Keynesian economic planning, therefore, presents "an irreconcilable antithesis" to the automatic monetary order because it is

> based on the idea of *conscious* organization by a central authority. Its aims and methods originate ... in a totally different world based on a fundamentally different view of the structural principles of the economy (ibid., emphasis added).

For a general economic order to function, then, there must be a coherence between the principles governing all aspects of policymaking. The question of monetary order must

[15] Published originally under the title "Goldwährung und Wirtschaftsordnung." Friedrich A. Lutz was a student of Eucken, who develops a similar approach in *Grundsätze der Wirtschaftspolitik,* albeit based an international commodity basket of consumer and industrial goods. The principles and effects of such a system would be similar to the gold standard except that "the value of money would not depend on *one* commodity – that is, gold – but would be linked to the value of several commodities" (Eucken 2004 [1952]: 262, emphasis in original, my translation).

therefore be answered in the context of the broader question of the political-economic order a society wants for itself (ibid: 226-7).

The choice between different monetary orders – a managed and an automatic – is a general choice between different approaches to governing the economy. This, in turn, is a choice that involves sacrifices. Whereas the managed monetary order involves the sacrifice of monetary stability, the automatic entails the sacrifice of the government prerogative to respond discretionarily to domestic political concerns: "If the rules are not observed" the automatic monetary system "ceases to be a system and chaotic conditions result" (ibid: 229). Governments must therefore not succumb to popular pressures for stimulus during a trough. The government ought, rather, to support the market in correcting the structural problems of the economy that led to the crisis in the first place. Only this will be an authentic and sustainable response to any given crisis. The international and automatic monetary system thereby promises to introduce a mechanism to enforce market discipline on government policy.

The Economic Constitution

The necessity of aligning the principles governing monetary and economic policy, demands a political commitment to allow "the price mechanism to take effect" (ibid: 231), as only the price mechanism can translate 'real' economic developments into intelligible signals for economic actors. This is one of the central tenets in ordoliberal economic theory: the price mechanism constitutes the central allocative device that allows the large industrialised economy to function smoothly and with a minimum of distortions (Eucken 1951 [1939], 1989 [1948], 2004 [1952]). As Franz Böhm (1989 [1966]: 53) put it, "the controlling force of the signals [of the market price system] consists in the fact that they co-ordinate the partial plans of all participants on the basis of decisions which are made by these participants." It is a system of economic decision-making which requires no governing central authority. The price mechanism operates as a "scarcity gauge" or a "calculating machine" and aides otherwise disassociated economic actors in the determination of "how to combine factors of production to produce what is required" (Eucken 1989: 27-8).

To perform its role the price mechanism must not be disturbed. It therefore demands general price stability, since price developments that reflect conditions other than the relative scarcity of different goods and factors of production in the free market distort its functioning. In order protect the price mechanism, the ordoliberal order requires a strong state both to establish the necessary framework conditions and protect them from corruptive forces arising from the market or society (see Foucault 2008; Bonefeld 2015; Streeck 2015; Wilkinson 2015a). It is a strong state, however, in a particular sense. As the bearer of *"volonté générale,"* the state's tasks must "include anything connected with the realisation of free market conditions" (Böhm 1989: 55). It must be endowed with a wide degree of discretion for evaluating and acting on what it perceives as the conditions necessary for realising the free market economy (see White 2017a). However, the "task of government consists *merely* in creating the conditions enabling this control mechanism [of the market] to operate in accordance with the constitution" (Böhm 1989: 64, emphasis added). The state must refrain from going beyond its role as an enabler and protector of the economic constitution. It is strong in the sense that it must be afforded broad powers to ensure the workings of an automatic mechanism that disciplines not only others but also itself. The strong state thus subjects itself to qualitative limits but at the same time the automaticity of the monetary system reinforces such constraints by ensuring that breaches of the economic constitution are 'punished' automatically. The internationality of the monetary system reinforces this punishment mechanism and thereby becomes a core feature of the domestic constitutional order of constrained government.

The price mechanism of the market is, like the deist God, a weak 'sovereign.' It works through the natural laws of the economy, but these are corruptible and the market needs state power to enable and enforce its 'will.' In this political theology (see Manow 2001), the immanent order of nature does not emerge spontaneously in its perfect form, as "the classical economists" thought (Eucken 1989: 38). It is, rather, the task of "economic policy ... to bring about the free, natural order that God intended" (ibid: 34; see also Eucken et al 1937). In this order, economic policy must be considered in its entirety to prevent incongruities between different parts of it. As such, "[m]onetary policy, policy on cartels, trade policy, policy towards small businesses *et cetera*" should not be "seen as separate specialised areas to be dealt with discretely" (Eucken 1989: 39) but constituent parts of a general whole. The problem of politics is thus pivotal to ordoliberal thinking in that political authority presents a perennial threat to the 'natural' order – through its potentially corrupting influence on the workings of the market – while at the same time being inescapably necessary for bringing it about and protecting it. This inherent paradox between the artificiality and naturalness of the market economy means that political authority is always both necessary and unwanted. The question, then, is how the paradox is to be addressed.

The ordoliberal paradox of political authority is a variant of Rousseau's 'paradox of politics' (Honig 2009), i.e. the problem that good laws come from good politics but good laws being a precondition for good politics. The problem is that social life does not emerge *ex nihilo* but is always situated historically and in concrete constellations of power. Any limited reform within the specific historical situation is inescapably insufficient or even counter-productive because it cannot adequately take the whole range of its consequences into account. Introducing the gold standard alone in the historical situation of Weimar Germany, for instance, would be bound to fail unless the comprehensive economic and political order were to be reconfigured along with it. Conversely, as Eucken (1989: 32) notes, "[t]here is little point in devising national constitutions in the modern world without regard for the economic system." And in the face of structural economic changes, "[t]he constitution of the country [may remain] unchanged, but because of the shift in economic power the governmental decision-making process undergoes a change" (ibid.). The monetary system or the economic constitution must not, in other words, be addressed in isolation but in conjunction with the wider consideration of the constitutional relation between state and society (see Böhm 1989).

In order to address this problem and overcome the problem of unintended consequences of partial and discretionary political initiatives, a 'naturally' occurring or artificially induced break with the past must be sought. In 1922, Carl Schmitt (2006) introduced his concept of the decision in and on the state of exception as the political equivalent of the miracle in Christian theology to address this problem and the ordoliberals in large part adopted this notion in their political theory (see, e.g., Böhm 1989: 63). In *Constitutional Theory,* Schmitt refined the concept of the political decision and, by fusing it with the concept of the constituent power, arrived at a conception of the constitution as being derived from "the political will, whose power or authority is capable of making the concrete, comprehensive decision [*Gesamtentscheidung*] over the type and form of its own political existence" (Schmitt 2008 [1928]: 125). This constituent decision, in turn, defines the constitution in its entirety and "[t]he validity of any additional constitutional rule is derived from the decision of this will" (ibid.).

In their so-called 'Ordoliberal manifesto,' the 'founding fathers of ordoliberalism' – Eucken, Böhm and Hans Großmann-Doerth (1937: xix/1989: 24) –

adapted the language of the 'comprehensive decision' to their own intellectual programme. In this, 'the economic constitution' (*Wirtschaftsverfassung*) is described as "a general political decision [*Gesamtentscheidung*] as to how the economic life of the nation is to be structured."[16] The manifesto calls for energetic legal-political action, but it rejects the Schmittian nihilism of the constituent moment. The economic constitution-making process should instead "bring scientific reasoning, as displayed in jurisprudence and political economy, into effect for the purpose of constructing and reorganising the economic system" (Eucken et al 1989: 23; see also Eucken 2004: 250-253; Müller-Armack 1978). The economic constitution should therefore be constituted by "men of science" who "by virtue of their profession and position" are "independent of economic interests" and, therefore, "the only objective, independent advisers capable of providing true insight into the intricate interrelationships of economic activity and therefore also of providing the basis upon which economic judgements can be made" (Eucken et al 1989: 15; see also Biebricher 2014: 97). The realisation of 'God's intended order' needs legal-political action as its midwife and the "comprehensive decision on the political order [*Die ordnungspolitische Gesamtentscheidung*] has to stand before individual economic policymaking acts" (Eucken 2004: 250, my translation). The latter, in turn, must conform to 'the principle' [*Prinzip*] enshrined in the economic constitution.

The question of the monetary system is thereby inscribed within the wider question of the principles informing the basic economic and political constitution of the state. The monetary problem thereby becomes "merely one part of the fundamental matter of the principles by which economic life should be governed" (Lutz 1989: 235). The problem of monetary order is thus an integral part of the general problem of how a political community governs itself.

The internationality of currency systems such as the gold standard (and later the euro), however, introduces an additional difficulty. Precisely because they are international, their functioning and maintenance requires "confidence in political stability at home *and abroad* and, barely distinguishable from this, confidence in the maintenance of the currency" (ibid: 233, emphasis added). If there are concerns about the stability of the political system at home or abroad, economic activity ceases to be

[16] See also Müller-Armack (1978: 328), who saw the job of "shaping an economic order" as requiring "its incorporation into a total life style."

governed by 'pure' economic motives such as profit and productivity and becomes determined by political considerations concerning "the real or supposed general security or financial security of the countries concerned" (ibid.). The question of a particular government's willingness to make the necessary sacrifices to maintain the currency system thereby becomes a concern for every other member of the system (ibid: 234). The internationality of the currency system thereby transforms the internal affairs of any member into a domestic political concern for every other member. As such, an international monetary system requires embedding not only in a national economic constitutional order but in a transnational one based on a comprehensive political decision in a constituent moment.

The Role of the Central Bank

Although underdeveloped in ordoliberal thought, the transnational dimension of the ordoliberal economic constitution has a direct bearing on the question of the euro and the ECB. I will return to this in chapters 4 and 6. For now, it is worth considering in more detail what the role of the central bank is within the ordoliberal economic constitution.

As discussed above, ordoliberals hold that the monetary system cannot "be considered in isolation" or "from the perspective of monetary technique only" (Lutz (1989: 236-7; see also Lutz 1962 [1936]: 94-95). It must be considered from the perspective of the basic principle of "the whole economic system." Like all other governmental institutions, then, the central bank must follow 'the rules of the game' and, in line with the general view of the role of the central bank under the gold standard, "not much is expected of a central bank" because its operations are "simply derived from the application of general economic principles to the monetary system" (Lutz 1989: 236). This does not render central banks superfluous, but it means that they must not exert a conscious, independent influence on monetary policy. "[T]hey must," rather, "work in the same direction" as the monetary system (ibid: 229). The automaticity of the system thereby provides the central bank with "an indicator of the need for action and of the end to be achieved" (Macmillan report as cited in Lutz 1989: 229). Any intervention by the central bank must, in other words, follow Alexander Rüstow's principle of 'liberal interventionism': it must "work in the same direction as the rules of the market, not against them" (Lutz 1989: 241, n. 7).

The principle of liberal interventionism has a direct bearing on the question of central bank independence:

> there can be no question of any 'independence of the human intellect' ... it is not for the [central bank manager] to command but to obey even if this means obeying in the manner of a highly intelligent servant who deduces only from certain indications what his master wishes and then does the right thing without any express command (ibid: 230).

The market is the 'master' whose signals the central bank must head faithfully and the 'monetary constitution' (Lutz 1962) must ensure the "automatic functioning" of monetary policy so that it does not depend on the "day-to-day decisions of political bodies" (Eucken 2004: 262, my translation). Monetary policy thereby becomes an exercise in applying the rules and principles of the economic constitution without independent agency. Monetary policy is rendered outside ordinary politics through the initial comprehensive political decision on the economic constitution, but its conduct is not left to an independent central bank. In fact, "an all too independent and weakly controlled central bank is difficult to fit into the structure of the state. It will be tempted to position itself in opposition to the general economic policy of the state" (Eucken 1946 as cited in Bibow 2009: 170). The ordoliberal economic constitution does thus not provide a justification for central bank independence, quite the contrary (see also Bibow 2009).

While the 'primacy of monetary policy' [*Primat der Währungspolitik*] (Eucken 2004: 255) is a core aspect of ordoliberal thought, it is so in the limited but important sense of monetary stability being the essential precondition for a functioning price mechanism, without which the competitive market economy is unthinkable (ibid: 256). Because the gold standard had been the historically most successful means of securing monetary stability, the ordoliberals sought the reintroduction of its principles by other means. They did so, however, by providing a political theory of its foundations in a comprehensive political decision on an economic constitution. When adherence to the gold standard was no longer a political necessity, it had to be made part of the constitutional choice between a "Free economy" and a "planned economy" (Lutz 1989: 241). The government of money, then, would take place on the basis of the primacy of the constitution. Within the constitutional order, politics ought to play as minor a role as possible and public authority should be employed mainly for protecting and sustaining the constituted system. The constituent political decision, in other words, ought to eliminate the role of politics in governing money and economic life in general.

The Primacy of Rules in American Neoliberalism

The ordoliberals conceived of the economic constitutional choice as one between competing comprehensive orders of potentially equal economic merit. That is, the Keynesian planned economy could be as efficient as the market economy, but it operated according to different principles. The choice between them was a moral one: should society be free or unfree? To American neoliberals such as Milton Friedman, this choice was false. The planned economy was indeed morally inferior to the free market economy because it rested on coercion (Friedman 2002 [1962]: 13). More importantly, however the notion that a planned and a free market economy operated according to different organising principles was rejected. Regardless of the system of governing, the 'economy' adhered to immutable laws and the problem with the planned economy was that even a fully rational, 'well-meaning' planner would never be able to know the full consequences of its policies. The planned economy would inescapably produce unintended and unwanted outcomes and was therefore quite simply a clumsy and sub-optimal way of organising economic activity.

This rejection of competing principles governing economic life had an important bearing on the question of money. Inflation, according to Friedman and co-authors such as Rose Friedman and Anna Schwartz, is neither a capitalist nor a socialist phenomenon but finds its cause in the use of the printing press by government (Friedman and Friedman 1990 [1980]: 254; Friedman and Schwartz 1963). It is a monetary phenomenon and is derived from the way in which money is governed. As such, the question of the monetary order becomes not so much a constitutional question as a question of policymaking and of establishing a methodology for governing money in a manner that does not distort the functioning of the economy.

Rules vs Authorities in the Absence of the Gold Standard

While monetarism, the neoliberal theory of monetary policy, is primarily associated with the work of Friedman after WWII, some of its core conceptual underpinnings were developed by Henry Simons in the inter-war period. Simons (1936: 11), in turn, developed them on the basis of an "amazement that so many people of insight should hold unwaveringly to the gold standard as the best foundation of national policies." This attachment to gold indicated, according to Simons (ibid: 12), "how little progress liberals have made in showing, by way of answer to revolutionists, what kind of money-rules might be adopted to make capitalism a more workable system." Liberalism, in other words, had failed to develop a credible response to the collapse of gold as the foundation of monetary value and as such, "[t]he monetary problem stands out today as the great intellectual challenge to the liberal faith" (ibid: 1).

A liberal response to the problem of money had to abandon the gold standard but without turning to a "reliance on discretionary (dictatorial, arbitrary) action by an *independent monetary authority*" (ibid: 5, emphasis added). A liberal response had, in other words, to reject central bank independence. Instead efforts ought to be directed to designing and establishing "a monetary system good enough so that, hereafter, we may hold to it unrationally—on faith—as a religion, if you please" (ibid: 14). The task, in other words, was to politically establish a system of governing money that would then become depoliticised and taken for granted. The answer, Simons suggested, could be found in the "establishment of a simple, mechanical rule of monetary policy" (ibid: 16). While such a rule could not "wisely be written into our fundamental law, it must provide the same sort of limitation and mandate as would a constitutional provision" (ibid: 24-25). It should be able to constrain the freedom of "a dominant party" (ibid: 25) and thereby remove the conduct of monetary policy from the realm of partisan politics. In order to perform this function, its significance would have to be grounded in public opinion: the rule "must be accepted by the community, and obeyed by the legislature, as the guiding principle of government finance" (ibid: 24).

In this regard, Simons (ibid: 25) argued, "there is probably nothing more promising than the idea of a stable price-level as a symbol articulating deep-rooted sentiments and as a source of discipline in fiscal practice" This grounding in the community's monetary imaginary would then "assure adequate moral pressure of public opinion against legislative (and administrative) tinkering" (ibid: 29). The meaning of price stability and the rule governing monetary and, by extension, fiscal policy should, in other words, be grounded in a popular imaginary defying rational explanation. It should be grounded in the 'hearts and minds' of the people.

When picking up on Simons' argument in "A Monetary and Fiscal Framework for Economic Stability," Friedman (1948: 247) equally presented his framework as being aimed at eliminating "the discretionary control of the quantity of money by central bank authority." His framework thus presents a vision for reducing "the uncertainty and undesirable political implications of discretionary action by governmental authorities" in response to economic developments as they arise (ibid: 263). Friedman (ibid: 246), furthermore, seeks to "specify the general institutional arrangements" conducive to securing "political freedom, economic efficiency, and substantial equality of economic power"; ends that are best achieved by relying "on a market mechanism within a 'competitive order' to organize the utilization of economic resources" (ibid.). Friedman's focus is not on individual policies but on the general structure within which policymaking takes place. In this regard, Friedman's makes two specific propositions regarding the monetary order and the conduct of monetary policy:

> (1) Government must provide a monetary framework for a competitive order since the competitive order cannot provide one for itself. (2) This monetary framework should operate under the 'rule of law' rather than the discretionary authority of administrators (ibid.).

So far, so ordoliberal: political authority must constitute the monetary system, but it must play no conscious part in managing it. In contrast to the ordoliberals, however, Friedman's (ibid: 252) programme is, like Simons', explicitly presented as privileging domestic over international concerns.

The focus on domestic concerns reflects Keynes'. Keynes, however, reserved a prominent and continuous role for politics in monetary policy combined with a degree of central bank independence in the technical pursuit of the government's desired policy. Friedman's framework allows for neither. This dual rejection is informed by Friedman's fundamental scepticism regarding the capacity of human beings to successfully control economic forces. To Friedman, the natural forces of the economy do not, in principle, need politics as their midwife. However, while these forces can never be suspended entirely, they can be distorted and perverted by government intervention, whereby a "moderate contraction" can be turned "into a major catastrophe" (Friedman 2002: 38; see also Friedman and Schwartz 1963). This leads Friedman to conclude that "The Great Depression ... is a testament to how much harm can be done by mistakes on the part of a few men when they wield vast power over the monetary system of a country" (Friedman 2002: 50). The question, then, is how to design a system for governing money that leaves as little scope for human error as possible.

Friedman's response is that the conduct of monetary policy ought to be subjected to the "government of law instead of men by legislating rules for the conduct of monetary policy" (ibid: 51). According to Friedman (ibid.), this "will have the effect of enabling the public to exercise control over monetary policy through its political authorities, while at the same time it will prevent monetary policy from being subject to the day-to-day whim of political authorities." Friedman, unlike Keynes, thereby introduces a schism between the legislative power of the people (through elected representatives) and government. The monetary order is explicitly subject to political control, but the conduct of monetary policy is not. The political control of monetary policy, then, is limited to updating the monetary policy rule "as we [learn] more about monetary matters" (ibid: 55).

The notion of a rule governing monetary policy reflects a dedication to doing "less harm" (Friedman 1948: 254). The question for Friedman is not that of creating the perfect system of monetary policymaking, but of creating one that is as little distortive as possible. In this regard, it of little importance whether the particular rule chosen is the best possible rule. What matters is that one is chosen. The logic informing this is derived from Friedman's conception of the economy. The economy adheres to immanent, immutable forces, but it is not humanly possible to gain a perfect understanding of those forces. The perfect monetary policymaker is not so much a political impossibility as an epistemological one: the policymaker may be perfectly benevolent, but because she cannot gain full knowledge of the workings of the economy, she cannot know the full consequences of her actions. Conscious policymaking is bound to produce unintended, distortive effects. As such, any rule, however imperfect, is preferable to discretionary policymaking because the rule at least is predictable and any distortion it may cause is one-off rather than continuous (Friedman 2002: 50-51). "The precise definition of money adopted, or the precise rate of growth chosen, makes far less difference than the definite choice of a particular definition and a particular rate of growth" (ibid: 54).

The Economic Approach to Central Banking

The problem of politics, however, remains unresolved, as there can be no certainty that the public and its political representatives will choose to introduce a rule via legislation. As such, the public and its representatives must be educated in how to think about policymaking. This is a central theme of neoliberal 'governmentality' (Foucault 2008): what is important is not to promote concrete policies but to shape how people think about and evaluate choices between different options (see also Becker 1964). According to this approach – which seeks to shape the way people think rather than what they think – political decisions ought, like economic ones, to be guided not by unchanging convictions but by weighing the costs and benefits of particular actions. A principled opposition to any given institution or social phenomenon thereby becomes less important than the weighing of the relative costs and benefits of competing alternatives. Thus, even though Friedman was, in principle, opposed to the very institution of a central bank (see Friedman 1976), his primary contribution to economic theory focussed on how a central bank ought to conduct monetary policy (see Doherty 1995).

Friedman's critique of central bank independence was specifically aimed at its institutionalisation in the absence of "a thoroughly automatic gold standard" (Friedman 2002: 51). In a post-gold standard condition, where the value of money has "no relation to any commodity," there is no anchor to guide monetary policy. As such, "the quantity of money is determined … by government. Government and the government alone is responsible for any rapid increase in the quantity of money" (Friedman and Friedman 1990: 253). The problem of money is, in other words, a problem of government. The question, then, is how the power of government can be rendered 'harmless' to the monetary order.

While the ordoliberals sought the solution to this problem in a comprehensive constitutional decision, Friedman seeks it in a reorientation of governmental thinking about monetary policy. While Freidman presented the monetary rule (or the computer) as the ideal, it should be understood as a methodological device rather than an actual programme. Like the abstract notion of the perfectly competitive free market economy, it constitutes the horizon against which alternative ways of governing monetary matters are measured. Its practical unreality or infeasibility is, in this context, irrelevant as long as it inscribes any given policy decision in a calculus of costs and benefits that takes a hypothetical market outcome as the benchmark: given a hypothetical base scenario of inaction or non-intervention, what are the costs and benefits of a particular course of action? Public interventions may be perfectly legitimate, from this perspective, but they need to demonstrate their superiority.

The basic problem for American neoliberals is not to specify the content of policy- or polity-making decision, but rather to shape the methodology of decision-making as such. It is, in the first instance, not important *what* is decided but *how*. This does not mean that concrete values and policies are not promoted – as for instance Friedman's *k*-percent rule for monetary growth (Friedman 1960) – but they are so on the basis of their ability to minimise distortions to the economy. For the American neoliberals, the problem of politics is thus not so much one of overcoming political influence on economic life but of establishing a particular syntax and grammar for how it is conducted. The problem of politics becomes one of educating governments and people in how to think about competing policymaking options in a manner that renders the activity of governing as unobtrusive as possible. In terms of monetary policy, then, "[t]he first and most important lesson that history teaches about what monetary policy can do ... is that monetary policy can prevent money itself from being a major source of economic disturbance" (Friedman 1968: 12). In other words, the most important function of monetary policy is to neutralise the potentially destructive economic effects of monetary policy. What matters is that Ulysses ties his hands.

Conclusion

Following the collapse of the gold standard in the interwar period, the political foundations of the value of money and the monetary order became a pressing intellectual concern. Because both the value of money, the monetary order and the conduct of monetary policy were no longer determined outside the political process, economic thinking had to confront the problem of politics. In this chapter I have discussed three approaches to the problem, which responded to the challenge in different ways.

What the three approaches discussed have in common is that none considers central bank independence as being linked to the achievement of price stability. In none, central bank independence figures as a way of addressing the problem of politics in relation to money; except perhaps in Keynes, but then only in a highly limited and specific manner. However, as I will highlight in the next two chapters, the doctrine of central bank independence *in the absence of a gold standard* incorporated central elements from each of the approaches. To anticipate points developed over the next chapters, central bank independence shares a technocratic and discretionary approach to monetary policy with Keynes; it shares an emphasis on the legal, even constitutional, separation of monetary policy from the control of political authorities with ordoliberalism; and it shares a conception of governing in accordance with the immutable natural laws of the economy with neoliberalism. With both ordoliberalism and neoliberalism, furthermore, it shares the fundamental concern with the primacy of price stability and, thus, monetary policy. What it leaves out (or is situated problematically in relation to) is the Keynesian notion of the final subjection of monetary policy to the government of the day, on the one hand, and the ordo- and neoliberal notions of instituting a system for eliminating central bank discretion, on the other.

According to all three approaches, the central bank is not supposed to be in a position to say 'no' to government. For Keynes, this would be in violation of the primacy of the government's economic policy; for ordoliberals this would indicate the failure of the economic constitution; and for the neoliberals, the central bank ought not to be in a position to say anything because the government ought not to be in a position to ask anything of it. This reflects, perhaps, that the three approaches are concerned with developing a general framework for how economic and monetary policy ought to be conducted. Central bank independence, on the other hand, emerged within and in response to the existing 'imperfections' of political and economic practices. It was never constructed systematically as a 'pure' theory, but emerged from practices, narratives and justifications that were situated in specific conflicts and historical contexts. It emerged, nevertheless, as a general way of thinking about how to address the problem of politics in relation to money, which has had an extraordinary influence on the institutional position of central banks around the world, including the ECB's. It is its emergence in practice and theory that I discuss in the next two chapters.

Chapter 2

The Myth of the Hyperinflations and the Emergence of Central Bank Independence in Germany

Introduction

“Nothing, as we have to keep reminding ourselves, made the German people so bitter, so mad with hatred, so ripe for Hitler as the inflation.” So wrote Stefan Zweig (2011: 340) in his 1942 memoir, *The World of Yesterday*. The German hyperinflation of 1923, according to Zweig, destroyed not only economic values but the moral compass of the German people:

> Even the Rome of Suetonius never knew such orgies as those at the transvestites’ balls in Berlin, where hundreds of men in women’s clothing and women dressed like men danced under the benevolent gaze of the police. Amidst the headlong fall of all values, a kind of madness took hold of the bourgeois circles that had so far resisted any change to the well-ordered society (ibid: 338).

With the annihilation of the value of money, Zweig suggests, all other values evaporate with it. Inflation is not only an economic event, much less simply a monetary phenomenon. The trauma was not inflation as such, but that it was accompanied by a societal lapse into a state of nature without any form of guideline for appropriate economic, political or moral behaviour, not to speak of sanctions for transgressing them. With an almost Hobbesian devotion to constrained freedom, Zweig (ibid: 338-339) claims that the German people secretly “hated the new German Republic, not because the government might suppress some of this wild freedom but, on the contrary, because it held the reins too loosely.” In the shadows lurked a new Leviathan promising to reinstate “law and order” (ibid: 339).

The narrative linking the German hyperinflation to the rise of Hitler is well-known. What is perhaps less well-known is that the contemporary notion of central bank independence is to a large extent founded on it; at least in so far as the German Bundesbank inspired the notion of central bank independence. As Hans Tietmeyer (1998: ix-x, emphasis added), then president of the German Bundesbank, put in on the threshold of transferring monetary sovereignty to the ECB:

> The internal and external stability of the value of the Deutsche Mark is ultimately a reflection and result of a stability culture in Germany which has grown over a period

> of decades and which *has its origins in the painful historical experience of two hyperinflations with their disastrous social and political consequences* … [Monetary stability] needs to be based on a social consensus which assumes concrete shape in terms of adequate legal and institutional regulations … without the protective shield of independence, central banks are exposed to a latent danger of being called upon to perform tasks which they cannot fulfil with the instruments they have.

Shifting the emphasis from the German context to central banks in general, Tietmeyer generalises the German experience. Central bank independence, he suggests, is not a peculiarity of the German 'economic constitution' but an institutional solution to a universal problem. Central bank independence, in this narrative, is the institutional form corresponding to a social consensus on the need for price stability, just like the state is, in Hobbes, for the social consensus on the need for political stability. Both demand a certain sacrifice of political freedoms but in their absence, life will be 'solitary, poore, nasty, brutish, and short,' as the hyperinflation and WWII attest to. Central bank independence is thereby grounded in something beyond its economic rationality. It is not only with reference to better economic outcomes that an independent central bank pursuing price stability is justified. It is justified against the background and fear of societal collapse and the possibility of the worst.

When the Bundesbank was created after WWII, most central banks were 'Keynesian': they were politically controlled and made to serve the broader economic agenda of the government of the day. The newly established independent German central bank was an anomaly. Its independence, furthermore, different from central bank independence under the gold standard as it was not only independent of government but also of the tie to gold. From the perspective of the theories discussed in chapter 1 as well contemporaneous practice this form of independence was unprecedented: "among all the important central banks in the world, the German Bundesbank is endowed with the greatest independence. Even compared to the American Federal Reserve Bank" (Emminger 1986: 27, my translation). Half a century later, its independence inspired emulation across the world and provided the blueprint for the ECB. Understanding the nature of the Bundesbank's independence and the foundations of its power to act against the democratically elected government is therefore not only of relevance to an understanding of the Bundesbank itself. It is of central importance to understanding the societal role of independent central banks in general and the specific conception of politics that this institutional form responds to.

This chapter analyses how the German central bank, first Bank deutscher Länder (BdL) and later the Bundesbank, was constituted and the justifications offered for its independence from government. Unsupported by the dominant economic theories of the day (discussed in chapter 1), the central bank's independence was justified against the backdrop of constituting price stability as a *Grundnorm* of economic and political life. This link between central bank independence and price stability was an innovation in terms of monetary-political thinking that became extraordinarily influential, particularly following the Stagflation Crisis of the 1970s (discussed in chapter 3). What I highlight particularly in this regard is the role played by the political myth of the hyperinflations. Consciously promoted by German central bankers in the debates leading up to the adoptions of the Bundesbank Act in 1957, this mythical narrative sought to ground the meaning of central bank independence in something more fundamental than positive law or economic expediency. The myth posited an order of meaning within which price stability was something akin to an 'absolute' and central bank independence was the only way of realising it. It sought to ground the meaning of central bank independence in public opinion – the 'hearts and minds' of the people – and the central bank presented itself as a representative of the people on a par with the elected government. 'The people' was thus represented with equal right by two potentially competing governmental institutions in a structure of 'dual representation.' The people, existing as public opinion, thereby became the source of the central bank's power to act against the government in concrete conflicts.

Central Banking in the Post-War Period

German central bank independence after WWII was, as noted, an anomaly at the time. Until the early 1970s, the post-war monetary order was in principle based on the 1944 Bretton Woods agreement. In reality, however, the situation was not as clear. European currencies including the D-mark only became fully convertible constituents of the system in 1958. Beginning its collapse in the late 1960s, it only survived as a fully functional international monetary system for about a decade (Bordo 1993). Bretton Woods was not exactly a beacon of stability, in other words. There are nevertheless some crucial characteristics of the system that informed the way central banking was conducted at the time.

At the time of the Bretton Woods conference, the prevalent view was that "If there is anything that inter-war experience has clearly demonstrated, it is that paper currency exchanges cannot be left free to fluctuate from day to day under the influence of market supply and demand" (Nurkse 1944 as cited in Bordo 1993: 29). While the gold standard was perceived to have failed, owing, inter alia, to rigidities in terms of the demands placed on domestic adjustments, a floating currency regime was perceived to have led to the prevalence of beggar-thy-neighbour devaluations, with highly destabilising effects. The gold standard was too strict, but the anarchy of floating currencies was too chaotic. This analysis can be challenged (see, e.g., Eichengreen and Sachs 1985), but it "was crucial in the design of the Bretton Woods system" (Bordo 1993: 31). As such, the agreement was essentially an attempt to "combine the advantage of the classical gold standard (i.e., exchange rate stability) with the advantage of floating rates (i.e., independence to pursue national full employment policies)" (Bordo 1993: 5). Gold was not abandoned as the ultimate anchor of monetary value, but the tie to gold was rendered more flexible. The idea was that adjustments would no longer have to take place abruptly but could be handled in an orderly fashion.

According to Walter Eucken (2004: 168, my translation), this meant that "the Bretton Woods agreement was basically nothing but a compromise between all the 'monetary orders' that had developed since the collapse of the gold standard." Instead of being based on "*one* principle," it combined, to the horror of Eucken (2004: 168, emphasis in original, my translation), principles from "economic systems of completely different character" and was thus not an order in the sense discussed in chapter 1. Whether or not Eucken's pessimism was justified, his analysis captures a crucial point: the specifics of the domestic monetary orders were not fully determined by the international system. Although not Keynesian in a comprehensive sense, the system reflected the Keynesian notion of allowing states to conduct autonomous monetary policies in accordance with domestic agendas rather than subordinating these "to the dictates of external balance and ... the international transmission of the business cycle" (Bordo 1993: 5). States, furthermore, could maintain capital controls in order to safeguard domestic monetary autonomy and fixed exchange rates at the expense of international financial integration (Rodrik 2011).

Following the Keynesian (and social democratic) primacy of politics, Bretton Woods allowed domestic political authorities to determine the objectives of monetary policy relatively freely. In the age of 'embedded liberalism' (Ruggie 1982) and social democracy (Berman 2006: 179), this entailed also a Keynesian approach to expanding the role of government in economic activity in many countries. This was reflected in (changes to) the institutional position of central banks. At the time, many central banks were still privately owned. While this private ownership was largely irrelevant for the purposes of conducting monetary policy, the nationalisations of central banks after the Great Depression and WWII were important symbolically. Analysing the nationalisations of the Bank of England and Banque de France, one observer concluded that the acts

> can be analyzed most fruitfully not as isolated fragments of history nor even harbingers of immediate changes in monetary policy but as reflections of changes in the basic attitudes of the British and French people toward the role that government should play in economic affairs (Bopp 1946: 308).

Central banks were to be subordinated to government and to the post-war project of economic reconstruction and reorganisation (see also Elgie and Thompson 1998).

The primacy of politics with regard to monetary policy was legally enshrined in a number of countries. The Bank of England was subordinated the Treasury's quest to make monetary policy favour "the borrowers of money as against the money lenders." Monetary policy was, in the (Keynesian) words of the Chancellor of the Exchequer at the time, to be "on the side of the active producer as against the passive *rentier*" (Dalton 1947 as cited in Wood 2005: 298). The situation was not much different on the continent. The Belgian National Bank was subordinated to the Minister of Finance, who had "the right to control all the Bank's operations" (Art. 29, Organic Law of the National Bank, 1939 as cited in Bade and Parkin 1988: 5) and the Dutch Bank Act of 1948 "made clear that monetary policy was not just the business of [the central bank] but was part of general economic policy and as such lay most definitely within the competence of the government" (DNB n.d.: 6). The governor of the Banque de France at the time, Jacques Brunet, insisted in the context of European monetary integration that "the role of governments in monetary policy be emphasized" (Brunet 1962 as cited in James 2012: 49). In Italy, the post-fascist leadership of the Banca d'Italia, with Luigi Einaudi at the helm, could only wrest a modicum of independence from the government. In their study of central bank laws, Bade and Parkin (1988: 4) thus concluded that even in the late 1980s these central banks were "subservient to the central governments … in the formulation and conduct of monetary policy."

Most central banks at the time were, in other words, "politically controlled and there existed no well-developed conceptual framework as to why or how central banks should be independent" (James 2012: 43). As discussed in chapter 1, "economic theory was deeply unsympathetic to any idea of independent central banks" (James 2012: 47).

The "old form of central bank independence," as Lutz (1949: 209, my translation) described it, had disappeared with the collapse of the gold standard and there was no appetite among economists or policymakers for re-establishing it in its old form or anew. In a hearing in the US House Banking Committee in 1964 on the independence of the Fed, similarly, the economics professors called to testify all discouraged central bank independence:

> Four, including Milton Friedman, favoured money rules, and the rest joined [Paul] Samuelson and [John] Gurley in recommending the subordination of monetary policy to the president. It was unthinkable, even "ludicrous," that monetary policy did not conform to the program of elected officials (Wood 2005: 346).[1]

Central Bank Independence in European Monetary Integration

Given the general international consensus, it is not surprising that the notion of central bank independence was absent from the 1970 Werner Report on European Economic and Monetary Union (EMU). This report constituted the starting point for the Delors Committee's work that led to the creation of the euro and the ECB (Baer and Padoa-Schioppa 1989) and it provided a blueprint for monetary union that was remarkably similar to that outlined in 1989 (Verdun 2001). One crucial difference, however, concerned the EMU's governmental structure. The Werner Report (1970: 26) considered the transfer of decision-making power to *two* European institutions indispensable: "a centre of decision for economic policy, and a Community system for the central banks." The former of these – a *gouvernement economique* (Verdun 2003) – would, according to the Report, "exercise *independently*, in accordance with the Community interest, a decisive influence over the general economic policy of the Community" (Werner Report 1970: 12, emphasis added).

The centralisation of economic government at the European level was envisioned to be accompanied by a transfer of powers to the European Parliament, to which the economic government would be "politically responsible" (ibid: 13). On the question of the independence of the central bank, however, the Werner Report was all

[1] In addition to the Bundesbank, there were two other exceptions to the general pattern: the Fed and the Swiss National Bank (SNB). The SNB is a special case for a variety of reasons, not least due to its maintenance of a domestic gold standard until 2000, and I will not discuss it further in this thesis. The Fed's independence, on the other hand, will be discussed in more detail in chapter 4. The hearing in question concerned a proposal to reduce the independence of the Fed, which was, by some, considered excessive.

but silent. While noting that it would resemble the Fed in its autonomy (ibid.), the Report stressed that the two organs "work together for the realization of the same objectives" (ibid: 26). Given the primacy of the economic government and its political responsibility to a strengthened parliament, this vision of EMU reflected the belief that "central banks required political supervision" (James 2012: 79). Indeed, the German contributor tried unsuccessfully to push forward he German notion of central bank independence and the Bundesbank remained fundamentally sceptical about the Report (ibid: 76-82).

In the Delors Report, in contrast, the notion of an economic government was abandoned. The formulation, coordination and implementation of Community policies "would not necessarily require a new institution." Realising EMU would require only "the creation of a new monetary institution" (Delors Report 1989: 21). This institution, in turn, "should be independent of instructions from national governments and Community authorities" (ibid: 22). Furthermore, in place of the political responsibility to parliament that the Werner Report envisioned, the Delors Report only suggested modest central bank accountability in the form of written and oral reporting to the other Community institutions (ibid: 22-23).

What the Fed was for Werner, the Bundesbank was for Delors. And the absolute independence of the future ECB reflected the German central bankers' concern that even though the Fed was "independent of the government" it was still too subject to "political pressures," particularly through "its accountability [*Rechenschaft*] to Congress" (Emminger 1986: 27, my translation). In contrast, the Bundesbank was both "independent from government *and* parliament" (ibid., emphasis in original, my translation).[2] The prevalent 'European' perspective on the status of the central bank had shifted markedly. The intellectual consequences of the Stagflation Crisis played a key role in this shift (see chapter 3). In the specific European context, however, the importance of the D-mark for European monetary relations – and with it the German notion of central bank independence – was decisive (see Dyson and Featherstone 1999).

[2] Emminger's claim that the Bundesbank was independent of parliament is not entirely true. Its independence was only enshrined in ordinary legislation, not, as the notion of independence from parliament would suggest, by the constitution (Emminger 1986: 27). However, over the years, Emminger (ibid., my translation) claimed, the Bundesbank's independence had "gained a de facto quasi-constitutional character," whereby the Bundesbank had become independent also of the Bundestag.

The Constitution of Independence

The independence of the German central bank is often viewed as an inevitable consequence of the inter-war period. When it emerged, however, it was highly contingent and fraught with conflict (Hentschel 1988; Mee 2016). In the years leading up to the adoption of the Bundesbank Law in 1957, there was, like elsewhere, no generally accepted theoretical or political justification for central bank independence in Germany and the main political parties of the Federal Republic did not consider it viable. Eventually this would change to the point where Jacques Delors' quip that "Not all Germans believe in God, but all believe in the Bundesbank" was considered to sum up "the near-divine standing of the German central bank with the German public" (*Handelsblatt* 2017, 28 July).

Understanding how central bank independence emerged in the context of a near-universal consensus against it requires an appreciation of the specific historical situation in which it was created. In the three years between the end of the war and the currency reform that introduced the D-mark, the monetary situation in what would become West Germany was highly unstable and "barter became the means of exchange in daily life" (Kennedy 1998: 2). This period of 'repressed inflation'[3] became linked to the experiences with the hyperinflation in the 1920s and constituted the second prolonged experience of fundamental uncertainty regarding the monetary situation within a generation. In this light, it is perhaps not surprising that the second inflation "created a powerful political culture in favor of monetary stability" (ibid.). What is surprising is that this *Stabilitätskultur* took the institutional form of central bank independence.

It is a peculiar historical irony that the modern form of central bank independence emerged in and became so closely associated with Germany. Prior to its establishment after WWII, no country in the world had perhaps had worse experiences with it. As Giersch and Lehment (1981; see also Leaman 2001; Schieritz 2013; Mee 2016) note, two of the most traumatic episodes in German economic history – the

[3] Repressed inflation refers to a situation when goods are unavailable at nominal prices, which are fixed through price controls. In such a situation, goods are obtained through barter, rations and the black market using foreign currency. Wages fixed in accordance with the official rate are more or less worthless and while there is nominally no inflation, the currency is in reality worthless.

hyperinflation of 1923 and the Great Depression, which combined sky-rocketing unemployment with *deflation* – both took place under the guardianship of a legally independent Reichsbank. Furthermore, the reform that ended the hyperinflation and brought about a period of price stability and growth was "not supported by the Reichsbank; it was even a reform against the Reichsbank" (Giersch and Lehment 1981: 10). The Reichsbank's independence was, of course, gradually curtailed after Hitler's rise to power. But even so, the Reichsbank's independence was effective neither in ensuring price stability nor in preventing the government from using the printing press for incendiary purposes. As such, it is not surprising that post-war German politicians and economic thinkers were sceptical of central bank independence, including the ordoliberals (see chapter 1; see also Bibow 2009; Feld et al 2015; Young 2017).

So how did the *Stabilitätskultur* come to be expressed in the institutional form of central bank independence? Initially, the practice of central bank independence was forced on West Germany by the occupation authorities. As Emminger (1986: 20, my translation) later remarked, the Bundesbank was a "child of the occupation." Subject to the Allied Banking Commission's (ABC) supervision and veto the Bundesbank's predecessor, the BdL established in 1948, was not, in fact, legally independent. But on the explicit demand of the Americans, and despite German opposition, it was independent from the control of German political authorities (Buchheim 2001: 8; Bibow 2010). Even Ludwig Erhard, who later became a champion of the Bundesbank's independence, opposed this complete independence at the time, arguing, not unlike Keynes, that while the central bank should be given independence in the conduct of monetary policy, the government was the final decision-making authority (Buchheim 2001: 12).

During its first years, the BdL was a controversial institution in Germany and it was subject to political attacks from all sides (Hentschel 1988). It is highly doubtful whether it would have survived the first few years in a (fully) sovereign German state and without the occupation authorities' support (Buchheim 2001: 16-17). "[L]ike a benevolent dictator" the ABC shielded the BdL from both the German political authorities and democratic pressures (Berger 1997: 435; see also Mee 2016: 233; Dickhaus 1998). Without the military occupation, the German form of central bank independence would have been unlikely to even get off to a start.

When the German Basic Law (GG) was adopted 1949, it conferred on the federal government the task of creating a federal central bank (Art. 88 GG). On this basis, the military authorities asked the newly created federal government to come up with a "substitute arrangement" before monetary sovereignty was transferred to the new West German state (Bibow 2009: 160). However, neither the Basic Law nor the military authorities specified its institutional form. Before the West German state could take "full sovereignty over central banking," the government had to come up with a new central banking law or introduce a transitional arrangement "to determine who would take over the function of the ABC in the future."[4] At the beginning of the process, Cabinet decided that a "draft of a transition law be presented soon and that it should basically stipulate that the federal government take the place of the ABC."[5] This reflected the general (Keynesian) outlook on central banking at the time: independence was a mistake in need of correcting (Hentschel 1988). Invoking not the inflations but the Great Depression, *Die Welt* wrote in 1949 (cited in Mee 2016: 141): "In all countries the non-political central bank belongs to the past ... It came to awful experiences in 1931 with the Reichsbank independent from the state." The general consensus against central bank independence was thus based in large part on a narrative of the interwar period that stressed the complicity of the independent central bank in the Great Depression.[6]

The Inflations in Central Bank Discourse

The general scepticism about central bank independence, however, was not shared by the central bankers themselves. They valued their independence and engaged actively in debates with politicians and the public to bring them around to their point of view.

[4] Das Bundesarchiv, Kabinettsprotokolle, 137. Kabinettssitzung am 20. März 1951, D. Notenbankgesetz (my translation).

[5] Ibid.

[6] While it is not the intention of this chapter to evaluate why the efforts to create a politically supervised central bank failed, it is worth noting that this failure was due in significant part to conflicts between the Länder and federal levels over the central bank's degree of centralisation. In opposition to the federal government, the Länder favoured a decentralised arrangement (Berger and de Haan 1999: 24). The final institutional outcome, a politically independent but centralised central bank, can be seen as a compromise between the two positions. What was a compromise to the Länder and federal governments, however, was a perfect victory for the central bankers, who wanted precisely that: a centralised and independent central bank (Mee 2016).

In an early intervention in favour central bank independence, for instance, Otto Veit[7] (1950: 141, my translation) argued for the need to "limit state sovereignty [*staatliche Oberhoheit*] over money creation to legally constituting [*gesetzliche Konstituierung*] the central bank and appointing the leading personalities. Apart from this, the central bank shall fulfil its task independently of state instructions." To Veit (ibid: 141-142), furthermore, the "independence of monetary policy from political influence is as important as the independence of the judiciary ... Neither more nor less." Presented at a meeting of the famous Board of Academic Advisors to the Economics Ministry (ibid: 9-10), Veit's justification is noteworthy: "The monetary catastrophes that the German people has lived through, always began with using the central bank to finance the state [*benutzung der Zentralbank für den Staatskredit*]" (ibid: 142). The independence of the central bank is thereby presented and justified as a bulwark against the catastrophes suffered by the German people in the recent past.

The narrative linking the experience of the catastrophic consequences of the inflations to the necessity for central bank independence became a consistent trope in central bank interventions in the debate on the future status of the central bank. Initially, the narrative was mainly employed 'behind the scenes' in fora such as the Board of Academic Advisors, in private correspondence and in closed meetings. An example of this relates to one of Finance Minister Fritz Schäffer's early drafts for a central bank law. Sponsored by Adenauer, it "foresaw the final submission of the BdL to the government's decisions" (Dickhaus 1998: 176). As noted above, central bank independence was more closely associated with the Great Depression than with the inflations at the time and the government's "sphere of influence over the central bank" was justified with reference to the independent Reichsbank leading Germany "into a difficult economic crisis, not least because of the lack of agreement between central bank and state policy" ('Begründung,' draft Bundesbankgesetz, September 1950 as cited in Mee 2016: 165). Schäffer, furthermore, worried that a too independent central bank would be able to bring down an elected government, since the public would, regardless of the central bank's institutional status, tend to attribute responsibility for unpopular monetary policies to the government rather than the central bank. Thus, he argued, "a central bank that

[7] Veit was president of Hessen's Landeszentralbank and member of the BdL's highest decision-making body, the Central Bank Council.

operated in full independence of the economic policy of the government could not exist anywhere in the world. If so, this government could not conduct any economic policy."[8]

BdL president Wilhelm Vocke,[9] however, sought to counter and alter this narrative of the interwar period. In a letter to Schäffer, he argued that "After two inflations the people is [*das Volk ist*] distrustful when it comes to money ... the mere possibility that [government control of the central bank] could happen can damage confidence" (as cited in Mee 2016: 149).[10] The BdL, furthermore, "advanced the idea that [Scäffer's] draft was a result of Adenauer's imposition" (Dickhaus 1998: 176). In a public address, Vocke suggested that this imposition was motivated by a sinister agenda: "An independent central bank, one free from politics, is the best guarantee of the currency ... The time when you have to destroy the independence of the central bank is when you wish, *as Hitler did*, to start an inflation" (Vocke 12 May 1950 as cited in Mee 2016: 161, emphasis added).

Like Zweig, the central bankers thereby invoked a link between the inflations, Hitler, and the societal catastrophes of the preceding decades. In doing so, they added a further element: government control of the central bank was the cause of the inflations. As such, government control of the central bank was a 'Hitlerian' agenda and a prelude to the worst. The relevant catastrophe was not the Great Depression, but the inflations and the people had to be protected from its government by its central bank. The mythical narrative of the inflations in central bank discourse thereby presents, still in embryonic form, a dimension that would become crucial to the German and, later, European (see chapter 4) notion of central bank independence: the dual representation of the people.

Myth and the Dual Representation of the People

[8] Das Bundesarchiv, Kabinettsprotokolle, 139. Kabinettssitzung am 3. April 1951 (my translation).

[9] Vocke was president of the *Direktorium*, the executive body of the BdL. Karl Bernhard was chairman of the *Zentralbankrat* or central bank council, the highest decision-making body. Vocke, however, quickly became the public face of the BdL and was interim president of the Bundesbank when established in 1957. The centrality of Vocke was reflected in media discourse. *Der Spiegel* (1956b, 6 June), for instance, referred to the BdL as "Vockes bank" and noted that "if one considers the Central Bank Council as the currency-parliament, Vocke's BdL is the government" (my translation).

[10] I have modified Mee's translation slightly based on his rendering of the original. Mee translates 'Das Volk ist' as 'the people are.'

The German central bank's response to the problem of politics in relation to money rested on two elements: the myth of the inflations and the dual representation of the people. A politically controlled central bank leads to inflation and inflation leads to societal catastrophe. As such, the central bank must become an independent societal force on a par with the government. In order to become so, it must, like the government, be a representative of the people. The myth of inflations and the central bank's representative claim are inherently linked: the myth constitutes the narrative grounding the significance of a particular value (price stability) and links it to a particular institutional form (central bank independence). The dual representation of the people, then, gives force to this institutional form. Only by grounding the authority of the central bank in the same source as that of the government can the central bank legitimately say 'no' to the government.

Myth as a pouvoir moteur

In the context of the debate on European Monetary Union, Richard Lambert and Peter Norman (1989) speculated that "Perhaps the Bundesbank's real power lies in strong public support. It is, opinion polls testify, perhaps the most respected institution in West Germany. The folk memory of hyper-inflation in this century have left their mark." Emminger (1986: 26, my translation) similarly noted that the foundation of the Bundesbank's independence was to be found in the fact that, "regarding inflation, the Germans are burnt children." As such, the extraordinary independence of the Bundesbank was explained by the fact that "the stability-consciousness [*Stabilitätsbewußtsein*] of the Federal German population is more developed than in most other countries." The experience of the inflations is thus seen as something that motivates public opinion in favour of central bank independence. It is, furthermore, a living power of opinion that cannot be fixed once and for all in law. It needs constant reiteration lest "the memory of the terrible [*böse*] past, particularly the inflation after World War I" should fade (ibid.). To secure a "solid foundation [*feste Gundlage*] for the independence of the central bank," the German central bank therefore undertook "great and active efforts to promote the population's understanding of and support for the *stabilitätspolitik*" (ibid: 26-27).

The narrative of the inflations played a key role this "cultivation of public opinion" (Muthesius 1950 as cited in Mee 2016: 154). One of the most important implications and clear manifestations of the success of this "publicity work

[*Öffentlichketisarbeit*]," according to Emminger, was found in a study conducted by Helmut Schmidt in the beginning of his Chancellorship in 1974. In this study, Schmidt famously concluded that "we cannot use a public conflict with the Bundesbank; public opinion would not stand on our side" (as cited in Emminger 1986: 27, my translation).

That public opinion came to attribute such importance to the battle against inflation and to associate it so strongly with central bank independence is not self-evident. Several countries have experienced hyperinflation, some even worse than Germany's, without either paving the way for fascist dictatorship or developing a *Stabilitätskultur* manifested in central bank independence. This does not mean that the preoccupation with the horrifying experiences of the inflations should be disregarded as mere hysteria. It is not. The question is how the experiences of the past speak to the present. What message do they convey?

While the hyperinflation of 1920s was unquestionably a traumatising event, a sober account of the interwar causes of the rise of Hitler would have to include considerations about the war debt, reparations payments, the political system of the Weimar Republic, the Great Depression, including the deflation and dramatic unemployment that it entailed, the capitalist elite's preference for the Nazis over the Social Democrats, etc. Similarly, accounting for the post-WWII *Wirtschaftswunder* of high growth, low unemployment and stable prices would have to include considerations of the effects of the Marshall Plan, post-war reconstruction, reinvigorated corporatism, the German economic model of export-driven growth, etc. To give an accurate account would, in other words, sacrifice the elegant simplicity of the narratives linking the hyperinflation to the horrors of Nazism, on the one hand, and the economic and monetary reforms of 1948, including the establishment of the independent BdL, to the *Wirtschaftswunder,* on the other. It would, presumably, have no unified plot. Furthermore, that the lesson of the two inflations should be central bank independence is the product of a very selective, even distorted, reading of history, as noted above. The narrative linking a politically controlled central bank to societal collapse rests, in other words, on a simplification and distortion of historical facts. It is, in its details, untrue. This does not, however, make it a lie. It is, rather, a myth.

'Myth'[11] is often placed within the dichotomy of 'truth' and 'falsehood,' a "belief that has no foundation in fact" (Tudor 1972: 13). In more nuanced terms, it is often conceived as "an ideologically marked narrative which purports to give a true account of a set of past, present, or predicted political events, and which is accepted as valid in its essentials by a social group" (Flood 1996: 44 as cited in Bottici 2007: 8-9). The underlying claim in such definitions is that the myth 'purports' to truth when it is in fact false and, one might add, problematic in its seductive simplification of complex social processes. The myth thereby appears as a suspicious political tool associated above all with totalitarianism, dictatorship and authoritarianism (Friedrich and Brzezinski 1966: 90-92; see also Cassirer 1946). Critics of any given myth thus often seek to expose its shaky factual basis and establish a more correct account of the events or phenomena in question. Critics of the 'German' approach to central banking, who see it as being too preoccupied with the spectre of inflation (or the 'inflation monster' as in the ECB's imagery and vocabulary; see picture 2.1.), similarly often seek to attack its foundation in the myth of the German hyperinflation by exposing the myth as an untruth (see, e.g., Leaman 2001; *Economist* 2013, 15 November; Schieritz 2013; Mee 2013, 2017).

While 'speaking truth to myth' is, of course, a perfectly valid political strategy, the attempt to inscribe myth within the dichotomy of truth and falsehood may miss the point (Bottici 2007: 9). Instead of focusing on its truth value, myth may, instead, be approached from the perspective of what it does. One may approach myth in a manner that brackets the problem of reality (ibid: 12). Mythical narratives are stories, yes, but they are stories told not "for the sake of amusement, but in order to promote some practical purpose" (Tudor 1972: 16). There is a deep seriousness about political myth, a seriousness that has less to do with past or present reality as with attempting to shape or preserve a certain understanding of the world, which then feeds into the institutional structures of society. This understanding, in turn, is not an attempt 'to understand the real causes of things' but an expression of aspirations and desires to shape ourselves and the world on the basis of values and opinions, hopes and fears. Myth relates to the question of who we are and want to become.

[11] Myths can take a wide variety of forms. In this thesis, I focus only on the historical myth that relates to social phenomena and non-fictional historical events.

Picture 2.1. The Inflation Monster. Screenshot from the ECB's educational video "Price stability: why is it important for you?" Reprinted with permission from the ECB. The video is available at: https://www.youtube.com/watch?v=F6PvX625JCs [accessed 16 December 2019]. Behind the two youths stands the 'inflation monster' and the setting is a marketplace in an unspecified but what appears to be a German inflationary past.

Georges Sorel emphasized this aspect of myth when highlighting the motivating force of the mythical narrative, "the *pouvoir moteur* of a great myth" (ibid: 14). In many ways an 'un-Marxist' move, Sorel framed socialism, the class struggle and the proletarian revolution not in terms of its scientific basis in the objective conditions of workers but in the heroism of participating in a battle of historic proportions and significance. Sorel (1999: 27) stressed that what motivates the partisan is not the expectation of material gains following victory, but the conviction and belief that one is part of something 'great.' Referring to Bergson, Sorel (ibid: 26) suggests that the struggle in the name of myth is not (only) aimed at altering the outer, 'objective conditions' of life, but at the experience of the life-affirming liberty that we enjoy "most of all when we are making an effort to create a new individuality within ourselves, thus endeavouring to break the bonds of habit which enclose us."

While the motive force of myth works on the individual, Sorel (ibid: 27-28) stresses that this individual dimension is inextricably linked to its social dimension. "The belief in glory" can only be sustained by "myths accepted by the masses." Myths are not "descriptions of things but expressions of a will to act" (ibid: 28) and they "must be judged as a means of acting on the present" (ibid: 116). In this, the myth differs from the utopian or reformist programme, which, according to Sorel, can be refuted on the basis of their potential for realisation. In contrast, a myth does not lend itself to such refutations "since it is, at bottom, identical to the convictions of a group, being the expression of these convictions in the language of movement; and it is, in consequence, unanalysable into parts which could be placed on the plane of historical description" (ibid: 29). It is perhaps not surprising, then, that attempts at doing precisely this in the German context, providing a historical critique of the factual basis of the myth of the inflations, have done little to alter the general narrative.[12]

Sorel's conception of the myth allows for an understanding of the practical force of myths in public contests over the meaning of events past or present. They are not lies, distortions or illusions but convictions and aspirations that can express a deeper, existential truth and act as a *pouvoir moteur* for political action. In this sense, political myths are closely related to political ideologies, which to some extent at least always contain some element of myth. As Christopher Flood (1996: 11-12) put it, political mythmaking "is linked to the existence of competing ideological beliefs about what society is and how it ought to be." The myth of the inflations is no different in this respect. Its elevation of price stability above all other potentially competing economic objectives reflects a particular ideological position; it reflects the ordo- and neoliberal primacy of price stability but presents an alternative avenue for realising it. However, the mythical narrative itself does not present itself as advancing a particular ideological perspective but puts forward a conception of society that seeks either to overcome a status quo, or to reject attempts at altering it, on a foundational level. The myth thereby acts on the self-institution of society through the creation or reproduction of a "symbolic network" of meaning (Castoriadis 1987: 117) that naturalises the ideological message it conveys. In this sense, myth may be considered an instrument of ideological hegemony in the Gramscian sense. It is a means of constituting a public monetary imaginary that can be held 'unrationally, as a matter of faith,' as Simons suggested (see chapter 1).

[12] For instance, in 1973, the Social Democrat Herbert Ehrenberg published a book devoted to refuting the myth of the inflations and desacralising the independence of the Bundesbank. In it he argued that "The belief in the wisdom and independence of senior officials seems to be far greater in Germany than belief in the parliamentary system. The bad experiences with two ... inflations apparently speak for this vote of confidence for an independent central bank. But the person who makes this argument knows regrettably little of German monetary history: both the inflation in 1923 and the Great Depression in 1929 took place with the powerful help of a Reichsbank whose autonomy was nothing less than that currently granted to the Bundesbank" (Ehrenberg 1973 as cited in Mee 2016: 375).

Mythical narratives often refer, implicitly or explicitly, to several temporalities at once:

> A myth is typically a tale concerned with past events, giving them a specific meaning and significance for the present and thereby reinforcing the authority of those wielding power in a particular community. They may carry a lesson, explicit or implied, for the future course of events (Friedrich and Brzezinski 1966: 91).

The myth thereby serves to provide a (more or less fictional) story about actual historical events from which certain principles of contemporary social relevance can be abstracted. At the same time, it gives a certain *telos* (whether positive or negative) to history that (heroic and/or self-sacrificial) political action in the present partakes in bringing about or preventing.

The German inflations were actual historical events. They did take place. The question is how to interpret them, how they speak and give meaning to the present. The central bankers' narrative about the inflations situates the events within a broader narrative of causes and consequences. It explains the past and gives an indication of what to do in order to remain true to the meaning of the event, or in this case, how to avoid its repetition in the future. At the same time, it works to constitute a new societal being that reinforces or breaks with the tradition inherited from the past. The narrative is thereby an aestheticisation of the event. It recreates the event as an artifice that symbolises a broader system of meaning and the event is given a significance beyond what a 'disinterested' factual account can offer. It is in this sense that the myth transcends the dichotomy of true and false. The myth offers not a transcendental, scientific or historical Truth, but it captures something essential about the event *for* someone and something. It rationalizes it within a framework of understanding and meaning-making that provides it with a significance that the facts themselves do not necessarily support.

This points to myth's selectiveness; it works on social memory as a method for remembering and forgetting certain things in certain ways (Blumenberg 1985: 9). The historical myth performs the function of highlighting particular aspects of events – "Why should we forget the lessons which a terrible record of inflations has taught us?" Vocke (1955: 5) asked. At the same time, the myth 'forgets' things that do not accord with the desired (ideological) system of meaning. The historical material on which the myth builds is selected, sequenced and ordered within "a more or less coherent plot" (Bottici 2007: 115). The myth thereby reduces complexity, postulates a certain order and causality of things, and promises ways of improving the human condition. Its criterion of validity, in turn, is not empirical or logical falsifiability but only its public reception.

As Sorel (1999: 117) argued, "Everything which its opponents endeavour to establish may be conceded to them without reducing in any way the value of the thesis which they think they have refuted; it matters little whether [the myth] is a partial reality or simply a product of the popular imagination." What matters, in other words, is that people (act as if they) believe in it. "Publicity," then, is "'one of the sharpest weapons in the arsenal of a central bank,'" as Vocke put it upon retiring from the Bundesbank in 1958 (Vocke 1958 as cited in Mee 2016: 235) because it contributes to shaping what people believe.

Because of its ability to simplify complex social processes and condense them into powerful mental or actual images (see pictures 2.1. and 2.2.), myth lends itself eminently to political and ideological struggles involving the shaping of collective narratives that give meaning to societal arrangements. The political myth is situated not in the abstract but in concrete conflicts over social being and the institutional structures that preserve and recreate society. The work *on* and *of* myth is therefore not exhausted in the process of founding and 'giving grounds for' or 'grounding' [*begründen*] the significance (Blumenberg 1985) of certain (institutionalised) ways of being in something beyond themselves. It remains continuously invokable in the process of becoming that political society is (Bottici 2007).

The Central Bank as an Organic Representative of the People

If the myth of the inflations served to motivate public opinion in favour of central bank independence, how did this inform the institutional relationship between the central bank, the government and the people? What kind of institutional structure was envisioned to give force to the meaning conveyed by the myth? Indications of this were found in Veit's and Vocke's notion of the central bank having to become an independent power within the state in order to be able to protect the people's will for price stability from government. This implies a conception of government having an agenda different from that of the people despite being democratically elected. The government, in other words, is a … of the people has … it has to be repre… ority.[13]

This photo, Lohngeld-Transport im Waschkorb (1922): Durch zwei deutsche Inflationen ... , has been removed as the copyright is owned by another organisation. The photo shows a group of men pushing a cart holding laundry baskets supposedly full of worthless money.

[13] While the central bankers' discourse refers mainly to the central bank, the conception implies that the people is represented with equal right also by other institutions (see also Rosanvallon 2011).

Picture 2.2. Inflation imagery. Illustration from *Der Spiegel* (1956, 6 June: 20).

This does not mean that the political system – government and parliament (for simplicity's sake: government) – does not represent the people but its form of representation is limited to representing prevailing political opinions at any given time. The government is the *electoral* representative of the people. Its legitimacy rests on governing according to the opinions of the people expressed in elections. It derives authority from the power of the people to elevate certain individuals to a position of political command through the ballot box, which at the same time forms the basis of holding the rulers to account. It is thus a specific form of representation (see also Urbinati and Warren 2008) – albeit the form most commonly associated with the term representation – based on the institutionalised, periodic expression of the changing political opinions of the people. As such, its legitimacy is based on the electoral majority of the day.

Inherently partisan, this form of legitimacy could only be partial, according to the central bankers. The government could only legitimately claim to represent those who voted for it and it would always be subject to short-term temptations and pressures. Providing the public good of stable money, on the other hand, the central bank claimed that it represented the long-term interest of "the whole people" [*ganzen Volk*] (Vocke 1973: 176). The central bank thereby saw itself as always in potential antagonism not only with government but also with bodies representing the interests of a subset of the population: trade unions, industry and agriculture in particular. While these might be legitimate representatives of their respective members, they could never express anything other than "group" or "sectional interests" and their perspective was limited to the present. The pursuit of such interests was "endangering what we have achieved" (Vocke 1955: 2). Neither individually nor together could they be considered representatives of the people as a whole and balancing their interest would lead not to the general interest but only to the partial realisation of any number of particular interests.

Because the value of money is in the general and existential interest of the people, it must be governed with "impartiality and independence" (Vocke 1955: 3; see also Rosanvallon 2011[14]). The central bank is thus presented as a "fully objective and neutral institution" (Vocke 1955: 2) serving neither special interests nor the electoral majority of the day: "Even the largest groups are minorities as compared with the grand total of our nation, whom we serve undividedly" (ibid: 3) against "all those who in some particular field ... are determined to place their own interests before those of the community" (ibid: 5). The central bank acts for "the whole nation, which *for its life* relies upon a sound and stable currency and which includes the housewives, the man in the street, the pensioners and the savers: *Be without fear*, we are on guard" (ibid., emphases added).[15]

This particular intervention, which invokes a stable currency as an existential precondition for societal life without fear, was made in the context of discussions on the Bundesbank Law and specifically on the question of independence. The target of Vocke's critique was the idea of limiting the central bank independence in any way. Shortly before the address was delivered, Adenauer had asked the BdL to refrain from

[14] Rosanvallon (2011: 6) defines impartiality as the "[a]chievement of generality by way of detachment from particularity" and it is "characterized by a structural variable (the fact of independence) and a behavioral variable (the maintenance of distance or equilibrium [in relation to partisan and/or special interests])." The establishment of independent, technocratic authorities such as central banks thus reflects, according to Rosanvallon (2011: 80), "the idea that a suspicion of partiality amounted to a denial of legitimacy."

[15] This conception rests on the myth of the hyperinflations in the sense that it is only through the understanding of even moderate levels of inflations as preludes to catastrophe that it can make sense. A 'sound and stable currency' is posited not against the alternative of a moderately more fluctuating or inflating currency, but the catastrophic scenario. There is no middle ground.

introducing further credit restrictions without first consulting the government (Mee 2016: 205). To Vocke (1955: 3), such demands were outrageous:

> If the management of the Central Bank were to be subordinated to politics ... then it would have to be expected that the Government office in charge possess a greater measure of technical expert knowledge and practical experience ... than the Central Bank management, the Government then clearly being the actual authority directing the bank. Nobody desires such an arrangement and the Government itself is interested in seeing that an institution which occasionally must not shrink from unpopular measures is not directed according to political conceptions or according to considerations based on elections or changes in party tendencies, but is genuinely objective with the sole aim of maintaining a stable currency.

It is the central bank's distance from partisan electoral politics and particular interests that allows it to act with objectivity and impartiality. What is at stake in attempts to limit the central bank's independence, according to Vocke (ibid., emphasis added), is not that the government considers itself better at conducting a monetary policy aimed at price stability. Rather, what is at stake is "a case of imposing or forcing other points of view on the Central Bank, such as obliging it to act in a way which it considers dangerous for the currency. *Only if this effect is desired should its independence be discontinued or restricted.*"

The independence of the central bank, then, is justified as a safeguard against partial, partisan interests taking over the conduct of monetary policy. In order to serve the general interest of the people and its 'desire' for price stability, the central bank must be independent. Its insulation from the electoral process, however, does not disqualify its claim to democratic legitimacy, according to Vocke (ibid: 5, emphasis added). Quite the contrary:

> In the last analysis it is not only the economic values that will be at stake, but also *political freedom and democracy itself.* Everything we have gained: employment, a prosperous economy, social life and, last but not least, our political life are founded on a stable currency and are seriously threatened by its depreciation.[16]

Echoing Zweig's notion that inflation is not merely an economic phenomenon, the independence of the central bank is justified as being the precondition for social and political life, for 'democracy itself.' This argument found favour with pundits at the time. In a piece devoted "Geheimrat Vocke"[17] and the speech cited above, *Die Zeit* (1956, 9

[16] Translation modified on the basis of Vocke 1973: 189.

[17] The English equivalent of 'Geheimrat' is Privy Councellor. Denoting someone's status as 'loyal advisor' to the sovereign, this formal title had long been abandoned in Germany at the time.

February, emphasis added, my translation) agreed: "The guardian of the currency [*Hüter der Währung*] is as important as the guardian of the constitution [*Hüter der Verfassung*]. Because the currency is also a piece of the wall that protects [*umfriedet*] our democratic way of life."[18]

This conception of legitimacy inscribes itself within the broader notion of 'constrained democracy' (Müller 2011) and the German post-war tradition of anti-majoritarian guardians of democracy (Möllers 2007). Democratic government, according to this perspective, cannot be given free (economic) reign, but must take place within a space regulated by non-majoritarian and non-partisan institutions such as the Constitutional Court and the central bank. Some aspects of societal life, in other words, must be taken out of the ordinary democratic process in order for that democratic process to function properly. Such guardian institutions, in turn, govern not according to the will of the majority but on the basis of the impartial pursuit of the general interest, whether expressed in foundational law (*Grundgesetz*) or foundational values (*Stabilitätskultur*).

A crucial function of independent guardian institutions is that they enforce constraints on majoritarianism. In this regard and with reference to the question of German rearmament, Vocke (1955: 5) invokes a telling analogy:

> Imagine a tremendously heavy truck preparing to cross a bridge, whereupon the engineers warn the driver that the bridge will not take the weight of the vehicle. The driver argues that orders are orders and that it is a military or political necessity that the vehicle should cross the bridge. What happens? It will have to be made clear to the occupants of the vehicle that the bridge, should they venture upon it, will collapse and that the vehicle with the driver and the load of armaments will crash to the bottom.

Allowing majoritarian politics unconstrained reign, in other words, threatens to lead to policies that if implemented will lead to their own undoing, resulting, potentially, in complete societal collapse. Ignoring the 'engineer's' warnings can be "life threatening," Vocke (1973: 176, my translation) noted in a 1950 speech that also invoked the bridge-currency analogy ("*Die Währung ist eine Brükkenkonstruktion*"). The sustainability and prosperity of a democratic state therefore depends on technocratic institutions enforcing the 'laws of nature' pre-emptively in order to prevent the destructive consequences that would in any case manifest themselves down the road. Vocke thus invokes an image of

[18] For further examples of the positive reception of the speech, see Mee 2016: 208-209.

the central bank as an apolitical institution 'engineering' the societal conditions in which political freedom and democracy can be realised.

Despite imposing constraints on government and partisan politics, the central bank should not, according to this perspective, be considered detached from the people. It reflects, on the contrary, the notion that "there is more than one way to act or speak 'on behalf of society' and to be representative" (Rosanvallon 2011: 8). It is the representative relationship between the people and the central bank that elevates the central bank to a position of authority. The fundamental, government-establishing power of the people is thereby not exhausted through its representation in the political system. The people can and does authorise other institutions to act as its representative, whereby the sovereignty of the state is expressed through multiple public offices. The power to command, in other words, is pluralised, allowing for legally irresoluble conflicts between rival expressions and representations of the sovereign will of the people. As the Minister of Justice, Fritz Neumayer, argued in the Cabinet debate on the Bundesbank Law in 1956: "the Bundesbank must be entitled to take measures against the intentions of the Federal Government [even] in an emergency situation."[19]

The democratic legitimacy of the central bank is thus conceptualised as resting on the central bank's ability to embody the will of the people, potentially against the expression of the will of the people through electoral representatives. This conception of democracy sees the expression of the 'will of the people' through periodic elections as being inadequate and incomplete (Rosanvallon 2011). At the same time, however, it introduces the possibility of the people being pitted against itself through the forms in which it makes itself present in the activity of governing. The question, then, is how such conflicts can be resolved.

The central bankers had, as indicated by the bridge-currency analogy, a clear answer to this: on questions relating to money, the central bank should prevail. However, the answer was more sophisticated than this. As Vocke (1973: 176, my translation) noted in a 1950 speech, any suspicion that the central bank was not governing in accordance with the general interest would undermine its authority and legitimacy. As such, independence should not be considered a *carte blanche* to do whatever the central bank saw fit: "A central bank that is oppositionist [*oppositionslustig*] or wants to conduct an

[19] Das Bundesarchiv, Kabinettsprotokolle, 143. Kabinettsitzung am 11. Juli 1956, my translation.

obstructive policy would immediately lose its independence." The central bank's independence, in other words, comes with certain implicit duties and obligations. Failure to fulfil these would lead to the *immediate* forfeiture of its claim to impartiality and right to independence because it would lose its character as a representative of the people. Its ability to resist government and parliament, in other words, rests on its ability to demonstrate its impartial pursuit of the common interest, not on its legal mandate, which was, after all, only based on ordinary legislation subject to the Bundestag. In case of misconduct on the part of the central bank, the elected representatives of the people would have the right to suspend the central bank's independence.

Such a scenario, however, is of limited relevance for the purposes of determining whether the central bank or the government should carry the day in situations of conflict. The relevant scenario is one where both central bank and government make legitimate but conflicting claims in the name of the people. It underlines, however, that while potentially very powerful, the central bank's claim to legitimate representation is quite elusive: because "the legitimacy of independent authorities depends on their ability to demonstrate their impartiality, that legitimacy is inherently unstable" (Rosanvallon 2011: 96). Whereas the government derives legitimacy from the electoral process, the independent central bank's legitimacy is not as formalised. Achieving the mandated objective is of course one source but this cannot inform situations of conflict concerning, for instance, the relevant interpretation of a particular economic situation. According to Rosanvallon, this is one of the crucial problems for the independent authority. Since it cannot rely on formal input, it must rely on the continuous display of fidelity to the spirit of its mandate. As such, "[e]ach intervention, each decision is tantamount to a refoundation of the institution" (Rosanvallon 2011: 96). The fact that an institution's actions were impartial yesterday does not mean that they are so also today or tomorrow. As such, it must continuously engage in efforts to win the people's trust.

The "bond of trust between the public and its central bank" is, according to the ECB's first chief economist, Otmar Issing (2002: 19), "something like a credit relationship." And like creditworthiness, "a reputation for impartiality can be established" (Rosanvallon 2011: 97). Trust is "a form of capital" (Rosanvallon 2011: 97); "*Vertrauen ist Kapital*" (Vocke 1973: 175). And like capital, it has a "cumulative dimension: the greater an institution's reputation for impartiality, the easier it is to establish the impartiality of any particular decision" (Rosanvallon 2011: 97). The "effective social power of an institution" (ibid.) thereby depends on its ability to accumulate trust through its continuous demonstration of its impartiality in the pursuit of the general interest of the people. In a conflict between the government and the central bank, the central bank's source of authority is thus the people's trust that the central bank is, in fact, acting not for itself or for some special interests but for the people as a whole.

Rosanvallon argues that this form of representation should be considered along the lines of what the French public law theorist Carré de Malberg called "organic representation" (Rosanvallon 2011: 88). While Carré de Malberg's notion of organic representation referred to the state as such, Rosanvallon (ibid: 90) claims that today it is the independent authorities "that most clearly play the role of organic representatives." This is because they are based on a conception of the people not as asserting its right to govern or to exercise control over how its representative governs, but on the people relinquishing control over the activity of governing to the representative, trusting the representative "to act and will *for*" the people (ibid., emphasis in original). While this leaves the people with no institutionalised ways of influencing its organic representative, the fragility of its claim to authority acts as guideline for its actions: it must govern according to an underlying societal value, "ein *sozialer Grundkonsens*" (Emminger 1986: 29, emphasis in original) and show itself to be pursuing this value. In order to prevail in conflicts with government, the central bank must govern on the basis of a principle that resonates with the people and whose realisation is more foundational than the realisation of values expressed in elections.

The notion of grounding the independence of the central bank in something more foundational than ordinary legislation is reflected in the discourse of German central bankers. As Emminger (1986: 27, my translation) noted "the Bundesbank's independence is formally only secured through the Bundesbank Law, that is, an ordinary law, not through the constitution." In law, its authority rested on the legislative power of the Bundestag. This, however, was considered an insufficient foundation of independence. The central bankers of the BdL thus

> agreed that the independence of the Bundesbank would only be secure when it could rely on the *overwhelming support of the population*; only then would it be immune from political interference. Moreover, we said: when the Bundesbank is not responsible to the government or parliament then it must in a democracy be accountable to the people [*dem Volk gegenüber Rechenschaft ablegen*] (ibid., emphasis added, my translation).

The problem of politics in relation to monetary policy was, in other words, to be overcome through establishing a direct relationship of trust between the central bank and the people; a relationship built on winning over the 'hearts and minds' of the people through the myth of the inflations.[20]

Conclusion

The German notion of central bank independence conceptualises the central bank as a representative of the people's foundational will. The ordinary legislation of the Bundesbank Law thereby becomes imbued with a "quasi-constitutional character" (Emminger 1986: 27) because of the *sozialer Grundkonsens* in favour of price stability. In that sense, the German notion of central bank independence reflects the same approach as that of the neoliberals. Central bank independence was not a product of comprehensive political decision on the economic constitution, but it was still to be based directly on the foundational power of the people and not the constituted powers of government and parliament. The central bank became one dimension of the institutional expression of popular sovereignty but in an organic rather than formalised sense. On this basis it considered itself the equal of the government. To Adenauer's question on whether he considered the central bank "the rightful equal of the Federal government?" BdL President Karl Bernhard simple response was: "yes."[21] The central bank was the equal of the government because it was a representative of the people on a par with it.

The claim to equal representation was based on the portrayal of inflation being "a betrayal of the people [*Betrug am Volk*]" caused by government control of the central

[20] In discussing the relationship between the independent institution and the people, Rosanvallon uses precisely the Bundesbank as an example. Reproducing the mythical narrative, Rosanvallon (2011: 116) argues that the German people concluded that price stability was "an essential prerequisite of democracy." Rosanvallon (2011: 117-8, emphasis in original) concludes that the independence of the Bundesbank was established as a means of constituting a "*direct relation*" between the people and "the institution in control of the nation's currency." This, in turn, "meant that the central bank intended to base its actions on fundamental political principles, the very same principles that defined the meaning and form of the social contract."

[21] The exchange between Adenauer and Bernhard took place in a Cabinet meeting on the future Bundesbank law (Das Bundesarchiv, Kabinettsprotokolle, 126. Kabinettsitzung am 14. März 1956). In the meeting minutes the exchange is rendered as:

> *Bundeskanzler: ... Sind Sie denn der Auffassung, daß Sie gleichberechtigt neben der Bundesregierung stehen?*
> *Bernhard: Ja.*

The term 'gleichberechtigt' is not easy to translate, but it may be rendered as 'equal standing' or 'rightfully equal.'

bank (Vocke 1973:181). Erhard (1956 as cited in Mee 2016: 229) even put it into a formula: "The formula 'dependent central bank = inflation' is valid at all times and everywhere. Historical experience proves that to us with crystal clarity." In Cabinet, Erhard countered Adenauer and argued that the Bundesbank "should not be obliged to support an inflationary government policy ... *The central bank must be able to say no. Public opinion demands it"* [*Das verlange die öffentliche Meinung*]."[22] To Erhard, there was nothing anti-democratic about the central bank's independence. On the contrary, it is a product of the people's will, whose continuous support for the central bank on the question of monetary policy trumps the intermittent bestowal of electoral legitimacy on the government. The mythical narrative of the inflations and its public reception constituted the ultimate grounding of the central bank's independence and authority vis-à-vis government. It provided a grounding of the meaning of this particular institutional configuration in a violent past.

The mythical narrative gave central bank independence a meaning and significance beyond what could be established reasonably on the basis of statistical, logical or historical analysis. It did so, furthermore, in a manner that was easily comprehendible to a broad audience. It grounded it in the societal fear of a return to a catastrophic past. As such, it was only right that the central bank should prevail over government in cases of conflict (see Mee 2016 for a good historical account of such conflicts). Even if this would sometimes 'hurt' in the short run, "one must in certain circumstances be able to say no, also in cases when the heart, the emotions, would rather say yes" (Vocke 1973: 181, my translation). The central bank's foundation of authority in the public acceptance of the myth of the inflations at the same time meant that the myth had constantly to be reiterated in order to keep the folk memory alive:

> As the horrors of the National Socialist 'welfare state,' the war and the inflation recede into the past, we begin somewhat to forget that a free economy, liberalised trade and a stable currency are not a matter of course ... but that they have been obtained through great sacrifices and toils. So too must they be defended and it is worthwhile procuring them with sacrifices [*mit Opfern zu erkaufen*]. Because on these rests not only the economic and social but also the political balance and the freedom of the democratic human being (ibid: 187, my translation).

[22] From Das Bundesarchiv, Kabinettsprotokolle, 143. Kabinettssitzung am 11. Juli 1956, emphasis added, my translation.

When the so-called Transition Law of 1951 transposed the BdL into German law, it was never, from Adenauer's and Schäffer's perspectives, supposed to become the blueprint for central banking in Germany. It was supposed to be a temporary solution and the central bank's independence was still up for debate. As Adenauer (1956, my translation) saw it, "[t]he central bank council is completely sovereign with respect to [*vollkommen souverän gegenüber*] the Federal Government. It is, of course, accountable to itself. But we have here an organ, that is responsible to no-one, neither parliament nor government." This arrangement was unacceptable. Should the central bank be given full autonomy, Adenauer argued, "This would give [it] the position of a power within the state [*Stellung einer Gewalt im Staate eingeräumt*] which could act against the political powers."[23] This 'democratic exception' could not last and was in direct contradiction to Adenauer's notion of *Kanzlerdemokratie*; a unitary form of political representation if ever there was one.[24]

As it were, the Transition Law established the German tradition of central bank independence and allowed the BdL to nourish its prestige and public standing (Bibow 2009: 167; see also Dickhaus 1998). Over the next 5 years, the BdL asserted its independence on a number of occasions and managed to keep the currency relatively stable while the German economy experienced the first years of the *Wirtschaftswunder*. As observers from different fields have remarked, from the ashes of the war and the repressed inflation, the D-mark and the German economy, against all predictions at the time, rose to international renown and the currency became a source of pride in a country where political nationalism was still unacceptable (see, e.g., Tognato 2012; Marsh 1992; Habermas 1991). The D-mark and its guardian became symbols of the societal break with the past. As one newspaper put it in the context of the debate over the Bundesbank Law in 1956:

> One can only hope that no formulation will be found that in any way cancels the independence of the central bank. This would be dangerous, not only for the currency but *also for politics.* In the public, there exists a conviction that the central bank council

[23] From Das Bundesarchiv, Kabinettsprotokolle, 143. Kabinettssitzung am 11. Juli 1956, my translation.

[24] The central bank's ability to act against an elected government appeared unconstitutional to Adenauer. As he put it in a Cabinet meeting, should the law merely instruct the Bank "to support the general economic policy of the Federal Government within the framework of safeguarding the stability of the currency, then the stability of the currency would be given primacy over general economic policy, and the Bundesbank would be granted an autonomous decision in situations of conflict. Such a regulation is unconstitutional" (from Das Bundesarchiv, Kabinettsprotokolle, 143. Kabinettssitzung am 11. Juli 1956, my translation).

> must be shielded from political influences in all its forms, as otherwise a clear and expert central bank policy is not possible. After all, everyone in Germany knows that in the two currency catastrophes we have behind us, the floodgates of inflation were opened at a time when the government still possessed the trust of the population (*Die Zeit* 1956, 22 March, my translation, emphasis in original).[25]

Crucially, when the Bundesbank Law was adopted in 1957 it reproduced the existing absence of an institutional mechanism for resolving conflicts between the central bank and the government. Government and central bank were equals and could have recourse to no external or superior institutional authority for the resolution of conflicts. This was not a mistake or compromise. It was Erhard's model and it was intended to ensure close, often informal coordination and cooperation between the central bank and the government. However, in situations of insurmountable disagreements, the debate would have to be resolved in the public sphere (see, e.g., Bundesbank 1972; see also Mee 2016; Berger and de Haan 1999; Bibow 2009; Tognato 2012). The Bundesbank Law cemented the practice of turning to the public in cases of conflict and created a dynamic in "which West Germans felt it only natural to embrace lessons from the inter-war past to make their points" (Mee 2016: 400). In these disputes, only the (mediated) public could act as judge. In accordance with the notion of dual representation, this was only logical. In cases of insurmountable conflict between, in principle, equally valid positions and claims to representation, the people had to manifest itself as the 'actually existing popular sovereign' to decide the matter (Glossner 2010; Orléan 2008).

The German notion of central bank independence emerged in the post-war period as an intellectual approach to economic and monetary government in its own right. By emphasising independence as an institutional solution to the problem of

[25] At this point, domestic and international media had come out in full force in favour of the BdL and central Bank independence. In *Der Spiegel* (1956a, 6 June), Vocke was described as "Kanzler der Deutschen Mark" and the *Financial Times* (1956, 19 June: 7) named him "the guardian of the D-Mark." In the latter article, the correspondent noted that "Recently, when the Chancellor, Dr. Adenauer, himself rebuked the [BdL] in public ... it became clear within 24 hours that the bank and not the Government would be upheld by the public." This was unsurprising "[i]n a country where inflation has wiped out savings twice within 25 years." Similarly, with reference to a bellwether incident in 1950, *Der Spiegel* (1956b, 6 June: 17) noted that "on that day the sovereign of Palais Schaumburg [seat of the Chancellery] realised for the first time that he possessed no means of pressuring [*Druckmittel*] the monetary sovereign in Frankfurt [*den Frankfurter Souverän der Währung*]." The article, furthermore, portrayed the central bank's independence as a product of the painful experiences of the two German inflations – "*Durch zwei deutsche Inflationen ... ... schmertzliche erfarungen gesammelt*" (*Der Spiegel* 1956b, 6 June: 20). Vocke equally figured in the tabloid press, with *Bild Zeitung* (1956, 4 June as cited in Mee 2016: 222) declaring: "An autograph from Greta Garbo – exciting. An autograph from Vocke – reassuring."

politics in relation to money, it departed from the approaches discussed in chapter 1. It nevertheless reflected and incorporated, whether consciously or not, ideas and principles from each of the three approaches to construct a novel approach to central banking. At a basic level, it reflected the neoliberal notion of grounding the meaning of price stability in a popular imaginary. As the bridge-currency metaphor highlights, it also adopted a conception of the economy that was similar to that of the neoliberals: it operated according to certain inherent, immutable laws that government ignored at its peril. As such, monetary policy ought, in contrast to Keynes, to be depoliticised and its objective should be price stability and price stability alone. The ordoliberal notion of grounding the monetary order in something more foundational than ordinary law, similarly, informed the central bankers. But without the possibility of the ordoliberal comprehensive constitutional decision, the central bankers sought a more organic foundation of authority. This, in turn, emphasised the agency of the central bank in conducting monetary policy under a fiat currency regime. On this, then, central bank independence adopted or reflected the Keynesian idea of applying technocratic expertise to the government of money rather than subjecting it to automatic mechanisms or legislated monetary rules.

Chapter 3

The Economic Science of Central Bank Independence

Introduction

By presenting central bank independence and the pursuit of price stability as two sides of the same coin, the German notion of central bank independence offered an institutional alternative to the discretionary political control of monetary policy that was otherwise dominant in the post-war period. In so far as the conduct of monetary policy remained discretionary, it was constrained by the 'absolute' of price stability, whose meaning was grounded in its existential significance. Central bank independence under a fiat currency regime was thereby no longer a threat to price stability, as the ordoliberals and neoliberals had seen it. By separating the conduct of monetary policy from the government's economic policymaking, it allowed for the possibility of pursuing price stability even against the wishes of the government of the day. As such, it constituted a protection against the potential capacity of government for doing harm. Taking money out of the political equation was, in other words, a way of making politics more 'economic' by enforcing frugality on the government.

This particular meaning of central bank independence allowed for the ordoliberal embrace of central bank independence (see Bernholz 1989). It was now not so much a name for an institutional form as for a particular ideology of economic government. The ordoliberal Wilhelm Röpke (1998 [1957]: 215) could thus argue that the central bank "certainly has the ultimate responsibility" for protecting against inflationary pressures. But circumstances may "threaten to require more from the exercise of this responsibility than public opinion, government and the full-employment dogma are prepared to accept. In these circumstances the independence of the central bank is invaluable." This statement contrasts markedly with Röpke's earlier writings on monetary policy, which emphasised the importance of the state's control of monetary policy and made no mention of the central bank or its independence (see Röpke 1937). Presumably on experiencing Bank deutscher Länder's successful pursuit of price stability in the immediate post-war period, Röpke (1998: 216-217) had changed his view and elevated the monetary authority to the central institutional guardian of the free market economy: "the heavy artillery of the bank of issue must occupy the center" in the battle against the “moral and social problem [of inflation].” In democracies, furthermore, “[i]t is not enough that [limits] should be laid down in constitutions; they must be so firmly lodged in the hearts and minds of men that they can withstand all onslaughts. One of the most important of these norms is the inviolability of money” (ibid: 220).

While ordoliberals such as Röpke embraced the idea relatively early on, the German notion of central bank independence remained the exception for another two or three decades both in economic theory and institutional practice. The norm remained the politically controlled central bank. Only in the 1980s did the economic theory of central bank independence emerge. When it did, it appears to have started a ‘wave of independence’ in the late 1980s. It is the development and the central tenets of this theory that is the subject of this chapter.

What distinguishes the theory of central bank independence from the German notion of independence is that it grounds the meaning of central bank independence in a scientific discourse rather than in a mythical narrative. As such, it appeals less to the ‘hearts’ of the people than to the ‘minds’ of policymakers. The justificatory discourse is thereby transformed from one that employs historical narratives to one that employs statistics and mathematical formulae and its imagery takes the form of equations, tables and graphs (picture 3.1). By separating central bank independence from particular historical and cultural contexts, this allows for generalisations. Central bank independence can thereby be presented as a general solution to a universal problem of politics rather than something intimately linked to specific historical circumstances and experiences.

$$E \sum_{t=0}^{\infty} \beta_{\pi}^{t} [\omega_1(\lambda K_t - g_1)^2 + \omega_2(Z_t - g_2)^2 + \omega_3(\lambda K_t + Z_t - g_3)^2 + \omega_4(p_t - p_{t-1})^2 + \omega_5 \pi_t Z_t + \omega_6 \pi_t^2],$$

Picture 3.1. Scientific imagery. A function from Kydland and Prescott (1977: 484).

That being said, the theory reproduces, whether consciously or not, some of the central elements of the German notion. Most importantly, it presents central bank independence as a “guardian against any misuse of power by the political authorities” (Allen 1989 as cited in Blyth 2013: 140). The central bank thereby remains a means of constraining the passions and irrationalities of politics. It is, according to a former member of the ECB’s Executive Board,

> a way to protect policy makers against the temptation of using monetary policy in a distortionary way [because in] a paper-money regime, where government liabilities represent means of payment and have purchasing power, there is always the temptation for any government to use such money in an opportunistic manner (Bini Smaghi 2007).

Central bank independence, in other words, is presented as a means of conquering short-term temptations in the name of long-term benefits.

Stagflation and the Science of Central Bank Independence

Over the decades following the end of WWII, the Bundesbank oversaw a period of rapid economic growth and low unemployment combined with low inflation. This, however, was not particularly unique as many other countries experienced something similar at the time without an independent central bank. It was, rather, the German record of inflation and unemployment during the Stagflation Crisis that impressed observers and made the Bundesbank the "*Weltstar*" (Emminger 1986: 20) of central banking as well as the lodestar of the scientific discourse. The myth of the inflations may never have disappeared entirely from the imaginary of central banking, but it took a backseat to the question of grounding the German experience of central bank independence in scientific language.

The Stagflation Crisis of the 1970s and early 1980s saw a "secular upward drift in both the inflation and unemployment rates" and was understood at the time to be different from but as severe as the Great Depression (Peterson 1980: 277). The severity of the crisis was emphasised by its global dimension; no major developed economy was left unscathed. And like the Great Depression it had a profound, albeit less radical, intellectual impact:

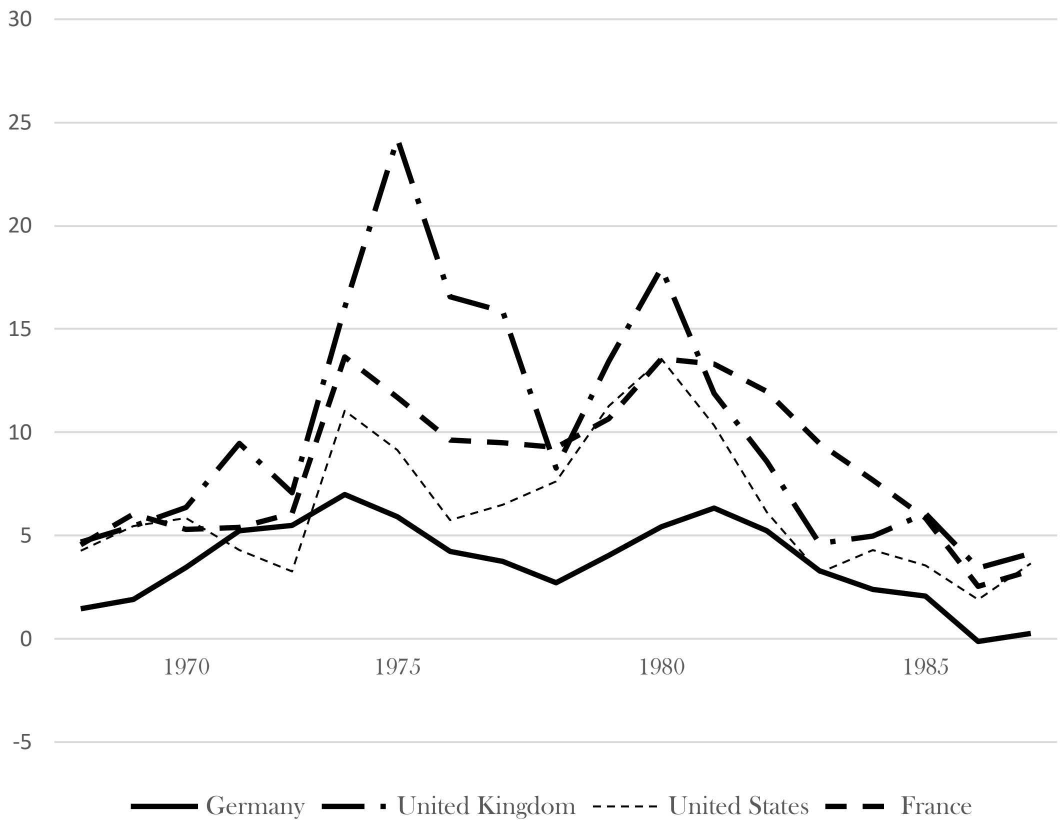
> What is clear from the experience of the last decade is that the conventional Keynesian approach is not working, that we are confronted with a condition which does not respond to the standard techniques which use fiscal and monetary policies for demand management (Peterson 1980: 277).

If the Great Depression marked the death of the gold standard and the ideology of laissez-faire liberalism, the Stagflation Crisis ended the Bretton Woods system and the dominance of the ideology of Keynesianism.[1] Policymakers looked for alternatives.

[1] Alexandre Lamfalussy (1997), president of the ECB's precursor, the European Monetary Institute, explicitly invokes the lessons of the Stagflation Crisis and the failure of Keynesianism as the

The most widely adopted alternative was found in neoliberal thought. In particular, the neoliberalisms of Hayek and Friedman were claimed to inform the political philosophies of politicians such as Thatcher and Reagan. But while some turned to grand theory for inspiration in the quest for alternatives, others turned to the more mundane task of studying the causes of why some countries had fared better than others through the Stagflation Crisis. In this respect, the record of the Bundesbank grabbed attention.

Figure 3.1. Consumer Price Inflation in selected countries 1968 - 1987



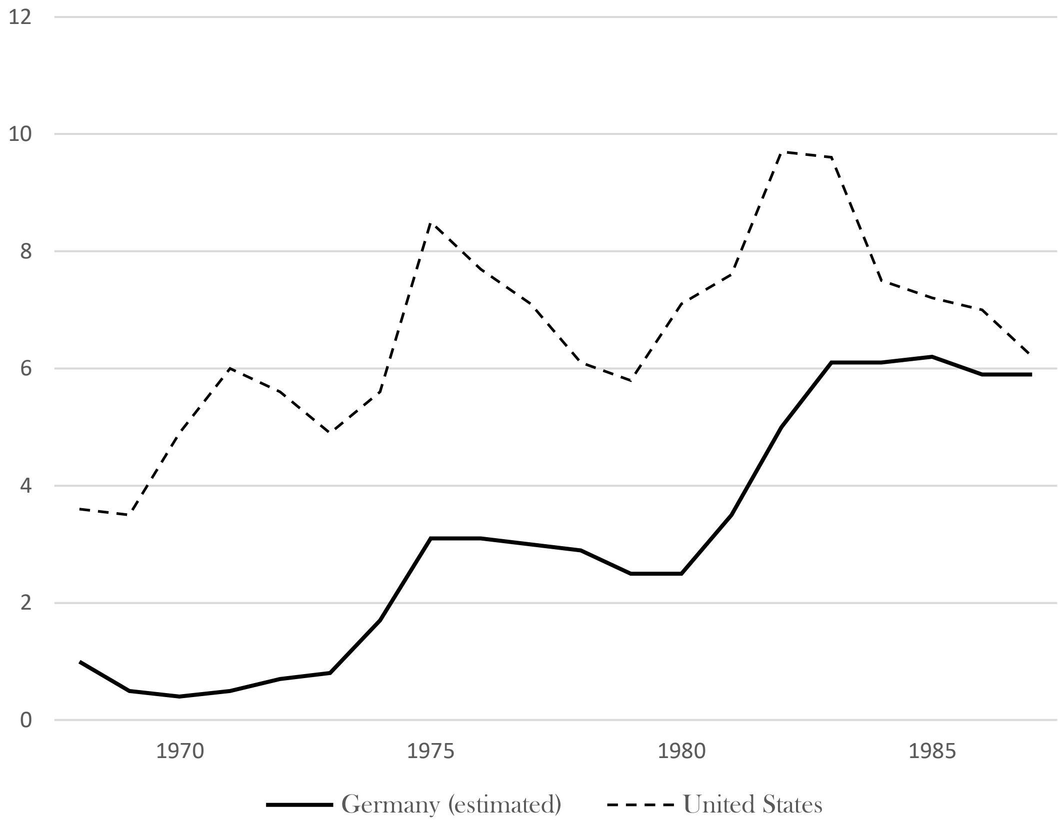
Source: World Bank.

While West Germany did not escape the Stagflation Crisis unscathed, the crisis was less severe here than in most other countries. In fact, both the inflation rate and the level of unemployment were markedly lower and more stable than in most other OECD countries during the period (see figures 3.1. and 3.2.). For instance, whereas the US

background against which the notion of central bank independence was enshrined in the Maastricht Treaty.

experienced a high of 13% annual inflation in 1980, inflation never rose above 7% in West Germany while unemployment remained lower than in the US throughout the period. This observation triggered reflections on what could explain it and central bank independence came to feature prominently in this explanation.

Figure 3.2. Unemployment rate in the US and West Germany, 1968-1987



Source: OECD (data on the UK and France was highly incomplete and is omitted)

The academic literature, in turn, fell into two categories: a theoretical and an empirical. The former approached the question game-theoretically and worked out logical arguments in favour of central bank independence. The latter took a more empirical approach by studying the determinants of independence and establishing a correlation between the degree of independence and inflation rates. Both these strands of research came to inform the way the ECB and its officials think about and justify the ECB's independence (see, e.g., ECB 2017a, Mersch 2017a, Draghi 2018a).

The Theory of Central Bank Independence

If one text can be said to have originated the contemporary theory of central bank independence, it is Finn E. Kydland and Edward C. Prescott's article "Rules Rather than Discretion: The Inconsistency of Optimal Plans" from 1977.[2] This article, according a Swedish central banker, demonstrated that "governments in democratic countries may have a *time consistency problem*" and offered "a common explanation for events that, until then, had been interpreted as separate policy failures" (Sparve 2005: 272, emphasis in original). It offered a comprehensive explanation for the Stagflation Crisis based on an inherent weakness of democratic politics: its inability to make long-term commitments to a certain policymaking regime. This research informed the shift away from a preoccupation with "isolated policy measures … towards *the institutions of policymaking*, a shift that has largely influenced the reforms undertaken by central banks and the design of monetary policy in many countries" (ibid., emphasis added),

Few subsequent theoretical and empirical works on central bank independence do not make reference to Kydland and Prescott's article, whether explicitly or through invoking its central concept of 'time inconsistency.' However, while the article provided the theoretical justification for central bank independence, it did not explicitly advocate central bank independence. This link was only forged later on, particularly by Kenneth Rogoff (1985), who based on Kydland and Prescott as well as Barro and Gordon (1983a, 1983b) developed the most systematic and influential theoretical justification for central bank independence.

The Problem of Beginnings and the Rules-based Order

The central problem for Kydland and Prescott is the question of rules vs discretion. In this regard, their intellectual forbearers are American neoliberals such as Henry Simons and Milton Friedman (see chapter 1); the latter's work being explicitly invoked as a

[2] This is not to say that there was no academic or political discussion of central bank independence prior to the publication of this article. However, at this point there was no systematic theoretical justification for central bank independence (see Forder 2005). At the same time, there was no general consensus that privileging low inflation would be desirable because it was, based on the general acceptance of the Philips-curve relationship, understood to have negative effects on other economic parameters such as employment and growth. Nordhaus (1975: 188) concluded that while central bank independence might be considered a possible remedy to the so-called political business cycle in relation to monetary policy, "The costs and benefits of independent policy determination are difficult to weigh" and it can be objected against it that "delegating responsibility to an agency which is not politically responsive to legitimate needs is even more dangerous than a few cycles."

reference point (1977: 474). While reaching the same conclusion as Simons and Friedman had done – rules rather discretion – they approach the subject in a manner that reduces the importance of an ultimate normative horizon. The neoliberal approach is thereby, in one sense, perfected because its conclusions are reached on an 'all else equal' basis: regardless of economic policy objective, rules provide a better avenue for realising it than discretion.

As discussed in chapter 1, neoliberals rejected the monetary policy discretion that central bank independence threatened to introduce. To them, there was no link between central bank independence and price stability. Monetary policy, instead, was to be conducted on the basis of monetary rules fixed in law. Simons and Friedman thereby encountered a difficulty that was not easily overcome except through the general public acceptance of a system of beliefs, namely a 'religion' of individual (negative) liberty. Given that coercion and manipulation are excluded, how else would it be possible to ensure that the public favours and compels its political representatives to institute a rule? What neoliberals encountered, in other words, was the problem of political beginnings, the paradoxical nature of which Simons (1936: 14) explicitly recognised.

The problem of political beginnings is a recurring problem in political and constitutional thought and practice (see, for instance, Arendt 2006; Kalyvas 2008; Loughlin and Walker 2008). As discussed in chapter 1, it was a crucial problem for the ordoliberals who sought its resolution in the Schmittian conception of the comprehensive decision as the political equivalent of the miracle. The problem, however, is perhaps most closely associated with Rousseau's *Social Contract,* which introduces the figure of the Legislator in order to solve it.

Rousseau was of course not the first thinker to confront the problem of beginnings. In Hobbes, for instance, the social contract is also a means of addressing the problem of beginnings but Rousseau's conception of the nature of the problem differed markedly from Hobbes'. To Hobbes, it was of little importance what kind of institutional framework and system of values was constituted as long as it could be reasonably expected to be able to secure a viable political order. As such, Hobbes could assert with (almost) complete indifference that the commonwealth is constituted by the multitude conferring "all their power and strength upon one Man, or upon one Assembly of men" (*Leviathan* part II, ch. 17), which then has undivided and unlimited authority to govern and legislate as it sees fit. It is, in other words, of no importance to Hobbes whether the multitude constitutes a monarchy, aristocracy or democracy, whether the order is 'free' or not, or whether the laws promulgated by the sovereign are just. In that sense, Hobbes was a normative relativist. His absolutism concerns only the demand for political order as such.

The Rousseauian problem of beginnings, which the ordo- and neoliberal thinkers of money also confronted, was different from this. Rousseau's difficulty arises because a normative requirement is attached to the order that is to be constituted. For Rousseau, it was not enough to establish order because order was not by definition better than the anarchic state of nature – "Man is born free; and everywhere he is in chains" (*Social Contract* bk. 1, ch. 1; see also *Discourse on Inequality*). It had, however, the potential to be so. But for an order to be better than no order, it had to be rational, free, equal, and just. The legitimacy of the political order could not be derived from its mere existence but only from its ability to secure and promote such objectives. The 'beginning' that Rousseau envisioned had to institute a system of government that could deliver not just the security of mere life but the betterment of the human condition, the good life (see also Arendt 1958; and, comparing Arendt and Rousseau, Canovan 1983).

The problem for Rousseau was how to make the multitude choose a *particular* political order. The problem, in other words, is how people can create 'good' laws, which are in their collective best interest, even though the multitude – in a state of nature or in an existing, corrupt political order – cannot possibly be expected to know what makes laws good without the enlightenment that comes from good laws. Completing the 'paradox of politics' (Honig 2009) or 'paradox of democratic legitimacy' (Benhabib 1994), then, the multitude needs, as Rousseau suggested, the 'good' laws in question in order to understand that they are good and what their own best interests are.[3] Rousseau's, in other words, was a classical hen-and-egg problem (Honig 2009: 14-16), which he resolved through the introduction of the mythical Legislator, whose role in the life of the political community would be exhausted in the constitution of a body of good laws that the community would come to revere as a civic religion.

If in the German context, the military authorities played the role of the Rousseauian Legislator, providing good monetary laws and institutions able to promote the general will and instil in the people a religious fervour for price stability, this form of

[3] The paradox in Rousseau is that in order for the people to make 'good' laws, the people need to be 'good.' But in order to have 'good' people, you need 'good' laws (see Honig 2009).

abrupt break with the past and external legislative influence on the present could not be expected or desired in other countries. As such, a different approach to the question had to be adopted. Simons and Friedman placed their trust in a gradual shift of public opinion: "The requisite measures, radical in the money field and even more radical elsewhere, will become possible politically only with the revival or development of a real religion of freedom, of a strong middle-class movement, and of values (and revulsions) of a rather intense sort" (Simons 1936: 18). Referring to Dicey's *Law and Public Opinion*, Friedman (1951) expected legislation in the future to come to reflect prevailing public opinion in the present. The task of "neo-liberalism," then, was "to provide the philosophy that will guide the legislators of the next generation ... We have a new faith to offer; it behooves us to make it clear to one and all what that faith is." The neoliberals, in other words, sought the gradual emergence of a new Gramscian ideological hegemony. It was to be promoted and nurtured by an intellectual avantgarde that would be able to educate both the people and the policymakers in how to think about the laws needed for the promotion of the good life.

The Futility of Politics

In contrast to the approach of hoping to penetrate the "mysteries" of public opinion (Friedman 1951), Kydland and Prescott's theory of time inconsistency provides a more pragmatic approach to the problem of establishing a rules-based order which bypasses the problem of beginnings and the question of swaying the public. While written in the context of the Stagflation and its accompanying crisis of Keynesian thinking – a historical context amenable to the kind of ideological change envisioned by Friedman – the argument does not rely on the public becoming ready for abandoning the old gods in favour of new. It does not present itself in the same explicitly ideological garb as the neoliberalism of Simons and Freidman but it promotes much the same conclusions: monetary policy conducted according to rules rather than discretion, and those rules being, for instance, the Friedmanian notion of "a stable growth in the money supply" (Kydland and Prescott 1977: 487).

Kydland and Prescott (ibid: 473, my emphasis) sum up their argument as presenting an explanation for why "discretionary policy, namely, the selection of that decision which is *best*, given the current situation and a *correct* evaluation of the end-of-period-position, does not result in the social objective function being maximized." Government planning and discretionary control over the policy making process does not have to be fallible or subject to partial interests in order to produce sub-optimal outcomes in terms of a “well-defined and agreed-upon, fixed social objective function” (ibid.). In other words, even if policymakers know and wish to promote the general will and welfare, they will be unable to do so if they react sequentially to developments as they happen. Policymakers, in other words, “should follow rules rather than have discretion” not because “they are stupid or evil” but because it is logically impossible for discretion to achieve its intended aims. Even fully informed and well-meaning discretionary policymaking “either results in consistent but suboptimal planning or in economic instability” (ibid: 487).

In contrast to the German approach to monetary policy, the important problem is not to ensure that the ‘social objective function,’ the general will, attaches primacy to price stability. While Kydland and Prescott assume price stability to be a desirable social objective, they recognise that it is only one among many. The important problem is the question of change and the realisation of a regime of policymaking that compromises any conceivable ‘social objective function’ as little as possible.

This suboptimality of consistent but discretionary policymaking “arises because there is no mechanism to induce *future* policymakers to take into consideration the effect of their policy, via the expectations mechanism, upon *current* decisions of agents” (ibid: 481, emphasis in original). When policy makers react to a development, whether economic or political, they are acting not on a stable state but on a dynamic system, comprising economic actors who have already second-guessed the future actions of the policymakers and factored them into their own behaviour in the present. The economy on which the policymakers of the future act, in other words, changes in the present as a result of the expectations of rational actors concerning future policy, thus changing the conditions on which the policy acts before it is enacted. The economy is a target that moves in expectation of future attempts to hit it, meaning that the effects of policy will be different from those intended and expected by the policymaker: “changes in policy induce changes in structure, which in turn necessitates reestimation and future changes in policy, and so on” (ibid: 474). This ‘feedback loop’ is what leads to either “consistent but suboptimal” policy – leading to a secular rise in the rate of inflation while leaving ‘real’ economic variables unchanged – or to a scenario where “stabilization efforts have the perverse effect of contributing to economic instability” (ibid.). Discretionary, reactive policies are for that reason either suboptimal or harmful because economic policy “is not a game against nature but, rather, a game against rational agents” (ibid: 473). In a discretionary regime, both policymaking and the environment on which it acts move continuously in relation to each other, constantly undermining the intended consequences of each other's adjustments.

In relation to the question of "the apparent trade-off between unemployment and inflation," Kydland and Prescott (ibid: 478) apply this logic to challenge the conventional assumption "that expectations depend in some mechanical ad hoc way upon past prices." This is mistaken, they claim, because "A change in administration which reflects a change in the relative costs society assigns to unemployment and inflation will have an immediate effect upon expectations." The market, in other words, does not base its expectations for the future only on the past but on information about future policy-making gathered in the present: "Changes in the social objective function reflected in, say, a change of administration do have an immediate effect upon agents' expectations of future policies and affect their current decisions" (ibid: 474). This means, for instance, that a government known to prioritise employment over price stability cannot hope to stimulate employment through an expansionary monetary policy. Because the effects of this expansion will already have been factored into the setting of prices (in contracts, for instance) in the present, it will result in "excessive rates of inflation without any reduction in unemployment" (ibid: 477). The result can only be increased economic instability without gains in terms of the 'social objective function.'

Despite its extraordinary assumptions, this account offered a compelling explanation for the Stagflation's secular trend towards both higher inflation and unemployment rates. It explained why discretionary monetary policies, such as those practiced in the US and elsewhere at the time, were failing to cure the problem of unemployment while leading to higher inflation. As such, it offered a logical critique of the Phillips-curve relationship and suggested that regardless of other objectives, a monetary policy "of maintaining price stability is preferable" (ibid.) for the simple reason that monetary policy, as Friedman had suggested, could not meaningfully stimulate employment. Monetary policy ought to be focussed on what it could do, namely, to stabilise the price level. Unemployment would have to be dealt by other means.

While Kydland and Prescott (ibid: 487) suggest that "economic theory be used to evaluate alternative policy rules and that one with good operational characteristics be selected", it does not appear to be of particular importance what exact rule is chosen. Following Simons, they suggest that "[i]n a democratic society, it is probably preferable that selected rules be simple and easily understood, so it is obvious when a policymaker deviates from the policy" (ibid.). A comprehensive constitutional-political decision or a general shift in public opinion towards a particular ideology is therefore unnecessary as long as it is generally acknowledged that the political control of monetary policy is futile (see also Lohman 1992). What must be ensured, however, is a credible commitment to a rule, so that a change of government, for instance, does not lead to changes in inflation expectations. This does not mean that economic planning based on a political commitment to full employment is the 'road to serfdom' but simply that the use of monetary policy for such purposes is clumsy and sub-optimal. As such, the principle guiding the use of monetary policy in economic policy emerges from the market itself and there is no need for a radically new beginning. The Legislator emerges from within the economic order and the introduction of the good law depends simply on recognizing the market's governing logic.

Kydland and Prescott (1977: 487) suggested that "[t]here could be institutional arrangements which make it a difficult and time-consuming process to change the policy rules in all but emergency situations." They did not, however, invoke the need for an independent central bank. While it has subsequently been interpreted as such, some elements were missing. In particular, Kydland and Prescott's conclusion does not depart significantly from Friedman's: it does not introduce a rationale for the central bank's independence but only for a rules-based monetary policy. If discretion is in any case eliminated, why would the central bank need to be independent?

Central Bank Independence and the Credibility of the Rule

Interpreting Kydland and Prescott's article as an argument for central bank independence demands two assumptions: first, that it is difficult, if not impossible, for policymakers to commit to a monetary rule without institutional commitment-devices, and, second, the German notion that central bank independence is equated with the pursuit of low inflation. Barro and Gordon (1983a, 1983b) explicitly address the former of these by introducing the question of the role of reputation in enforcing commitments.

Barro and Gordon (1983b: 101) develop their model on the basis of Kydland and Prescott's argument that "people understand the policymaker's incentives and form their expectations accordingly." A policymaker without some kind of commitment device is unable credibly "to commit its course of future action" (Barro and Gordon 1983a: 591) and will end up reacting to developments as they happen in a manner that compromises its intended objective. This is a variant of the problem of politics: because politics always involves the possibility of changing course, it suffers from a commitment problem that may result in, among other things, monetary instability. This problem can be overcome, they claim, "[i]f commitment were feasible through legal arrangements or other procedures." This would eliminate "the countercyclical aspect of monetary policy" (ibid.) and leave 'everyone better off' (ibid: 592).

The problem is how to enforce the rules when policymakers always have the option of 'cheating' by creating 'surprise inflation' (Barro and Gordon 1983b). Paradoxically, the more credible the commitment is in the first place, the greater will be the benefits of cheating. The pre-commitment may thereby introduce additional incentives to cheat. This, in turn, will affect how rational actors behave and reintroduce the initial problem. Thus, even in the presence of a "once-and-for-all binding choice ... there may be no mechanism in place to constrain the policymaker to stick to the rule ... as time evolves" (1983a: 598). Even if the problem of good beginnings could be resolved, in other words, the problem of politics would remain. From this follows that we must not only focus on getting the rules right, but on the "legal or institutional mechanisms to enforce them" (1983b: 108).

One of the crucial elements in this regard is reputation and credibility (1983b: 102). This at the same time introduces an opening for separating the conduct of monetary policy from electoral politics in so far as it introduces a longer time horizon in monetary policy making: "any known finite horizon for the game rules out [reputational equilibria]" (1983a: 605). A discretionary monetary authority that is responsive to political changes cannot credibly commit to a rule for monetary policy because there is no way of committing any possible future government to the rule in the present (1983b: 102-4). Barro and Gordon develop a model of monetary policy based on rules enforced by reputation and the reputational costs of departing from the rules in response to this problem. The notion of central bank independence, however, remains absent from their framework.

The link between commitment to low inflation and central bank independence as a means of enforcing this commitment was forged by Rogoff (1985), who introduced the hypothesis that "dynamic inconsistency theories of inflation ... make it plausible that more independent central banks will reduce the rate of inflation" (Alesina and Summer's 1993: 151). It was, in other words, Rogoff who combined the scientific approach with the German notion of central bank independence. Rogoff, however, presents a solution that is much less demanding both in terms of ensuring the right rules and enforcement-mechanisms as well as in terms of securing general public acceptance of the primacy of price stability.

Rogoff (1985: 1177) suggests that taken to its logical conclusion, the rules-based approach would require the "design of a permanent constitutional reform that absolutely ruled out systematic inflation, and yet left the central bank scope to respond to disturbances." In other words, the rules-based approach could not overcome the problem of beginnings. It would, furthermore, come with certain drawbacks by introducing "the danger that the rule will be difficult to alter after it becomes outmoded" (ibid.). To counter this drawback, Rogoff (ibid.) promotes the 'conservative central banker' as an "alternative, less drastic, response to the stagflation problem": "society can make itself better off by selecting an agent to head the independent central bank who is known to place a greater weight on inflation stabilization (relative to unemployment stabilization) than is embodied in the social loss function" (ibid.).

Reputation plays a key role in Rogoff's framework, but it is a reputation of a very different kind than that discussed by Barro and Gordon. It is not the reputation gained through honouring certain commitments that counts, but the reputation for inflation-hawkishness.[4] In this framework, only the central bank's independence and conservatism are crucial because this allows, as it did in Germany, for a commitment to price stability. Taking advantage of the time-inconsistency model, which presents the pursuit of price stability as being neutral with respect to other economic objectives, Rogoff develops a model that promises to resolve the problem of politics through a relatively minor institutional adjustment. Because there is no trade-off between inflation and unemployment, society's interests can be served unproblematically by an independent central bank systematically biased in favour of price stability. Monetary policy is conceptualised as being distributionally neutral and can, as such, be safely removed from the general political process for expressing societal priorities and values: "society can be made better off by having the central bank place 'too large' a weight on inflation rate stabilization" (ibid:1187).

[4] Rogoff's (1985: 1179-80) model takes advantage of a peculiar incentive of central bank governors: "One incentive that the head of the central bank might have for holding down inflation is that he can thereby improve his standing in the financial community, and thus earn greater remuneration upon returning to the private sector." Rogoff, in other words, seeks to institutionalise the influence of 'shadow principals' (Adolph 2013) in central banking, by "deliberately allowing the central banker to be captured by the financial community" (Lohman 1992: 276).

Measuring Independence

Rogoff (1985: 1187) suggests that his model "may help explain why many countries set up an independent central bank and choose its governors from conservative elements of the financial community." Like Kydland and Prescott and Barro and Gordon, he presents no empirical evidence to support his model. No central banks are studied in terms of their independence or conservatism. The postulated link between central bank independence and low inflation is not supported with reference to historical data. The theory, of course, stands and falls with this question: does central bank independence actually lead to lower observed inflation rates?

While it is perhaps inherently impossible to answer this question conclusively (see, e.g., McNamara 2002; Forder 2005), a veritable academic industry developed around addressing it. The pre-occupation with it has two dimensions. On the one hand, it reflected the search for an institutional solution to the problem of inflation. The theory postulated a causal relationship, but if it were to serve as the basis of institutional reforms, it would have to be proven that it was at least 'tentatively' plausible (Alesina 1988: 17). On the other hand, establishing that the theory 'worked' was crucial because of the sensitive question of the independent central bank's democratic legitimacy. Unelected discretionary power – particularly if it is responsive primarily to the financial community (Rogoff 1985; Lohman 1992) – is democratically questionable. As such, the benefits of the institutional arrangement would have to be established beyond doubt in order not to be rejected all too easily for its lack of democratic legitimacy as, for instance, Nordhaus and Friedman had done. It would, as it were, have to be able to demonstrate a robust 'output legitimacy' to make up for its lack of 'input legitimacy.'

Central Bank Independence and the Political Business Cycle

One of the characteristics of attempts at establishing a relationship between central bank independence and low inflation is the search for an index for measuring central bank independence. That is, what are the determinants of independence and how can the independence of different central banks be compared? The literature on this question is substantial (to name but a few, Bade and Parkin 1988; Alesina 1988; Alesina and Summers 1993; Grilli et al 1991; Cukierman 1992; Eijffinger and Schaling 1993) and it continues to attract attention in academic debates, whether one agrees or disagrees with the basic premises of the approach (see, e.g., De Haan and Eijffinger 2000; McNamara 2002; Forder 2005; Mudge and Vauchez 2016). The different indices refer explicitly to the theory of central bank independence discussed above and attempt to formalise some of the variables identified in the theoretical works. The literature on 'measuring central bank independence' thereby operationalises the theory in order to a) test whether there is empirical evidence to support the claim that independence leads to lower observed inflation, and b) to provide guidelines for reforming or creating new central banks.[5]

Alberto Alesina's "Macroeconomics and Politics" (1988) is one of the most substantive early works in this vein. It develops a justification for central bank independence explicitly based on Barro and Gordon, but in doing so it emphasises an element that was under-developed in the theoretical work: the political business cycle. The original theory of political business cycles hypothesises that macroeconomic policy will tend to be distorted by governmental interventions informed by incentives arising from the electoral process (see, e.g., Nordhaus 1975[6]). When chasing re-election, the theory hypothesised, rational political actors will introduce policies with short-term benefits but long-term costs. The ordinary political process thereby leads to politically induced booms and busts, i.e., economic instability:

> a perfect democracy with retrospective evaluation of parties will make decisions biased against future generations. Moreover, within an incumbent's term in office there is a predictable pattern of policy, starting with relative austerity in early years and ending with the potlatch right before election (Nordhaus 1975: 187).

This somewhat gloomy conclusion seems to point to the necessity of delegating policymaking authority to politically independent bodies. While recognising this, however, Nordhaus (ibid: 188) dismisses it due to the dangers of such bodies being unresponsive to societal wants and bringing uncertain benefits.

To Alesina (1988: 15, 35-38), the key aspect of the political business cycle is its partisan dimension. The problem of committing to price stability is not only related to the electoral mechanism as such, he claimed, but to the fact that parties with different ideological positions compete for governmental power. Credible contestants for governmental power may attach different weights to combatting inflation, thereby generating "suboptimal fluctuations in money supply and in output and unemployment"

[5] This latter aspect is often explicitly addressed in the context of EMU (Alesina and Grilli 1992; Grilli et al 1991; Cukierman 1992, Eijffinger and Schaling 1993).

[6] Kalecki (1943) developed a theory of political business cycle before Nordhaus. He derived the origin of the cycles in the preference of the capitalists for relatively high unemployment due to a fear of the power of the workers to capture surplus value. Kalecki, in other words, did not see the cycle as a product of the political process as such but of the capitalists' control of it (Nordhaus 1975: 181).

(ibid: 39). The response to this problem of politics for monetary stability is to institute "a Central Bank, independent from each *current* government" (ibid., emphasis added). The central bank should, in other words, not be absolutely isolated from politics but specifically from partisan politics. This, Alesina (ibid: 40, emphasis added) suggests, might both ensure commitment and address the democratic shortcomings of central bank independence because it only prevents "*direct* political pressure from each current government."

Alesina restates the problem of politics in relation to monetary issues as involving two elements: periodic elections and competing political parties that hold different opinions regarding the importance of monetary stability. The problem, in other words, is the normal functioning of democracy and the threat that it poses to the stability of monetary values. While this argument may justify central bank independence, it says little about what ensures independence and whether it actually works as hypothesised. In order to test the hypothesis, central bank independence must be measured and compared to observed inflation rates. On the basis of such a measure, then, Alesina (ibid: 41) shows that the two countries that have the greatest central bank independence, Germany and Switzerland, also enjoy the lowest rate of inflation. While Alesina (ibid: 42) notes that this is a correlation, not necessarily a causal link, it appears to confirm the 'central bank independence = low inflation'-thesis.

This and other such findings to the same effect (e.g., Bade and Parkin 1988; Masciandaro and Tabellini 1988) rationalised the Bundesbank's and the SNB's relative success during the Stagflation Crisis. But it raises (at least) two questions: What do these findings show? And what is being measured?

On the first question, Alesina (1988: 42) notes that the direction of the causal link is not clear, if indeed there is a causal link. The "relationship may be due to the fact that countries with a preference for low inflation also prefer more independent central banks." That is, there may be a general political culture in favour of price stability – a *Stabilitätskultur* – in the countries concerned that explains why there is low inflation. The populations of these countries may simply be more willing than others to make sacrifices to achieve price stability. Central bank independence may not be the independent variable. While the theory brings forward a hypothetical causal direction from central bank independence to inflation and formal explanation for why this might be so, the data cannot confirm it. But the data did not falsify the theory either and the supposedly close causal link between central bank independence and low inflation quickly became taken for granted as a basic consensus of the economics profession (Forder 2005).

A similar critique can be advanced of the second question (what is measured?). One of the most important variables in the different indices is the central bank's legal independence. This, of course, includes the government's ability to determine monetary policy but it also includes the legislated objectives of the central bank. In line with the theory discussed above, a specific content is given to the notion independence: how strong is the legal commitment to pursue price stability? This measure reflects both the German and 'Rogoffian' notion of independence being synonymous with inflation-averseness and the legal enshrinement of the objective of price stability could be seen as a measure of how conservative central bankers are likely to be. It is "one of the means by which a government can choose the strength of its commitment to price stability" (Cukierman et al 1992: 354; see also Lohman 1992; McNamara 2002).

In Cukierman's (1992: 374) oft-cited index, this is a central element. A central bank's independence is considered 'perfect' if it has price stability as "the only or major goal, and in case of conflict with government [the central bank] has final authority to pursue policies aimed at achieving this goal." Based almost to the letter on the institutional position of the Bundesbank, the measure is constructed on the basis of what it is trying to explain: the Bundesbank's success (see Forder 1999 for a general critique of the 'measuring' literature to this effect). Indeed, the various available measures of central bank independence agree on little but the independence of the Bundesbank and the SNB (Forder 1999: 29). Not surprisingly, then, the Bundesbank is the clear 'winner' with the SNB a close second. On this basis, there appears to be a strong correlation between central bank independence and low inflation.[7] Conversely, if "price stability is mentioned with a number of potentially conflicting goals (e.g., full employment)" the central bank is considered significantly less independent (Cukierman 1992: 374). Consequently, given that the Fed has a dual mandate – maximum employment and stable prices – it scores lower in terms of independence than the Bundesbank. Cukierman (ibid: 370) explicitly recognises that what he attempts to gauge is "not the independence to do anything that the [central bank] pleases" but "the ability of the bank

[7] Across measures, this correlation seems to disappear once the Bundesbank and the SNB are excluded from the sample (Forder 1999).

to stick to the price stability objective." Central bank independence is thereby defined as a commitment to price stability "even at the cost of other short-term real objectives" (ibid.). The measure, in other words, does not measure central bank independence as such, but, circularly, the political commitment to price stability expressed in legal form (Forder 1999).

Independence is tested not only against inflation but also against government debt and budget deficits. In doing so, Grilli, Masciandaro and Tabellini (1991: 375, emphasis added) find that central bank independence leads "to low inflation, irrespective of political institutions and budgetary problems … having an independent central bank is *almost like having a free lunch*; there are benefits but no apparent costs in terms of macroeconomic performance." The thrust of this conclusion is shared by Alesina and Summers (1993: 151), who conclude that "while central bank independence promotes price stability, it has no measurable impact on real economic performance."

This conclusion corresponds to that of Friedman as well as that of the theory of central bank independence: a monetary policy geared towards price stability does not affect other economic variables. It is, as such, irrelevant for other economic policymaking and can safely, even 'optimally,' be removed from the ordinary political process. This 'truth,' however, should be qualified. The question of the control of the central bank has consequences for the wider question of economic governance: if monetary policy is determined by an independent central bank that refuses to monetise government deficits, then "budget deficits are determined by the Central Bank" (Alesina 1988: 44). An important and intended 'beneficial' effect of central bank independence is its introduction of constraints on the government's room of manoeuvre not only with regard to monetary policy but also in terms of the budget. In doing so, central bank independence presents itself not only as a response to the problem of politics with regard to monetary policy but also with regard to fiscal policy more broadly. Despite 'having no effects' on other economic variables, it creates constraints on economic policymaking.

There is an inherent tension in the literature on this issue. On the one hand, central bank independence is an institutional fix to the specific problem of inflation, without any measurable effects on other economic outcomes. At the same time, however, it is an institutional arrangement that compels governments into acting in certain ways. It is a 'free lunch' paid for with the sacrifice of the government's political freedoms concerning economic policy. It is, as such, a way of strengthening the disciplinary forces that governments face in economic policymaking; a way of making governments 'less dangerous.' While monetary policy can be 'safely' separated from general economic policymaking, the link between the monetary and the broader economic order – highlighted by all three approaches discussed in chapter 1 – does not disappear. Central bank independence is thus simultaneously 'neutral' and significant for constraining a government's economic policymaking capacity in a particular way. Such a paradox can, of course, not be sustained as 'scientific.' As Gunnar Myrdal would perhaps have remarked, its proponents have left behind the realm of science and entered that of ideology and politics.

The findings of the 'measuring' literature are presented as having "important implications for the ongoing debate over the feasibility and appropriate sequencing of the European monetary integration" (Grilli et al 1991: 375-6). In short, it provides empirical support for the 'monetarist'[8] path to economic and monetary integration: a monetary union with an independent central bank can successfully precede full economic (and political) union because a single monetary policy will have the effect of constraining the general economic policies of the Member States, thereby paving the way for the necessary economic convergence.

Conclusion: The Elimination of the Political Question

In the German context, the authority of the central bank was to be founded upon a broad societal consensus on the need for isolating the conduct of monetary policy from political control. The theoretical and empirical literature on central bank independence introduced a different or additional foundation: *science*. Logically and empirically, the literature claimed, central bank independence was superior to politically controlled central banks. Based on the principle of central bank independence established by the Bundesbank, both the theoretical and the measuring literature sought to replace the political question of the objectives of monetary policy with the more technical question: what works? The political question, in turn, had to be abandoned because its mere presence in political economic life would lead to suboptimality and instabilities.

[8] 'Monetarist' refers here not to monetarism as an economic theory but to the perspective that European monetary integration would engender subsequent economic convergence and integration and could therefore precede 'deeper' integration efforts. In debates on EMU it contrasted with the 'economist' perspective, which considered general economic convergence to be a necessary precondition for monetary union.

In Keynes (see chapter 1), the technical question was crucial to the question of the structure of the central bank. No political choice about economic policy made sense without an effective technical execution of the monetary policy supporting it. But the political question about the objectives of monetary policy could, and indeed should, never be abolished. It ought to inform elections and the daily activity of democratic governments. With central bank independence defined as the single-minded pursuit of price stability, this political question is entirely eliminated, leaving only the technical question behind. Central bank independence is a way of eliminating the continuous possibility of politically determining the order and orientation of monetary policy and replacing it with a distinctly 'economic' rationality, which promises to contribute to economic welfare only through distorting economic processes as little as possible.

While the causal link between central bank independence and low inflation cannot be established beyond reasonable doubt, the theoretical and empirical literatures nevertheless offer a justification for central bank independence: it provides an institutional means of constraining the potentially destructive power of politics in relation to the economy without being associated with any significant costs itself. What the 'scientific' grounding does is to present central bank independence as (economic) reason's conquest of the (political) passions. The 'scientific' justification for central bank independence thereby 'confirms' the message conveyed by the 'myth.' But it also adds an additional layer to it. It claims that while inflation may become catastrophic, this is not necessarily the most relevant aspect of it. Inflation is also quite simply unnecessary and counterproductive. If central bank independence was perceived as entailing certain sometimes difficult sacrifices in the name of a higher objective in the German context, this need no longer be the case. It is the closest thing economic life comes to 'a free lunch.'

Except, of course, it isn't. Depoliticising monetary policy and rendering it outside partisan control does not make it non-ideological, unpolitical or unpartisan (see McNamara 2002). As is recognised in the literature itself, for instance, the political dedication to low inflation is more commonly a feature of conservative political programmes than of more progressive ones. Low inflation, furthermore, has significant distributional consequences by benefitting creditors more than debtors. Such distributional consequences can only be assumed away if price stability is somehow considered the 'natural state' of the economy or if any inflation is seen as a prelude to societal collapse. This underlines the understanding of politics and policymaking that informs the theory: politics is not an adequate way of expressing the people's wishes. It is an inherently distortive force, particularly as it relates to economic and monetary issues. While it cannot be avoided entirely, it must be made less harmful. Central bank independence promises a way of achieving this that requires no grand constitutional programme or new beginning. In the EMU, however, central bank independence *was* introduced in a grand constitutional programme that constituted a new beginning for its citizens and Member States. In the process, central bank independence unavoidably became a *constitutional* issue. This is the theme of the next chapter.

Chapter 4

The Constitution of the European Central Bank

Introduction

"When the Maastricht Treaty was discussed and the statute for the future ECB was debated," according to Otmar Issing[1] (cited in Jeffrey 2016), "a few strands came together." On the one hand, "an increasing number of studies showed that the degree of price stability coincided with the independence of the central bank. So the mood for independence was supported." But this 'mood' did not come from such studies. It came, rather, from the fact that "the Bundesbank was independent" and "had helped to ensure monetary stability in Germany since the creation of the Deutschmark in 1948." What came together in the creation of the ECB was "[a] combination of empirical evidence and an insistence by Germans" on the institutional form of independence enjoyed by the Bundesbank. What came together, in other words, were the mythical and the scientific groundings of central bank independence.

Beyond establishing that the ECB would become independent, however, this 'mood' says little about the actual institutional form of the ECB. While the principle of the Bundesbank's independence had to be retained, its exact institutional form and foundation of authority could not be replicated at the European level. While the problem of politics in relation to money had to be addressed in a similar manner, a different approach to doing so had to be adopted. This chapter analyses the peculiar constitutional structure that resulted from this approach.

A basic premise of both the German notion of central bank independence and the theory of central bank independence is that there is a government to be independent from. In the European context, however, there is no such government but rather a multiplicity of political authorities at different levels of government. The constitutional position of the ECB would therefore have to differ from other central banks. If the

[1] Issing was the first Chief Economist of the ECB and was a Member of the Executive Board 1998-2006. Prior to this, he served on the German Council of Economic Experts and on the board of the Bundesbank.

Bundesbank's independence, for instance, made it 'a state within the state,' as Chancellors Adenauer and Schmidt both complained, the same accusation cannot be levelled at the ECB. It would have to stop at 'a state,' which would hardly be satisfactory or particularly accurate. In terms of its position within the governmental framework of the Eurozone, the ECB is not the European Bundesbank for the simple reason that the Eurozone is not, at least not in public law terms, the German state on a larger scale. Focussing on the question of differences in the degree of independence risks overlooking this basic fact and its significance for the general EMU constitution.

Similarly, while the US Federal Reserve System was often presented as a source of inspiration for the 'Founding Fathers' of the ECB, they ended up choosing a different path. As noted in chapter 2, the Werner Report's vision of EMU advocated a political structure within economic policy quite similar to that of the US. The central bank's position within this structure would have been similar to that of the Fed, which describes itself as 'independent within government.' This description inscribes itself in a tradition of thinking about the organisation of governmental powers that reflects, as I highlight in this chapter, central Montesquieuian ideas. In this model, the political control of monetary policy is not abolished, but is mediated through a complex structure of checks and balances. Within this structure, what is sought is not the elimination of politics, but the prevention of monetary policy being dominated by one set of interests, partisan or otherwise. The structure seeks the mediation of the exercise of sovereign power with respect to monetary policy.

The framers of the EMU in the Delors Committee, as discussed in the next section, consciously rejected this model. Building on, but modifying considerably, the Bundesbank model, the Maastricht Treaty constituted the ECB as an independent body exercising sovereign powers checked by Treaty law. As such, the ECB formalised the notion of being the direct monetary representative of the people discussed in relation to the Bundesbank in chapter 2. In doing so within the particular constitutional structure of the Eurozone, I highlight, the ECB's institutional form addressed the problem of politics in relation to money in a manner similar to that which Hobbes proposed for overcoming the problem of politics in general. Within the realm of monetary affairs, the ECB was set up to eliminate the potentially destabilising effects of conflicting or divergent political opinions and practices with regard to monetary policy. Through its transnational constitutional depoliticisation, monetary policy was to be conducted beyond the reach of ordinary politics within, as well as beyond, the state. In this particular sense, the Maastricht Treaty achieved the ordoliberal notion of founding a transnational monetary order in a constituent moment. That being said, it addressed a question the ordoliberals never fully answered: the question of transnational public authority.

The analysis that follows can be described as 'idealist' as opposed to 'materialist.' That is, it focusses not on the 'real' legitimacy of the institutions discussed or on whether the structures described adequately achieve what they claim to do in terms of expressing the people's will. While it may be true, for instance, that central banks act in ways that primarily favour holders of financial assets over regular wage earners, this cannot inform their justifications. As public institutions they must claim to serve the public interest, not the private interests of particular sectors or groups in society. The general public is always seen as the 'master' that such public institutions 'serve.' How they are institutionally set up to serve the public, however, differs.

Monetary Union and the Transnational Problem of Politics

The European monetary union was intended to help complete the single market for capital: "With full freedom of capital movements and integrated financial markets incompatible national policies would quickly translate into exchange rate tensions and put an increasing and undue burden on monetary policy" (Delors Report 1989: 11). The problem at the time was that individual Member States could conduct economic and monetary policies that were potentially in conflict with the realisation of the single market. The problem was the continued political freedom of Member States to seek the realisation of domestic goals that jeopardised the achievement of common aims.

The problem of politics faced by the European Community at the time was not only or mainly the problem that monetary value is simultaneously grounded in and threatened by politics. It included this problem and reflected the same logic, but it was broader in scope. The problem was that the realisation of a certain shared agenda would have to be founded on a political agreement between the contracting parties, but this agreement would thereafter be under constant threat from the politics internal to each of those parties: "Decision-making authorities are subject to many pressures and institutional constraints and even best efforts to take into account the international repercussions of their policies are likely to fail at certain times" (ibid.). The problem was thus similar to the time inconsistency problem discussed in chapter 3: relying on voluntary cooperation in the present would jeopardise the achievement of the common good in the future because there would be no way of securing the cooperation of future decision-making authorities without institutional controls. There was a "need for more binding procedures" (ibid.).

From Werner to Delors

When the Delors Committee was given the task of preparing a report on how to achieve EMU following the adoption of the Single European Act in 1986,[2] the 1970 Werner Report was revisited. While the Delors Committee agreed with the general objective that Werner outlined for monetary union, the institutional approach was deemed outdated and to have suffered from "intrinsic weaknesses" (Baer and Padoa-Scioppa 1989: 56). One such weakness was its "lack of clarity on independence"[3] and on the distribution of decision-making responsibility for monetary policy (ibid: 57).

The Werner vision of EMU entailed a comprehensive *gouvernement économique* at the European level, which would perform an active and interventionist role in shaping economic conditions and policies across the Union. This reflected the largely Keynesian consensus of the post-war years; it embraced political authority in the ordinary conduct of economic and monetary policy. This meant that the central bank's independence would be limited and that final responsibility for monetary policy would remain with political actors. Baer and Padoa-Schioppa[4] (1989: 58), however, highlighted that the stagflation had "destroyed" the consensus that informed Werner. Now, as discussed in chapter 3, "a new consensus" had emerged which "emphasized the need for monetary arrangements that promote and preserve stability" (ibid.). In terms of economic policy, furthermore, emphasis had shifted towards "the supply side of the economy and structural policies" (ibid.). In institutional terms, this neoliberal turn

[2] The Single European Act was the first major reform of the 1957 Rome Treaty and is considered to have sparked the momentum necessary for moving towards EMU in 1992. It was motivated by the need to complete the single market and introduced a number of institutional changes that would make this possible by 1992, including the introduction of majority voting in a number of areas relating to market integration (Cowles 2012).

[3] From "Comments on "The Werner Report revisited," Tommasso Padoa-Schioppa in correspondence with Henry Joly Dixon, 28 July 1988, Historical Archives of the European Union (HAEU), TPS-184.

[4] Gunter Baer and Tommaso Padoa-Schioppa participated in the work of the Delors Committee as rapporteurs and were instrumental in coordinating work on and drafting the report.

entailed the abandonment of the idea of a *gouvernement économique*. Focus turned instead to the question of the monetary policy regime.

According to the Delors Report (1989: 14), economic policy could remain a Member State responsibility "within an agreed macroeconomic framework and [...] subject to binding procedures and rules." This element reflects the ordoliberal approach to economic policy being based on rules rather than discretionary political authority. While a political decision is necessary in order to establish and maintain the framework conditions (see Selmayr 1999: 378), the exercise of public power should retreat as much as possible from an active involvement in steering economic activity. As Röpke (1954: 250) argued in the context of discussing the possibility of transnationalising economic governance, "there would be little advantage in taking away from national Governments the sovereign right of collectivist economic control for the sole purpose of transferring it to an international authority." In relation to monetary policy, however, the Delors Report (1989: 14) does not emphasise rules and procedures but rather a transfer of "decision-making power" to "one decision-making body." Delors thereby incorporates the notion of central bank independence discussed in the previous two chapter: the central bank should be an independent actor with final decision-making authority within monetary policy. This decision-making body, in turn, ought to be single-mindedly devoted to the "*stability of the value of money*" which was to be the "prime objective of European monetary policy" (Pöhl 1989: 137, emphases in original). Reflecting the German approach to central banking, then, this "overriding commitment ... must be safeguarded through the central bank's *independence* of instructions from national governments and Community authorities."

In terms of institutional structure, there was, in short, a significant shift of emphasis from Werner to Delors. Whereas Werner emphasised a comprehensive economic policy formulated at the European level, the emphasis was now on a single monetary policy acting as an externally given constraint on the coordinated but separate economic policies of the several Member States. Delors's EMU promised to accomplish this by leaving fiscal policy in the hands of Member States but subject to a body of rules, while introducing a politically independent central bank pursuing price stability.

The Question of Transferring Sovereign Powers

The question is: why was the solution to the problem of divergent national economic policies sought in the creation of a single monetary authority and a set of fiscal rules rather than in a comprehensive 'economic constitution' enforced by a common public authority? There were, of course, practical political obstacles to creating coercive public authority at the European level. But the constitution of an economic order without comprehensive political authority also had a distinct normative dimension to it (Selmayr 1999: 378; Zilioli and Selmayr 2000: 627). This is perhaps best captured in a January 1990 speech by Karl Otto Pöhl, then President of the Bundesbank. The EMU, according to Pöhl, would introduce

> binding arrangements ... in major sectors which make unilateral action more difficult or impossible for member states and which set a minimum standard of 'good conduct' for them, particularly in fiscal policy. *This will necessitate the surrender of sovereignty by the individual member states, but this need not mean corresponding gains in Community authority.*[5]

The point of the 'E' in EMU, in other words, was to eliminate a set of existing policy prerogatives rather than to transfer them; the Community would not assume the governmental capacity surrendered. Once the rules and procedures were put in place, it would be simply a question of following them with minimal political discretion. The Community would have no direct policymaking power, no sovereign powers, within the sphere of general economic policy.

The 'M', on the other hand, would "transfer the decision on future monetary policy to an independent Community institution"[6] which "must have the weapon which every efficient central bank must have: *the monopoly of money creation.*"[7] It would involve a "transfer of sovereign rights to a supranational institution."[8] The "Member States transferred their sovereignty with regard to monetary policy to the Eurosystem" (ECB 1999: 55). The sovereignty surrendered by the Member States with respect to monetary policy would *not* remain unclaimed but would be assumed by the ECB. This

[5] Pöhl, K.O. "Herr Pöhl discusses the basic features of a European monetary order," speech in Paris, 16 January 1990, p. 1, emphasis added. HAEU, TPS-193. Pöhl is thus in agreement with Röpke's 1954 notion that "To diminish national sovereignty is most emphatically one of the urgent needs of our time. But the excess of sovereignty should be abolished instead of being transferred to a higher political and geographical unit."

[6] "Herr Pöhl discusses," p. 5.

[7] Ibid., emphasis in original.

[8] "Herr Pöhl examines issues relating to the creation of a European central bank," *BIS Review* No. 93, Basle, 13 May 1988, p. 3. HAEU, TPS-184.

was justified by the fact that the advantages of independence apply to the Community "to an even greater extent than to national states because in a confederation such as the EC there is always a tendency to orientate oneself towards averages and compromises, but that is the worst possible compass for monetary policy."[9] That is, the central bank must be above the ordinary haggling of intergovernmental policymaking: "a modern, efficient central bank system must be independent of the instructions and pressures of national governments and European institutions" because "[p]rotracted consultation and concertation processes are not consistent with the requirements of the financial markets which need fast and flexible reactions by the central bank."[10] The imperatives of the governmental activity itself demand depoliticised but efficient decision-making. The markets demand decisive sovereign authority.

In reflecting on the institutional structure of its proposed EMU, the Delors Report (1989: 13, emphasis in original) noted that it would have to respect the plurality of the Member States by allowing them "a degree of autonomy in economic decision-making." Pöhl's notion of an asymmetric sovereignty transfer/surrender was justified with reference to "[t]he existence and preservation of this *plurality*" (Delors Report 1989: 13). As such, "it would not be possible simply to follow the example of existing federal States" as the Werner approach had done. "[I]t would be necessary to develop an innovative and unique approach" (ibid.). The EMU would have to develop an institutional structure that differed from any existing.

The Fed: 'Independent within Government'

How did the EU's 'innovative and unique approach' differ from existing approaches? To answer this, it is necessary to have an idea of the approaches that were rejected. Because of their federal structures, the two most relevant were considered to be the German and the American approaches to the question of the relationship between the central bank and government. As the German approach was discussed in chapter 2, this section focusses only on the US approach and the institutional form of the Fed. Both, however, serve as grounds of comparison in the section on the ECB below.

The Fed's Foundation of Independence

[9] "Herr Pöhl discusses," p. 3.
[10] Ibid.

According to a former Vice-Chairman of the Fed's Board of Governors, Alan Blinder (1996: 8-9)[11],

> a central bank is a repository of enormous power over the economy. And if the central bank is independent, as the Federal Reserve is, this power is virtually unchecked. Such power is a public trust, assigned to the bank by the body politic through its elected representatives. In return, the citizens and their elected representatives have a right to expect – indeed to demand – that the bank's actions match its words.

In line with the notion of central bank independence, the Fed's powers are exercised independently of political instructions. They are 'unchecked' in the sense that no political body can (ordinarily) veto the Fed's decisions. The Fed, however, is only '*virtually*' unchecked. Its power is derived from Congress and the President ('elected representatives'), who in turn derive their governmental authority from the 'body politic.' From this structure of authorisation and delegation follows a certain right: the right to demand something from the Fed. In the final instance, then, the Fed is accountable to, and controlled by, the people's elected representatives from whom it derives its 'enormous power.'

On the basis of this structure of authorisation and accountability, the question "Who does the Fed Serve?" (ibid: 2) can be answered meaningfully only by recognising that its "constituency can only be the entire nation" (ibid: 4). The question is how the relationship between the Fed and the nation is given institutional form.

In accordance with the theory and empirical evidence on central bank independence, Blinder (ibid: 9, emphasis in original) claims that the nation is best served by a central bank that is "free to decide *how* to pursue its goals" and whose technical decisions are immune to being "countermanded by any other branch of government." Monetary policy demands "[f]arsightedness and patience," none of which are "the strong suits of the political process in a democracy" (ibid: 10). Thus, "many *governments* wisely depoliticize monetary policy by delegating authority to unelected technocrats with long terms of office, thick insulation from the hurly-burly of politics, and explicit instructions to fight inflation" (ibid: 10, emphasis added). Governments thereby follow the reasoning

[11] Blinder's should of course not be understood as the authoritative account of the Fed's form of independence. It reflects, however, a common way of conceptualising the Fed's independence. It may not be adequate in terms of the wider governmental role of the Fed because it focusses narrowly on the Fed's monetary policymaking role (see Conti-Brown 2016, 2017), but since monetary policy is the focus of this thesis, the broader inadequacies of the conception are to a significant extent irrelevant for the present purposes.

"which led Ulysses to tie himself to the mast. He knew he would get better long-run results even though he wouldn't feel so good about it in the short run!" (ibid: 11). In accordance with the discourse discussed in chapter 3, central bank independence is a Ulysses contract. It allows 'us' – voters, public, politicians – to conquer our future irrationality in a moment of clarity (see Conti-Brown 2017).

While the logic of separating monetary policy from the ordinary political process is similar to that found in the discourse of the German central bankers, there is a telling difference in the way Blinder presents it. In his presentation, it is the government that introduces central bank independence as a self-constraint. While in a formal sense, both the Bundesbank and the Fed derive their authority from ordinary legislation, the Bundesbank sought to ground its authority in something more foundational than this so that its independence would be immune from changes of opinion within the Bundestag. The question is whether the same can be said for the Fed. That is, what is the Fed's relationship to the broader political system of the US federal government?

In the US system of government, one must differentiate between different moments or 'stages' of democracy: "certain decisions are reserved to what is sometimes called the 'constitutional stage' of government, rather than left to the daily legislative struggle" (Blinder 1996: 11). The rationale for such a differentiation, Blinder suggests, is to ensure that "basic decisions" will "be hard to reverse." This distinction between extraordinary and ordinary politics – between ordinary and higher lawmaking (Ackerman 1993) – applies "[s]imilarly with monetary policy" (Blinder 1996: 11). However, despite invoking it, Blinder does not make the claim that the Fed's independence was settled at the constitutional stage (which would, in any case, be wrong). Rather, the Fed's dual mandate and independence are derived "from authority delegated by Congress" (ibid: 11). Its authority is not derived directly from the *constituent power* of the nation but from the *constituted power* of the legislative branch of government.

This, in turn, has important consequences for the institutional relationship between the Fed and the nation. Congress' delegation of authority to the Fed "makes it very difficult, *but not quite impossible,* for elected officials to overrule or influence a monetary policy decision" (ibid: 11, emphasis added). Whereas the conduct of monetary policy is insulated from ordinary politics, the general framework of the monetary order, including the Fed's independence and mandate, is not. The Fed can thereby be overruled should elective representatives so wish: “Central bank decisions should be reversible by the political authorities, but only under extreme circumstances” (ibid: 12). While such mechanisms of ‘political control in the last resort’ “have never been used in the history of the Federal reserve … America is wise to have them in place nonetheless. *Delegated authority should be retrievable, not absolute*” (ibid: 13, emphasis added). The Fed is, as such, open to consequential scrutiny by the nation’s elected representatives in Congress. This as well as the fact that the President appoints the Members of the Board of Governors confers political legitimacy and authority on the Fed (ibid: 12). The institutional relationship between the nation and the Fed is mediated by political representatives and the political responsibility for the Fed’s actions or inactions remains ultimately with them.

The Fed’s foundation of authority in a relationship of delegation between the people, elected political representatives and the Fed informs the nature of the Fed’s political accountability. This is reflected in a number of ways. For one, unlike the Bundesbank’s, the Fed’s independence from political authorities is not explicitly enshrined in law but is a product of custom, certain structural characteristics and agreements such as the 1951 Treasury-Fed accord, which ended the wartime Presidential control of the Fed (Hetzel and Leach 2001). Most importantly, the Fed is independent in making monetary policy decisions and its budget is not subject to the congressional budgetary process. Its independence, however, is limited. At a fundamental level, it is limited by Congress’ constitutionally enshrined right “To coin Money, [and] regulate the Value thereof” (article I.8.5 US Constitution). This right is explicitly invoked in section 31 of the Federal Reserve Act, which stipulates that Congress retains the “right to amend, alter, or repeal this act.” Combined with Congressional oversight hearings, this final authority over the Fed gives Congress a powerful means of holding the Fed to account and a considerable degree of influence over the Fed’s monetary policy (Weintraub 1978; Grier 1991; Binder and Spindel 2017).

The Fed’s independence is also qualified through its relationship with the executive branch. The most direct and formalised way for the President to influence the policy direction of the Fed is through the presidential appointments of the seven-member Board of Governors. The 14-year, staggered, and non-renewable tenures of the Board’s members are supposed to ensure that a president can only appoint two members of the Board in any one term (Hackley 1972). A single term president can therefore ideally not 'pack' the Board. The President's discretion in this regard is further limited through the requirement that the Senate approve the appointees (section 10.1 Federal Reserve Act). However, the President (and Senate) is also responsible for designating who among the Board members are to be Chair and Vice-Chairs. These positions, in particular the Chair, are the most influential in terms not only of agenda-setting power in the Federal Open Market Committee (FOMC[12]), but also in terms of controlling the Fed's bureaucratic resources (Knott 1986; Chappell et al 2004). The key to the President's power over the Fed in this regard is that these designations are relatively short (four years) and they are renewable (section 10.2 Federal Reserve Act). This means that every full-term President will hold a certain sway over the agenda-setting power within the Fed and can exercise pressures on its leading personalities through the appointment process (Chappell et al 1993; Saeki and Shull 2003; see, however, Keech and Morris 1997). In addition to the President's power of appointment, the Treasury retains the right to decide in situations of conflict between the Fed's and the Treasury's responsibilities and prerogatives (Section 10.6 Federal Reserve Act). In contrast to the Bundesbank, the question of final authority in situations of conflict is explicitly addressed and settled in favour of the political representatives. Political authorities thereby retain considerable scope for influencing the Fed's conduct of monetary policy (Wooley 1984; Stein 1994; Havrilesky 1988; see also chapter 3).

The significance of such qualifications of independence is attested to in the history of the Fed (see, e.g., Friedman and Schwartz 1963; Sylla 1988; Wood 2005; Bernholz 2013; Humpage 2014; Garbade 2014). The Federal Reserve Act has been amended multiple times since it was signed into law by President Wilson in 1913 to account for small or large changes in the opinions on, and perceived necessities of, central banking in the US. Two of the most significant of these changes were the 1933 Banking Act (part of the New Deal) and the Federal Reserve Reform Act of 1977, which introduced the dual mandate of maximum employment and stable prices.

[12] The FOMC is the highest decision-making body on monetary policy within the Fed. Its membership counts the seven members of the Board as well as five of the Presidents of the 12 Federal Reserve Banks on a rotating basis. The President of the New York Fed, however, holds a permanent position on the FOMC. The Chair of the Board is also the Chair of the FOMC.

The executive power's influence over the monetary order and the orientation of monetary policy has also proven substantial over time. With the 'Nixon Shock,' for instance, President Nixon radically altered the basic monetary order of the US (and the world) and thereby the conditions under which the Fed exercised monetary policy. But this was only Nixon's most dramatic assertion of presidential power. When Nixon entered office in 1969 the then Chairman of the Board, William McChesney Martin, opposed the President's wish to lower interest rates and expand the money supply. Consequently, Nixon did not to renew Martin's term but installed his friend, Arthur Burns, as Chairman, hoping that he would prove more receptive to Nixon's point of view, which he reluctantly did (Wood 2005: 361-3).

Another example, which became a turning point not only in the history of the Fed but of monetary policy in general, was President Carter's appointment of Paul Volcker to the Chairmanship in 1979. Volcker, according to his own testimony, made it clear that he did not intend to compromise his dedication to "an independent central bank and the need for tighter money" (Volcker as cited in Wood 2005: 375). Hailing this as the victory of central bank independence overlooks that this was precisely why Carter appointed him. Mandated by the office of the highest political representative of the nation, Volcker shifted the theoretical basis of the Fed's operations from one inspired by Keynesianism to one inspired by monetarism (Tobin 1981; McCallum 2008). Without presidential backing, however, it is doubtful whether the Fed would have had the legitimacy to commence on a monetary policy course whose effects were so dramatic that the resulting recession often carries Volcker's name (Wood 2005: 378) and is widely understood as marking the advent of the 'neoliberal revolution' (S. Hall 2011; Streeck 2013, 2014).

The Governmental Role of the Fed

The close relationship between the Fed and the political branches of government as well as the continuous possibility of legislative or executive interventions in the activities of the Fed is what has prompted the description: "independent – not independent of Government, but independent within the structure of the Government" (McChesney Martin 1957: 2). Unlike the Bundesbank, which was explicitly made "independent of instructions from the federal government" (article 12 of the original *Bundesbankgesetz*, my translation), the Fed is seen as a part of the government and, in stark contrast to the

Bundesbank, only its detractors would claim that the Fed is unaccountable to political representatives. As the head of the Board's legal division at the time noted, "[t]here is at least one proposition as to which there can be no dissent: the Board of Governors of the Federal Reserve System is an independent establishment of the Federal Government, 'a part of the Government itself'" (Hackley 1972: 194). According to McChesney Martin[13] (1957: 2-3), this notion is crucial to understanding the Fed's independence:

> [It] does not mean that the reserve banking mechanism can or should pursue a course that is contrary to the objectives of national economic policies. It does mean that within its technical field, in deciding upon and carrying out monetary and credit policy, it shall be free to exercise its best collective judgment independently ... The Reserve System is an instrument of Government designed to foster and protect the public interest.

The Fed still uses the phrase "independent within government"[14] and characterises itself as an "independent government agency" (see also Humpage 2014). In doing so, it inscribes itself within the American tradition of independent agencies.

The independent government agency is a specifically American innovation in thinking about administrative power.[15] It goes back to the founding of the Interstate Commerce Commission in 1887; "an event that profoundly altered the system of separated powers" because it introduced into the American system of government "a strange amalgam of executive, legislative, and judicial powers, combining functions of all three branches yet the creature of none" (Miller 1986: 41). According to Rosanvallon (2011: 77), it became "the symbol of a new approach to public administration" and "marked a break with the traditional ideas about the role of the bureaucracy." Since then, a multitude of such agencies have been established, including the Fed in 1913.

Reflecting Blinder's justification of the Fed's independence, Rosanvallon (2011: 77) argues that informing the introduction of independent government agencies is a concern with "'keeping politics out' of the business of regulating a sector of the economy of vital importance to the nation's general interest." At the same time, the creation of an

[13] The longest serving Chairman of the Board, serving between 1951-1970.

[14] See https://www.federalreserve.gov/faqs/about_12799.htm [last updated 1 March 2017, accessed 6 December 2019].

[15] It has subsequently been transferred to Europe and, somewhat controversially, to the EU (see Shapiro 1997; Everson 1995; Majone 1997, 2002; Thatcher 2002; Thatcher and Stone Sweet 2002; Rosanvallon 2011).

administrative apparatus specifically dedicated to a particular policy area allows for improving the quality and effectiveness of government by subjecting it to specialised expertise. Informing the notion of the independent agency is the idea that the government of some spheres of societal life is enhanced through its separation from direct (partisan) political control. While government, broadly construed, ought to remain responsible for the policies concerned, the formulation and execution of those policies ought not to be carried out directly by the non-specialised branches of government because these lacked the necessary expertise, on the one hand, and were liable to be biased in favour of certain interests, on the other.

Independent government agencies have been the subject of considerable political contestation and constitutional scrutiny over time, particularly in the 1930s – in the context Roosevelt's radical expansion of the powers of the federal government – and again in the 1980s – in the context of Reagan's assertion of presidential power to reorient public policy along ideological lines (Foote 1988). The controversy over these agencies derives from the difficulty of reconciling them "with a tripartite structure of government" (Miller 1986: 43). The independent agency, it seems, threatens to introduce an ill-defined, 'headless fourth branch of government' created "[w]ithout too much political theory" (Landis as cited in Miller 1986: 43) and perhaps even against the normative logic of the Montesquieu-inspired separation of powers (Koch 1996: 421). Despite such objections, however, the independent agency has resisted attacks and the 'three great constitutional branches of government' have accepted their existence as useful for a number of reasons. One of the reasons is that the independent agency can function as a means of checking the power of the other branches of government (Strauss 1984). In so doing, it does not necessarily compromise the Montesquieuian system of checks and balances between the different governmental powers. It may even enhance it.

Independent agencies may enhance the balance of powers through the relationship between their coming into being and their operation once in place. Congress creates the agencies and has the power "to vest substantial discretion in agency heads, and to provide that action by the agency head is a necessary precondition to the effective exercise of the authority in question" (Miller 1986: 44). Congress, then, can create independent agencies in order to limit the power of the President or, more precisely, to orient and give direction to, and thereby bypass the President's direct control of, the exercise of executive power. That being said, the President retains "the constitutional power to direct the [agency] officer to take particular actions within his or her discretion or to refrain from acting when the officer has discretion not to act" (ibid.). This (ultimate) subjection of the concrete activities of the independent agency to executive direction reintroduces the President's ability to check the power of Congress (see Datla and Revesz 2013).

The key motivation for creating such agencies was not to make them independent of Congress, Courts, or executive. It was not even to make them independent of partisan politics as such. The intention was, rather, to make them "[i]ndependent of control by *a single political party*" (Shapiro 1997: 279, emphasis added). Thus, the "American independent agencies have been independent in the special sense of being isolated from the *immediate control* of either of the two major political parties rather than being independent of the three great constitutional branches" (ibid: 280, emphasis added). In other words, the independent agency was instituted to ensure that no one partisan position could dominate and exercise the full executive powers of the state within certain spheres of policymaking. Such agencies should be understood as being "somewhat separated from politics because of their exercise of technical expertise but not too separated" (ibid.).

Accordingly, the independence of the Fed should be seen not as a way of depoliticising monetary policy absolutely but as a way of mediating the political exercise of governmental power with regard to monetary policy. On the one hand, it ensures a degree of specialisation which would be all but impossible should elected representatives be responsible for monetary policy. On the other, it ensures a certain distance from the ordinary party-politics of the elected branches of government. It ensures that monetary policy is never directly controlled by any one party and conducted for purposes internal to that party itself. It ensures, as it were, that the exercise of sovereign power with respect to monetary policy is never direct but is mediated through a complex institutional setup of checks and balances.

Montesquieu and the Mediation of Sovereign Power

An independent agency such as the Fed entails a double mediation of sovereignty. On the one hand, its foundation of authority in the nation is not direct but is mediated though political representatives. This gives elected representatives the power to control the objectives and activities of the Fed through the ordinary political process. On the other hand, because of the Fed's independence elected representatives are not directly in control of monetary policy. Their influence is mediated by the Fed. The exercise of sovereign powers with respect to monetary matters by elected representatives is thereby channelled through and mediated by the Fed as an intermediate power. This dual mediation is as essential feature of the Fed's institutional form and means that it cannot be considered a direct, organic representative of the people in the manner of the Bundesbank.

As hinted at above, the notion of intermediation in the activity of governing is not necessarily antagonistic to the Montesquieuian notion of moderate government arising from the institutionalised 'arrestation of power by power.' It may, in fact, be one of its essentials. This, at least, is Carl Schmitt's (2014 [1921]: 83) reading: "Montesquieu's state theory is only comprehensible if one bears in mind that what was referred to in the most crucial parts of his treatise was the idea of intermediate powers." The intermediate powers, however, are referred to not in the context of discussing the separation of powers but in discussing 'laws in their relation to the nature of monarchical government' (*The Spirit of the Laws,* bk. 2, ch.4). For republican government, the relevance of the principles of monarchy stems from the republic's dual weakness: "If a republic is small, it is destroyed by a foreign force; if it is large, it is destroyed by an internal vice" (bk. 9, ch. 1). To secure its viability, the republic must be complemented by principles from the other 'pure' forms. In this regard, Montesquieu gives special attention to "a kind of constitution that has all the internal advantages of republican government and the external force of monarchy ... the federal republic."

While the monarchical executive office is introduced in the context of external security, Montesquieu's discussion of its place within the separation of powers underlines that its role and functions extend to the domestic sphere. Executive power, Montesquieu claims, "should be in the hands of a monarch, because the part of the government that almost always needs immediate action is better administered by one than by many" (bk. 11, ch. 6, p. 161).[16] Within the framework of the separation of powers, the executive power derives its relevance from its ability to act on "matters of political necessity" (Loughlin 2003: 49). The ever-present possibility of circumstances

[16] In transferring the concept of monarchy to a republican context, it is important to stress that what is referred to is the narrow meaning of the term, the 'rule of one,' rather than kingship.

unforeseen by the law introduces the need for an office capable of direct and immediate action. The executive thereby introduces a permanent but domesticated dictatorial power (*The Spirit of the Laws*, bk. 11, ch. 6, p. 159, bk. 12, ch. 19; see also Schmitt 2014: 87-8; Rossiter 1948; Balkin and Levinson 2010). It allows governmental power to "reach where law cannot, and thus supply the defect of law, yet remain subordinate to law" (Mansfield 1989: xvi; see also Rousseau 2012: 118).

The prerogative of the executive office to exercise sovereign power directly in legal grey areas, however, introduces the danger of arbitrariness. For Montesquieu, this danger can be alleviated through the mediation of the exercise of sovereign power: "Intermediate, subordinate, and dependent powers constitute the nature of monarchical government" (bk 2, ch. 4, p. 17). This means that even in a political system where the monarch "is the source of all political and civil power" (bk 2, ch. 4, p. 17), i.e., where there is one undivided source of public authority, the monarchical office is not free to execute its will arbitrarily. It is, essentially, a definitional question for Montesquieu: in order to be considered monarchical rather than despotic, the rule of one "necessarily assume[s] mediate channels through which power flows; for, if in the state there is only the momentary and capricious will of one alone, nothing can be fixed and consequently there is no fundamental law" (bk 2, ch. 4, p. 17-18). Such mediate channels need to be as "permanent" as the monarchical office itself and "have the people's trust" (bk 2, ch. 4, p. 19).

While Montesquieu's republic – where the powers of the different estates, the different political classes, 'arrest each other by the arrangement of things' (bk. 11, ch. 4) – would not seem to need intermediate powers, this is only the case in conditions of political inequality. Here different political classes derive their right to govern and their power to do so from independent sources (birth, wealth, numbers). In conditions of political equality, where all political power emanates from one source ('the people'), the question of intermediate powers is reintroduced. That is, when the divine right of kings is secularized and the hereditary political privileges of the nobility lose political meaning, there can be no 'arrestation' of power by power in the Montesquieuian sense.[17] All

[17] Arendt (2006: 169-170), however, held that the genius of the American Constitution was that it reintroduced the logic of Montesquieu's political inequality by constituting a legislature based on the Roman separation between power (*potestas in populi*) and authority (*auctoritas in senatu*), while at the

powers of the state are now dependent upon one will: the will of the people. 'The people' thereby becomes sovereign in a sense that is absent from Montesquieu's federal republic.[18]

The absence of popular sovereignty from Montesquieu's theory does not make his notion of intermediate powers irrelevant to the modern theory of the state as founded on popular sovereignty. On the contrary, what Montesquieu identified was the notion of a

> 'mediation' of the *plenitudo potestatis* rather than a balancing of powers. The omnipotent state should never be able to intervene arbitrarily ... It should rather be arbitrated, mediated in its exercise by an appropriate organ with well-defined authorities – a *pouvoir borne* [limited power] whose authority ... cannot be suspended arbitrarily ... The result is that civil liberty is protected from the omnipotence of the state, which is regulated by a network of limited authorities (Schmitt 2014: 86).

Montesquieu's entire framework of government is, according to Schmitt, based on the premise of intermediate powers, governing autonomously within limited spheres. The activity of governing is thereby separated from sovereign authority. But while separated, the entire governmental apparatus of the state remains composed of and by (representatives of) the people. Ultimately but with difficulty, it remains subject to the (changing) will of the people. The people thereby retains the *continuous* authorship of the entire framework of government allowing it to change its outlook, but only over time, or, alternatively, in extraordinary manifestations of popular will. Through intermediate powers, the activity of governing is rendered more stable because it is (almost) never composed all in one stroke but only gradually in the constitutionally orchestrated rhythm of expressing democratic will through elections.[19] It acquires a permanence and continuity that moderates the effect of, but does not abandon, the periodic expression of the will of the people. Independent agencies are thereby a means of ensuring that the

same time retaining the federal principle that all central powers are derived from the constituent entities instead of being the product of devolution from a unitary sovereign.

18 It is, perhaps, no coincidence that the first independent agency in the US was established after the Civil War. According to Schmitt's rendition of the theory of the federation, what characterizes the federal political form is that the question of sovereignty remains unsettled or suppressed (Schmitt 2008 [1928]: 389-90; see also Beaud 2009). While this may have been the case at the founding of the Republic, (see Ackerman 1993), the question of sovereignty was 'settled' during the Civil War in favour of the federal level, whereby the US could no longer be considered a federation but rather a federal state (Schmitt 2008: 391-2; Ackerman 2000).

19 On the significance of rhythm for the incorporation of legitimate opposition in government, see White 2017b.

entire governmental apparatus of the state is never taken over by any one party or faction of the people and it emerges as an integrated structural feature of the separation of powers within the unitary state. In the intermediate powers we find a manifestation of the institutional "recognition of the opposition as an institution of government" that Arendt (2006: 259) considered an important source of the (relative) political stability of the American (and British) system of government.

With regard to the institutional position of the central bank, this means that its independence is one of distance from the immediate control of political authorities. The link between them is to be made more circumscribed, but it is not to be broken entirely. This is not dissimilar from Keynes' notion of central bank independence. But whereas Keynes emphasised that the conduct of monetary policy should not be directly controlled by the government of the day, its general objectives were nevertheless to be politically determined by the majority of the day. This reflects the constitutional make-up of Keynes' political system of reference, the British, in which the executive and the legislature are (normally) not too separate. In the US political system, the difficulty of the very notion of an electoral majority means that the link between the conduct of monetary policy and political authority is further mediated. The US federal political system incorporates the electoral representation of the people in three bodies: the Senate, the House of Representatives, and the Presidential office. Each of these forms of representation can potentially lead to different majorities, which, in turn, makes it more difficult, but not impossible, for any one party to monopolise the activity of governing. This applies equally to the Fed's independence (see Lohman 1998; Mabbett and Schelkle 2019). But because of the possibility of one party (or cross-party outlook on monetary policy) commanding a majority in all branches of government, this independence is not absolute. The elected representatives in the legislative and executive branches of government hold the ultimate responsibility for the direction and consequences of the monetary policy being pursued by the Fed.

The Fed is independent, but it is also, as McChesney Martin noted, an instrument of government. It is designed, instituted and mandated by Congress to govern within the specific area of monetary policy to achieve particular goals. It is a specialised agency allowing for monetary policy to be conducted with technical expertise by designated and trusted experts. In this arrangement it is impossible to speak about the central bank being the 'monetary sovereign' or the 'bearer of monetary sovereignty.'

'Monetary sovereignty,' if it is a meaningful concept at all, remains anchored in the relationship between the governmental apparatus of the state as a whole and the people, not in any one institution. The power to decide on the monetary order and/or the orientation of monetary policy remains a legitimate concern of ordinary politics and the people remains able to manifest its will through the election of representatives for legislative and executive offices. As a response to the problem of politics with regard to money, the Fed's institutional form reflects the Montesquieuian notion of seeking to moderate government by preventing the direct, unmediated and potentially arbitrary exercise of sovereign power. It gives institutional form to the attempt to mitigate the potentially harmful effects of partisan excesses, not to the attempt to eliminate political control entirely.

ECB: 'Independent of Governments'

The Fed's institutional form was, as noted, rejected as a model for the ECB. Similarly, while the principles informing the Bundesbank's independence may have been the ideal to be realised by the ECB, its exact institutional form and place within German society could not be reproduced at the European level. Both the American and the German model rely on the notion of a unitary people or nation authorising the entire governmental apparatus, including the central bank, whether directly or indirectly. The foundational expression of sovereignty in these models is found in the (federal) constitution as an expression of the unitary people's constituent power, which gives legal form to the state as a comprehensive political relationship between the governing apparatus and the citizens. The different structure of sovereignty in the becoming-Eurozone simultaneously prevented the adoption of any of these models and informed the 'unique' institutional form chosen for the ECB.

One description of the ECB that clearly marks it out from other central banks is that it is 'a central bank without a state' (see, e.g., Zilioli and Selmayr 2001; James 2012). At the governmental level of the ECB, there is no state. This, according to Issing (2000a: 31), reveals that

> many strands of Hayek's thinking ... may have influenced the course of events leading to Monetary Union in subtle ways. What has happened with the introduction of the euro has indeed achieved the denationalisation of money, as advocated by Hayek.

However, while the euro may have 'denationalised' money in Europe by detaching its creation and government from the nation state, it did not abolish the public control of money. Although not embedded within the general governmental framework of a state, the ECB is a public institution and the product of European public law. It claims the monopoly on the issuance of legal tender within its jurisdiction (article 128 TFEU) and is not subject to the form of currency competition that Hayek envisaged as a model of European currency reform in the 1970s (Zilioli and Selmayr 2000: 602). The ECB, in short, is not a Hayekian response to the problem of politics.

At the same time, the ECB cannot be considered 'independent of government' (like the Bundesbank) or 'independent within government' (like the Fed). Those kinds of independence demand the question: what government? In the Fed's case, this question was answered with reference to the general institutional framework of the US federal government. In the Bundesbank's case, the answer was, simply: Cabinet. Both these answers reflect that within the respective constitutional orders, there is an economic policymaking authority equivalent or superior to the central bank. In the Eurozone, there is no such authority.[20] The Maastricht Treaty established no 'European Government' and any such entity remains embryonic at best. Neither the European 'executive' (the Commission) nor the European co-legislator (the Council of Ministers and the European Parliament) hold economic policymaking prerogatives of the kind associated with the US Congress and President or the German Cabinet and Bundestag. The ECB is, consequently, often described as 'independent of governments' in the plural (see, e.g., Pöhl 1991: 84; *Economist* 18 May 2000; Trichet 2009; Stark 2011).

Being situated outside the governmental structure of a state, the ECB can equally not be considered an independent government agency in the sense discussed above (Zilioli and Selmayr 2000: 608-612). Given that it is their relation and ultimate subjection to the general governmental apparatus of the state that defines such agencies, such a characterisation would miss a crucial aspect of the ECB's independence.[21] This is

[20] A fact perhaps best attested to in calls for its establishment following the Eurozone Crisis. Forces within the European Parliament, for instance, have called "for the executive authority to be concentrated in the Commission in the role of an EU Finance Minister" (Verhofstadt 2016: para. 25; see also Trichet 2011a, 2011b). ECB officials have, similarly, stressed that the ECB "needs clearly identifiable and fully empowered interlocutors" (Cœuré 2012). I discuss the question of strengthening European governmental authority in more detail in chapter 7.

[21] Attempts to make sense of the ECB within this tradition often conclude that the ECB is as an extreme or abnormal case, stretching or transforming the framework beyond recognition (see, e.g., Everson

underlined by the notion that the Maastricht Treaty implied a transfer of 'monetary sovereignty' to the ECB (see below; see also Zilioli and Selmayr 1999, 2000, 2001, 2007). While such an adjectival qualification of the concept of sovereignty is bound to bring a certain confusion (see Loughlin 2016), this notion is crucial to understanding the peculiar constitutional imaginary informing the institutional position of the ECB as well as the principles informing its exercise of governmental powers (see chapter 5).

The conceptualisation of the central bank as a sovereign power within its specific domain, and thus as being outside or separate from the general governmental structure of the political community, is perhaps the aspect of the ECB's institutional construction that sets it most apart from other central banks. And it begs the questions: is the notion of monetary sovereignty meaningful? If so, in what way? Observing ECB's 'enormous' powers within the Eurozone as well as its institutional loneliness, questions similar to these prompted Howarth and Loedel (2005) to ask the provocative question: is the ECB 'the new European Leviathan'? The ECB, of course, is not a Hobbesian Leviathan in every respect. It is not omnicompetent. Its powers are specialised, circumscribed and limited in a number of important ways. It is, in principle, not above the law and is, accordingly, subject to the ECJ's judicial review (although see Borger 2019; see also chapter 6). The Hobbesian comparison is nevertheless not as outlandish as a checklist approach would suggest. Hobbes' theory of sovereignty, particularly his notion of sovereign representation, can serve as a useful heuristic for capturing essential aspects of the ECB's institutional form both as envisioned by its framers and as expressed in EMU public law. There is, furthermore, something in the nature of how the problem of politics is addressed institutionally through the ECB that reflects the Hobbesian 'science of politics.'

The Hobbesian Problem of Politics

The problem of politics is Hobbes's central concern. Contrasting Hobbes' theory with Aristotle's notion of *zoon politikon,* Harvey Mansfield (1971: 100) captures this succinctly: "For Aristotle, men come to government because political controversy is

1995: 188; Torres 2013: 101). As Williams (2005: 84) asks: "are state-based agencies really the relevant unit of comparison for the EU's independent agencies?" Shapiro (1997), furthermore, suggests that the differences in the structures of the American and European political systems make it difficult, perhaps impossible to transfer the American idea of independent agencies to the EU.

natural; for Hobbes, men are forced to consent to government to escape the consequences of political controversy." To Hobbes, then, the fundamental question was to neutralise the destructive effects of competing political (and religious) convictions and allegiances.

According to Hobbes, people's passions are the source from which the state emerges. The passions are what drive wilful acts, the "Voluntary motions" (*Leviathan,* ch. 6), and arise from the condition of being in the world. While including the most basic desires and strongest aversions, passions are not necessarily irrational or 'just feelings.' They are based on experience in combination with imagination, which gives rise to conceptions of causes and consequences, which in turn lead people to develop opinions about what constitutes the Good and the Evil. But since "No Discourse whatsoever, can End in absolute knowledge of Fact" (ch.7, p. 47) such opinions degenerate into ambition and self-perceived superiority over others (ch. 11, p. 72), resulting in a "perpetuall and restlesse desire of Power after power" (ch. 11, p. 70). The human condition, in other words, is one of perpetual struggle between rivalling factions claiming to have a superior grasp of the Truth.

The problem is the fundamental condition of insuperable equality (ch. 13, p. 86). This leads not to the development of a natural and permanent dominion of some over others but to a condition of permanent upheaval and disorder where "notions of Right and Wrong, Justice and Injustice" (ch. 13, p. 90) have no meaning because such notions rely on the question of the Good being settled. This question cannot but remain unsettled as absolute knowledge is impossible; it is by definition 'unsettleable' in the absence of an umpire, a 'non-equal.' It is the question of the Good, the direct political question, that the artificial person of the sovereign settles (Mansfield 1971: 97). But the settlement is indirect. The institution of sovereignty is not a realisation of a transcendent Truth. Rather, the constitution of sovereignty introduces a mechanism, a machine, for governing *as if* such a truth had been found. It is not the truth of the political Good that is settled with the constitution of the sovereign but rather the impossibility of further disputing what the Good ought to be. Only through this settlement and its constitution of a common yardstick of values can concepts of right and wrong, justice and injustice, emerge as meaningful categories in societal life. "Sovereignty is a source of certainty, and hence a source of peace, without warring factions contesting every normative question" (MacCormick 1993: 15).

In Hobbes, the institution of the sovereign is the multitude's way of alienating their political agency, their own opinions of the Good, in order to cater to the 'conscience', the common knowledge, of everyone that the political freedom to engage in controversies of political opinions jeopardises the possibility of enjoying all other freedoms. In Hobbes' covenant we find, like in the theory of central bank independence, a movement of reason to conquer the passions and a moment of self-limitation that suspends yet confirms the postulated effects of the passions and grounds civilized life in the fear and danger of a mythical state of nature. In the covenant to institute the artificial person of the state, the preference for stability and security trumps the individual's ambition and freedom to constitute and pursue her opinion of the Good as the common standard of societal value. The sovereign office is the representative of the entire body of those covenanting – even those against the particular order constituted have consented to order as such (ch. 14; Mansfield 1971: 101).

By subjecting themselves to the common power, everyone authorises every act of the sovereign. The sovereign is given the "*Right* to *Present* the person of them all" (ch. 18, p. 121). But although the power of the sovereign is unlimited, it is not arbitrary: "The concept itself contains the idea that the sovereign has duties" (Pitkin 1967: 33; see also Loughlin 2003: 57). The sovereign representative is bound to its subjects in a relationship of duty to protect and promote the Good for which it was constituted (ch. 17, p. 121). The subjects, however, can have "no right—that is, no *institutional mechanism*—to enforce these duties of which the sovereign is in law the sole judge" (Loughlin 2003: 57, emphasis added). In other words, the subjects have neither a right to nor legitimate institutional means of controlling or disputing the actions that the sovereign takes on their behalf. That there may be conflicting opinions in this regard is no argument against this order of things as these are, as noted, inherently fallible. In government it is, in other words, better to accept *a* Good that may potentially be 'wrong' than to subject the exercise of governmental power to conflicts between equally fallible opinions about what the Good should rather be.

Politics and political controversy are to be eliminated in two senses: the question of the Good is settled by virtue of the covenant, and the means of obtaining it are removed from legitimate political dispute. Securing the common Good (security, stability) is left entirely to the sovereign representative. Sovereign power, in Hobbes' theory, becomes the Good itself (Mansfield 1971: 103) and it is order as such that must be constituted and preserved, not a *particular* order. This does of course not mean that the order is not a particular order but rather that the covenanting parties, in the name of security, have relinquished their right to politically decide and change their minds on the question of the particular order that the sovereign representative is bound to protecting.

The Social Contract and the ECB as a Sovereign Representative

Hobbesian sovereign representation constitutes an institutional means of eliminating the destabilising effects of competing political views on the activity of governing. In order to ensure this, the sovereign representative must be independent of instructions in its decision-making and its decisions cannot be subject to veto. While Hobbes' theory applied to the activity of governing in general, central bank independence reflects a similar logic with regard to the more limited task of overcoming the problem of politics in relation to the government of money. Restating the theory of central bank independence in this light, the theory holds that the destabilising monetary effects (inflation) of the competition for the control of political power can be overcome through the institutionalisation of a consistent response to the question of the good of monetary policy. The more absolute the central bank's independence, in turn, the more consistent the answer will be.

With the creation of the ECB, this conception was taken to its logical conclusion. The two main principles – the once and for all settling of the question of the good of monetary policy and the institutional elimination of the possibility for politically contesting its meaning – are reflected in the public law framework of the ECB. The primacy of price stability is firmly enshrined in the Treaties (articles 119.2, 127.1, 219.1-2, 282.2 TFEU; article 3.3 TEU). The Good of monetary policy has been settled and depoliticised through a constitutional contract (Selmayr 1999) that made price stability a *Grundnorm* of the Eurozone's economic constitution (Zilioli and Selmayr 2000: 628, 2001: 35-36). Short of fundamental treaty reform, there are no legal-institutional mechanisms for politically reformulating this basic commitment (Zilioli and Selmayr 2007: 370-1). At the same time, the question of how to achieve this Good was also removed from political contestation through the ECB's independence from all political authorities (articles 130, 282.3 TFEU). The ECB was thereby given the power to determine what price stability means[22] and how to achieve it without there being institutionalised means of overriding or changing its decisions politically.

The ECB as an institutional response to the problem of politics for monetary policy differs markedly from the Fed. It reflects not an attempt to mediate partisan control of monetary policy but an attempt to eliminate politics entirely from the government of money. Political control of the central bank through ordinary politics is not only to be made more difficult, it is to be abolished entirely through a manifestation of political will in a constituent moment. This entails a different relationship between the foundational source of political authority, the people, and the central bank.

The Fed's relationship to the people, both in public law and the Fed's self-conception, is mediated by constituted powers who continue to hold supreme legislative authority over the Fed. The state as the abstract unity of the federal governmental apparatus remains, in Hobbesian terms, the sovereign representative of the people and the Fed only exercises sovereign powers at the behest of the 'great constitutional branches of government.' The ECB's relation to its foundational subject, the plural "European peoples" (ECB 2002a: 46), on the other hand, is direct. There is no constituted power above it from which it derives its authority. This is reflected both in Treaty law and in the ECB's self-conception:

> It was *the sovereign decision of the peoples of Europe* (through their elected representatives) to transfer the competency for monetary policy and the other tasks enumerated in the Treaty to a newly created European body, and to endow it with independence from political interference (ECB 2002a: 46, emphasis added).

In this conception, the ECB "exercises not powers *delegated* to it by the Community institutions, but *originary* powers given to it directly" (Zilioli and Selmayr 2001: 18, emphases in original). Or as Yves Mersch (2017b: 13), member of the ECB's Executive Board, put it: "the citizens of Europe made the ECB independent and gave it a clear mandate."

The Maastricht Treaty, of course, cannot be considered a social contract of a formless multitude of individuals "*every one, with every one*" (Hobbes, *Leviathan,* ch.

[22] As the ECB notes on its website, "The primary objective of the ECB – price stability – is clearly established in the [TFEU]. The Treaty does not, however, give a precise definition of what is meant by price stability." See: https://www.ecb.europa.eu/mopo/strategy/pricestab/html/index.en.html [accessed 3 December 2019].

18, p. 121). It was negotiated and signed by representatives of existing state peoples. But it did not come into force until it had been ratified by each of the parties to it "in accordance with their respective constitutional requirements" (article 48 TEU). The Treaty, in other words, did not come into effect through an intergovernmental agreement but only through constitutional amendments in the individual Member States, i.e., in accordance with the different institutional expressions of popular sovereignty.[23] In so far as elected representatives acted on behalf of the peoples "in a singular act completed with the ratification of the Maastricht Treaty" (ECB 2002a: 46), they acted as 'extraordinary representatives' and their authority over the ECB ended with its constitution. The ECB's authority is thereby not derived from a constituted legislature, whether in the Member States or at the EU level, but directly from the Member State peoples (acting through extraordinary representation). In that sense, it can be understood as the product of a 'social contract' among 'the peoples of Europe.' This notion is reflected in ECB discourses:

> The EU can in fact be regarded as perhaps the most ambitious example of the philosophical theories that underpin the social contract. As Thomas Hobbes remarked in his *Leviathan*, sovereign states are established to regulate social interactions and avoid the 'war of all against all' that would prevail without the rule of law. States, however, compete with each other and therefore may even resort to arms in the absence of a supranational body imposing social contract laws (Cœuré 2013).[24]

In the constitutional imaginary of the EMU, the ECB's authority to act independently is derived from an expression of the peoples' constituent power in a founding moment. This expression, in turn, entailed a "transfer of national currency sovereignty," which "represents a partial surrender of political sovereignty ... rightly perceived by citizens as marking a deep change in the way in which nations consider themselves" (Issing 2000b). The ratification of the Maastricht Treaty, in other words, transformed the way in which Member States govern themselves. This is manifest in that

[23] The Danish 'nej', the French 'petit oui' and the resounding Irish 'yes' in Maastricht Treaty referenda underline that the legal force of the Treaty depended on the people's consent. Referenda, however, are only one possible form for expressing popular will and the absence of referenda in other countries should not be understood as the absence of an expression of popular sovereignty *per se*. It might be – "In einem Fall war ich wie ein Diktator, siehe Euro" (Helmut Kohl as cited by Paul 2010: 293; see also *Der Spiegel* 2013, 8 April; *Euobserver* 2013, 8 April) – but the doctrine of popular sovereignty cannot limit the forms in which the people's foundational will manifests itself *a priori* (see, on this, Schmitt 2014).

[24] While the reference to Hobbes in this speech concerns the EU as a whole, Cœuré stresses that it applies "to an even larger extent to" the Eurozone.

the peoples have both individually (through national constitutional amendments) and collectively (through the contractual creation of the ECB) inscribed a governmental power that is external to each state within the governmental apparatus to which each of the Member State peoples are subject. The decisions of this governmental power, in turn, are self-authorised and immediately effective within the territory of the Member States without being subject to veto by those Member States individually or collectively. The governmental apparatus, which each people is both subject to and author of, can thereby no longer be seen as unified under the abstract notion of the State. The foundational political will of each Member State people is expressed through separate organs, with none holding final authority over the other.

The notion of the ECB as a separate representative of the will of the peoples reflects the notion of dual representation discussed in relation to the Bundesbank in chapter 2. The Bundesbank's representative claim, however, was not formalised but emerged 'organically' from a particular political culture (*Stabilitätskultur*). The notion of the ECB's foundation of authority being derived from a 'sovereign decision of the peoples,' on the other hand, formalises and constitutionalises this representative claim. The ECB thereby realises the Bundesbank ideal of constitutionalising price stability and central bank independence. But the ECB's powers are not constitutionalised within a state structure that expresses the unity of the people in political form. It is not the product of one constituent power but many. It is, therefore, not inscribed in a traditional constitutional separation of powers as a 'fourth branch' of government., Rather, it is created as a body exercising sovereign powers *separate* from any state. Like the state, the ECB is a sovereign representative and the notion of dual representation within the state is restated as the dual *sovereign* representation of the people through the ECB and the Member States: every people of the Eurozone is represented simultaneously and with equal right by two separate organs claiming sovereign governmental authority within certain spheres of societal life. Neither the ECB nor the Member States are omnicompetent; they are '*limited* sovereign representatives,' with the ECB, of course, being qualitatively more limited than the Member States.

The Monetary Union as an Escape from the State of Nature

How does the creation of the ECB as a limited sovereign representative alongside the Member States alter the basic organisation of the exercise of governmental powers in the Eurozone? And what justifies this change? The first question is discussed in chapter 5. Below I address its justification.

Hobbes presented the constitution of a sovereign representative as a necessary means for achieving a political stability that would remain elusive as long as social relations where characterised by anarchy. To Hobbes, anarchy is characterised by a fundamental equality meaning that any constellation of forces favouring order was unstable and bound to be temporary; no phenomenological power would be able to secure the perpetuation of order even if it might be able to secure a temporary one based on the command of superior force. Anarchical order would always be liable to revert to anarchical chaos.[25] The sovereign representative, the Leviathan, offers a means of overcoming this fragility of the anarchical order by subjecting and channelling the force of all through the authority and power of one. Rivalling powers would thereby sacrifice their freedom to pursue power and self-interest in the name of security and a life without fear. In short, political freedom would be sacrificed for existential stability, without which political freedom was, in any case, meaningless.

To support and justify his argument, Hobbes constructs his mythical state of nature. The state of nature[26] precludes the permanent realisation of the benefits of cooperation because the imperative of individual survival favours, in game theoretical terms, cheating and the individual pursuit of power. As in the prisoner's dilemma, the equilibrium outcome is one that leaves all worse off than if cooperation could be ensured. What the sovereign representatives promises to do is to break this structure. Once established, then, undermining the sovereign representative amounts to a return to the state of nature. For this reason, the surrender of powers must be permanent.[27]

[25] While Hobbes' (ch. 17, p.117) notion of "Covenants, without the Sword, are but Words" is perhaps most famous, an equally valid conclusion from Hobbes' theory is that 'swords, without the covenant, are but weapons' (see Arendt 1970).

[26] Hobbes' anthropology is pessimistic (*homo homini lupus*) but the structural outcome of the anarchic state of nature is not dependent on this. In Rousseau's more optimistic anthropology, the state of nature leads to much the same outcome. This is particularly evident from the stag hunt metaphor presented in *A Discourse on the Origins of Inequality*. The problem, according to Rousseau, is not that people have an inbred proclivity for evil, but that the imperative of individual survival in the state of nature makes cooperation impossible to sustain because of the risks involved. In the stag hunt, every member of the company of hunters would reap greater rewards if all committed themselves fully to hunting the stag. The individual hunter, however, could secure her own sustenance with less risk, but also less reward, by defecting if given the chance to kill a hare. Because of this, the stag hunt is likely to fail and all are left worse off than if cooperation could be enforced and defection credibly punished.

[27] This emphasises that sovereign representation must not be vested in a natural person but in an artificial person, an office (see Loughlin 2003). If sovereign power were to be vested in a natural person, this

The Myth of the Hyperinflations and the ECB

The notion of the danger of (a return to) a state of nature is pertinent to the question of the ECB's institutional form in several ways. The myth of the German hyperinflation is, for one, never far from the surface (see Leaman 2001; Tognato 2012; Mee 2013, 2017; Schieritz 2013; *Economist* 2013). The work of this mythical narrative, as discussed in chapter 2, is to posit price stability as a fundamental condition for civilised societal life. Without it, all other values evaporate with it and something akin to a Hobbesian state of nature emerges in which there is no common yardstick of value, no settled notion of the Good. "Inflation - like war," Issing (2002: 23-24) claims,

> erodes the social fabric of society and, ultimately, puts the very foundations of democracy and freedom at risk. This is one of the lessons of the bitter history of the 20th century, which was a century of hyperinflation in the wake of wars and wars in the wake of hyperinflation.

In the Treaty, therefore, "the primary objective of price stability has a special constitutional – *and thus lasting* – status, placing it above shorter-term political influences" (Issing 2000c, emphasis added).

The myth of the hyperinflations was also explicitly invoked in the context of discussions on the institutional form of the future ECB. Pöhl, for instance, justified both the price stability mandate and the ECB's independence with explicit reference to the hyperinflations:

> Most Germans, with traumatic memories of two hyperinflations, would not accept a central-bank system that attributed this goal [price stability] less significance than does the Bundesbank Act. The task of ensuring price stability would be facilitated ... by a European central-bank system being free to formulate objectives and make decisions—independent not only of national governments but also of European Community institutions.[28]

Tietmeyer (1991: 182-3), Pöhl's successor at the helm of the Bundesbank, similarly noted that

> The experience gained twice with hyperinflation in the first half of this century has helped to develop a special sensitivity to inflation and has caused the wider public to believe in the critical importance of monetary stability in Germany. For this reason,

would introduce the danger of the interregnum when the natural body of the sovereign perished (see Kantorowicz 1957; Agamben 2005).

[28] Pöhl, K.O. *The Wall Street Journal,* 20 July 1988, HAEU-TPS 184.

> the strong position of the Bundesbank is widely accepted by the general public – questioning its independence even seems to be a national taboo. This social consensus has yielded strong support for the policy of the Bundesbank ... In the light of the success of the Bundesbank, it is only natural that the German public will expect that any successor, which could take its place at the European level, should be at least as well equipped as the Bundesbank to defend price stability.

The two Bundesbankers invoke the myth of the hyperinflations in the context of asserting the Bundesbank's ultimatum that the Maastricht Treaty should constitutionalise the primacy of price stability and central bank independence. Without these elements, they threaten, they will make sure the German people will not subject itself to the covenant.

International Monetary Anarchy

Another important justification for the creation of the euro and the ECB is to be found in the pre-existing monetary relations among European states. Following the collapse of Bretton Woods, if not before, international monetary cooperation was informal and the major currencies of the world floated against each other. While the dollar was the world's primary reserve currency, it was the first among equals in something akin to an international monetary anarchy. While this anarchic order was not necessarily chaotic or problematic in general, it presented a particular problem in the context of European integration and in particular in the context of completing the single market. As the Delors Report alluded to, the capital market liberalisations of the 1980s had allowed current account imbalances to grow more rapidly than before. Eventual corrections thereby threatened to become much more dramatic than previously. Such "large cumulative imbalances were what convinced Europe's policymakers that a monetary union was the only way of avoiding the risk of periodic crises with currency realignments whose trade policy consequences threatened *the survival* of an integrated internal European market" (James 2012: 12, emphasis added). Currency realignments in the name of the national pursuit of self-preservation, in other words, were seen as an existential threat to continued European integration.

The problem was not an existing lack of political will for cooperation – the European Monetary System (EMS) under the de facto leadership of the German Bundesbank was fully functional at the time and widely considered a success. The problem was that if one or more Member States were put under intense strain, there would be no way of preventing defection in the name of self-preservation. Such defections, in turn, would jeopardise the stability, the collective achievements of integration and the material well-being not only of the Member State in question but of all the other Member States as well. As the participating states and central banks were equals, no state or central bank could enforce cooperation on another within the EMS and there were no means available for coercing a Member State into compliance. The Bundesbank may have been the 'strongest,' but its strength was, as in Hobbes, not great enough to compel all others to obey indefinitely. And even if that had been the case, the other Member States could not live indefinitely with being dominated by a power that was formally their equal. Neither the 'strong' nor the 'weak' were thus adequately served by existing cooperative arrangements under the fundamental condition of international monetary anarchy (see also Howarth and Loedel 2005: xiii).

The condition of international monetary anarchy, where each state is, in principle, free to pursue whatever monetary policy it sees fit, was understood as being unsustainable in the context of 'ever closer union.' The externalities associated with the continued possibility of divergent national monetary policies made the institution of a common power able to "preserve order" in the monetary field an urgent priority (Howarth and Loedel 2005: xiii; see also, in less Hobbesian language, Delors Report 1989). The creation of the artificial person of the ECB to protect the monetary order is thus similar to Hobbes' covenanting parties introducing "that restraint upon themselves" which serves to promote "their own preservation, and of a more contented life thereby" (*Leviathan,* ch. 17, p. 117).

Like Hobbes' covenant, the creation of the Monetary Union and the ECB as a sovereign representative involves relinquishing certain political freedoms; most importantly the freedom to decide monetary policy. This, furthermore, was done in the name of securing the conditions necessary for the realisation of a number of other freedoms and privileges, which were threatened by the potential, if not actual, opportunistic or 'self-preservational' behaviour of peoples and governments in the (latent) 'monetary war of all against all.' And indeed, in establishing the Maastricht framework, a number of Member States seem to have been at least partially animated by the perception that a monetary order not to their liking was a lesser evil than the failure to institute order (Dyson and Featherstone 1999).

The possibility of having a seat at the decision-making table may have played an important role in this regard, but the ECB was specifically set up institutionally not to take into account the opinions of the Member States.[29] "We are not representatives of our countries," as Tietmeyer allegedly remarked at the first meeting of the ECB's Governing Council (Issing as cited in Jeffery 2016). In contrast to the EMS, dominated by the monetary policy of the Bundesbank on the basis of German conditions, the ECB was set up to conduct monetary policy on the basis of conditions in the Eurozone as a whole. Thereby the de facto but inherently fragile dominance of the temporarily strongest was overcome through the establishment of the non-equal.[30]

Irreversibility

If overcoming the potential dangers associated with international monetary anarchy was a motivation for transferring sovereign powers to the ECB, the same Hobbesian logic militates that once in place, "[t]here can be no turning back, as the failure of Monetary Union would not only be extremely costly from an economic point of view, but *the political fallout would be unimaginable and would be tantamount to a catastrophe*" (Issing 2000a, emphasis added). This potential political catastrophe justifies the constitutionalisation of "this (irreversible) transfer of sovereign power" (Zilioli and Selmayr 2001: 19-20).

The legal irreversibility of the transfer of sovereign power does not necessarily mean that it is practically impossible to reverse it. It means, rather, that within the constituted order there are no legal means of doing so. A reversal or radical alteration demands a transformation of the constitutional order as a whole through a new manifestation of constituent power, a new social contract. That is, a people that wishes to change the ECB cannot do so by its own accord and under the Treaties there is no

[29] This points to a separate, important aspect of the ECB's institutional form: it is a supranational rather than an intergovernmental body (Zilioli and Selmayr 2001). That is, the decision-making body is composed of central bankers in their *personal* capacity as experts on monetary matters, not as representatives of their Member States (see also chapter 5). The decision-making body of the ECB is thereby decidedly aristocratic.

[30] One may, of course, argue that the de facto monetary dominance of Germany was not overcome but simply given institutional form through the creation of the euro. This, however, does not challenge the notion that the euro established governmental order based not on cooperation among formal equals but on command by a superior. Whether that superior is more 'German' than, say, 'Greek' is irrelevant in this regard.

procedure for exiting the euro.[31] It is a permanent order to which each state has committed itself irreversibly. If a state were to exit, it would have to do so through an extraordinary act that at the same time reconstituted the state as a post-EU-Member State. The 'irreversibility of the euro,' famously pronounced by Mario Draghi (2012) during the Euro Crisis, was already a basic principle in the Maastricht Treaty and its protocols (Zilioli and Selmayr 1999: 277, 2000: 604; Smits 1997: 133). It follows from the very purpose and institutional form of the Eurozone and the ECB.

Sovereign Loneliness, Plural Sovereignties

The creation of the ECB as an independent sovereign power in response to 'the monetary state of nature' does of course not mean that individuals or states cannot seek to influence the ECB. The ECB can and does seek support from political authorities and its policymaking can be influenced in various more or less formal ways; the appointment of the leading personalities being the most direct avenue. What the ECB's institutional status does mean, however, is that there are no institutionalised means of controlling the ECB and compelling it to pursue, or refrain from pursuing, a particular course of action on the basis of competing convictions, opinions and perceptions of need.[32] Thus, "in parallel to its denationalization," the EMU constitutional framework has led "to a complete *depoliticisation* of monetary policy" (Zilioli and Selmayr 2001: 34, emphasis in original).

The depoliticisation of the ECB is remarkable not least because it has been given wide-ranging executive and legislative powers. Its monetary policy decisions are immediately effective and cannot be vetoed or reversed by any other political body. Furthermore, like EU regulations in general, an ECB regulation "shall have general application. It shall be binding in its entirety and directly applicable in all Member States" (Article 34.2 Statute of ESCB and ECB). ECB's regulations, in other words, have the same legal status as those adopted by the EU legislature (Zilioli and Selmayr 2001: 37). In contrast to EU regulations, however, there are no Member State representatives

[31] It should be noted that while is not entirely clear from the Treaties whether a Eurozone state has the legal right to abandon the euro, the absence of a legally specified procedure for exiting the euro probably reflects the difficulty, if not impossibility, of a regulated and orderly exit from the euro. This does not mean, however, that the Member States do not have a political right to exit.

[32] The ECJ may review ECB acts, but it cannot determine what the ECB should do or not do. The ECJ thereby provides a legal, not political, check on the ECB's powers.

or political bodies involved in the adoption of ECB regulations. This reflects the conception that "'in a field as sensitive as monetary policy [it] can be considered wise and not at variance with the requirements of democracy' to hive off part of the legislative power and of the executive from the representatives of the people" (Zilioli and Selmayr 2001: 48 referring to Smits 1997). This means that some degree of unchecked rule by the ECB must be accepted:

> The fact that it will be difficult to correct the ECB's behaviour, much more so than in respect of State central banks thus far, is unavoidable in the present constitutional make-up of the Community ... it may even be desirable in view of the lack of a tradition of independence for central banks in Europe (Smits 1997: 500).

The constitutional depoliticisation of monetary policy is not only a product of the normative commitment of the theory of central bank independence. It is also a product of the institutional elimination of any constituted power above (as in the US) or alongside (as in Germany) the central bank. This has led some to highlight the problematic nature of the ECB's 'institutional loneliness' (Padoa-Schioppa as cited in Rudzio 1999, Padoa-Schioppa 2000, 2004; Braun 2017; Mabbett and Schelkle 2019). In an interview, Padoa-Schioppa (as cited in Rudzio 1999, my translation; see also Cœuré 2012) highlighted that "the ECB's problem is not its independence but rather its loneliness. Europe is no political union and we in the ECB lack a European government, a counterpart." While this loneliness may be considered unfortunate (see also De Grauwe 2011; Aglietta 2012, 2019), it is not a 'mistake' but an integral aspect of the EMU's constitutional construction.[33]

Independence as such, as discussed in relation to the Fed and the Bundesbank and as highlighted by Padoa-Schioppa, does not necessarily entail loneliness. The independence of sovereign representation, however, does. The sovereign must, following Hobbes, be independent of other powers and it must be unrivalled in the exercise of its powers: "The sovereign is alone (sovereign) or is not" (Derrida 2011: 8). The sovereign loneliness of the ECB, however, is different from that of the (unlimited) sovereign state. Whereas the sovereign state monopolises the legal expression of political

[33] While it is true, as Mabbett and Schelkle (2019) highlight, that the many veto players within the US political system often render the Fed de facto lonely in its governmental activities, this loneliness is qualitatively different from that of the ECB. In the US contingent circumstances may render the Fed without an effective counterpart. In the EMU the absence of a counterpart is part and parcel of the constitutional construction.

will within its territory, the ECB does not. It is lonely only in the sense that it has no equal or superior at its governmental level (the European). It is not the lone sovereign representative of the peoples within the territory in general because the Member States retain the right to exercise other sovereign powers within their respective territories. The Member State, however, is no longer the sole sovereign power within its territory. From the perspective of supreme governmental authority, the Eurozone is simultaneously *a* unified territory and separate territor*ies*. It is, however, without an omnicompetent sovereign.

As noted above, and as I discuss in more detail in chapter 5, the absence of a sovereign is envisioned to produce an order of constraints on the exercise of sovereign powers within the realm economic policy and to depoliticise the exercise of sovereign power within the realm of monetary policy. It is envisioned as a constraint on the potential expressions of popular will through the agency of the state. In one sense, then, sovereignty may be said to be divided and thus destroyed, with the result that the EMU suffers from a chronic lack of political authority and steering capacity. The exercise of sovereign powers by one may conflict with the exercise of sovereign powers by several in a manner that leads not to an order of mutual (self-)restraint but, following Hobbes, to chaos and internal strife. Chapters 6 and 7 address how the Eurozone Crisis emphasised the importance of such conflicts. However, while the division of the exercise of sovereign powers entailed by the Eurozone's constitutional framework eliminates 'the sovereign' (state), it does not necessarily entail a division and elimination of sovereignty as such. Or at least, it is not supposed to.

The constitutional imaginary of the EMU relies both for its legitimacy and governmental order on the notion of the continued sovereignty of the peoples. The authority of the order as a whole must be derived not only from the founding expression of the will of the peoples but also from their continued will for it; expressed, if nothing else, in continued membership. If not, the order of constraints it imposes on the exercise of governmental powers at the Member State level appears as a blatant violation of the principle of democratic self-government. However, the state can no longer be seen as sovereign, seeing that the governmental apparatus of the state no longer holds the monopoly on legal authority and governmental power within its territory. Sovereignty must therefore be popular sovereignty. But because the people does not/must not/cannot govern directly, it must be represented in the activity of governing by institutions authorised by it. Through such representation, the will of the people is manifested in governmental practice. But as highlighted above, the foundational will of the peoples of the Eurozone is not expressed in a unified but a dual structure of sovereign representation.[34] Sovereignty remains an expression of the political relationship between the people and its governmental apparatus (see Loughlin 2003: 81-82) but the representation and realisation of the peoples' will in governmental activity is no longer performed by the state's governmental apparatus alone. The ECB is thus inscribed in the sovereignty relation between the individual peoples and their governmental apparatuses. The governmental apparatus of the separate peoples thereby contains a shared governmental power, which derives its power and authority from the will of each and of all.

The ECB creates an existential link between the peoples of the Eurozone. Within the sphere of monetary policy, they are governed as one. The peoples, however, retain their separate political existences. They remain in the plural as the political subjects authorising both the ECB and their respective state apparatuses. They retain, in other words, the fundamental political right to authorise governmental acts as individual and separate political subjects, not as one. While the transfer of 'monetary sovereignty' to the ECB reduces the governmental capacity of each individual state, the transfer does not constitute a division of the sovereign right of authorisation. The constituent power of the several peoples remains the political foundation on which all governmental power is exercised.

Conclusion

The notion of the ECB's mandate and institutional status resting on the constituent power of the peoples is crucial to the constitutional imaginary informing the EMU as a governmental order. It reflects the ordoliberal (and Hobbesian) notion of overcoming the problem of politics in a foundational moment that settles the Good of monetary policy and the principles according to which it is to be conducted. In the transnational setting of the Eurozone, this entailed that Member State governments would face the

[34] Dual sovereign representation thereby creates the possibility of the will of the people being in conflict with itself: the foundational will for the euro may be in conflict with the expression of will through the agency of the state. I discuss this tension in chapter 6.

monetary policy of the ECB as an external condition over which it would have no control. From the perspective of Member State governments, the euro reproduced the logic of the gold standard via an economic constitution (see also Wilsher 2014; Morys 2014; Pettifor 2015). Monetary policy, however, would not governed by a monetary rule or an automatic mechanism but by an independent central bank exercising technocratic discretion.

The technocratic discretion of the ECB is not, as in Keynes, controlled by political authority but by law. As a concretisation of the foundational will of the peoples, this law constitutes, in principle, a binding constraint on the ECB's exercise of powers. It cannot be altered except through a new constituent moment. As such, the continued existence of the peoples as separate political subjects represents a means of constraining the exercise of sovereign power with regard to the monetary order. While exercising sovereign powers, the ECB has no right alter those powers or the purposes to which they are put. Even within its sphere of policymaking, the ECB's independence is limited by constitutional concretisation of the foundational will of the peoples. The ECB is thereby a limited sovereign representative in two senses: in terms of its sphere policymaking and in terms of positive legal constraints on its powers. And the same is true of the Member States. As I discuss in the next chapter, this structure of dual, limited sovereign representation gives rise to a particular set of governmental principles, as well as a number of tensions and contradictions.

Chapter 5

The Governmental Logics of the ECB and Their Contradictions

Introduction

This chapter examines the principles informing and regulating the exercise of governmental powers by the ECB as a sovereign representative. It identifies and discusses three governing logics – *the rule of law, technocracy* and *democracy* – and discusses their respective rationalities and the relationship between them. While mutually reinforcing in the regulation of the activity of governing, according to the justificatory discourse, the three principles are also potentially contradictory. These contradictions, which may be 'dormant' in ordinary times, are written into the constitutional structure of the ECB. In exceptional circumstances, they threaten to destabilise the structure and call for something new.

This chapter is devoted to the more or less abstract expounding of the three governing logics, the mutual relation and their contradictions. The next two chapters, then, turn to discussing how the contradictions manifested themselves in the Eurozone Crisis (chapter 6) and how the Crisis introduced a structural instability that pointed beyond the existing structure (chapter 7).

While the main focus is on the ECB's institutional form and governmental rationality, a consistent theme is what the structure entails for the conduct of economic policy more broadly. While the ECB may be alone at its governmental level, it is not alone in the activity of governing in general. Throughout, the chapter therefore discusses also how the ECB's governmental rationality affects and structures the exercise of sovereign powers by the Member States as well as the sovereignty relation between peoples, states and Union. The conferral of rights and duties on the ECB has implications for the general governmental structure of the political community and the general organisation of the exercise of sovereign powers with regard to economic policy in the Eurozone. An appreciation of the meaning of the EMU's particular way of addressing the problem of politics concerning monetary affairs demands an appreciation of these implications.

The Rule of Treaty Law

The modern theory of the state sees the state not only as a means of governing societal life but also for resolving conflicts between societal groups and classes concerning issues that impact the associational life of the political community as a whole. The peaceful resolution of conflicts within the framework of established decision-making procedures plays a key role in generating the authority of the state and the legitimacy of its governmental activities. In this regard, the power of the modern unitary state rests in the form of its representative structure. The constituted powers represent the community as a whole and as such they mediate and implement 'the will of the people' through various institutional configurations including, but not limited to, the different branches of government. Unless they involve secessionist or revolutionary forces, conflicts within such a setting take place within a framework in which even the defeated party accepts the legitimacy of political decisions resulting from a pre-agreed decision-making procedure.

In relation to central banks, this principle has taken a number of different forms. In the US, conflicts involving the Fed always take place within the framework of the mediation of will of the people through elected representatives. The Federal Reserve Act gives the Fed a certain independence while at the same time constraining and orientating its exercise of governmental powers. Ultimately, however, it is the political authority generated through the political system that enforces and determines the Fed's governmental freedoms and practices.

In West Germany, there was no institutional mechanism for resolving conflicts between the Bundesbank and the Federal Government. The Bundestag may have retained legislative superiority over the Bundesbank Law, but in practice conflicts concerning monetary issues tended to be resolved through competing appeals to the public. The conflict, in other words, was decided through a manifestation of whose side 'the people' stood (or at least was more or less uniformly interpreted to stand by the political elites). The manifestation of popular sovereignty through public opinion added an 'organic' dimension to the formal electoral representation of the people in the relationship between the central bank and the political system. Mostly the Bundesbank bank prevailed, but not always (see Mee 2016; Tognato 2012).

In the case of the Eurozone and the ECB, there is no authority at the European level which can claim for itself a legitimate right to counterbalance, challenge or rein in the central bank. Political representation at the European level takes a very different form from 'monetary representation.' Whereas the levels of ultimate political and monetary authority tend not to be differentiated within the unitary state,[1] political decision-making bodies in the EU/Eurozone represent not one sovereign political subject but several. The ECB, on the other hand, is constituted to act in the singular as the sovereign representative of the several constituting subjects as one. The highest decision-making body of the ECB, the Governing Council, is thus composed not of representatives of Member State governments but of central bankers appointed to their office on the basis of their expertise within the field. This structure of singular representation by the central bank and multiple representation by the authorities responsible for general economic policy distinguishes the ECB from both the Fed and the Bundesbank. It is, furthermore, difficult to imagine a meaningful European public sphere that would be able to legitimately provide the kind of manifestation of public opinion encountered in the German context. In a conflict between a particular Member State government and the ECB, for instance, what is the relevant public?

The Community of Law

The absence of a unified subject of political legitimation as well as institutionalised mechanisms of politically resolving conflicts means that law becomes the primary means of governing and regulating the relationship between political representatives and the central bank as well their respective exercises of power. As then member of the ECB's Executive Board, Lorenzo Bini Smaghi (2010) noted:

> the European Union is a community of law, subscribed to by the Member States in which *pacta sunt servanda*. This refers to all the pacts, starting from fiscal discipline in

[1] There are and have been exceptions to this, but due to the (historically) intimate link between money and sovereignty (Aglietta and Orléan 1998; Goodhart 1998), the monetary authority usually resides at the level of government that can credibly claim sovereignty for itself. That is, if, in a federal system, the constituent states are considered sovereign, monetary authority tends to be decentralised. If, on the other hand, the federal level has manifested itself as sovereign, as in the US after the Civil War, monetary authority tends to become more centralised. An important qualification to this is the question of the integration of the financial system. The territorial integration of this often generates pressures for an integrated central banking system (see Schelkle 2017). There is thus, as the work of Charles Goodhart and Michel Aglietta and their respective associates has shown, a dual determination of central banking: sovereignty and banking/finance, which reflects both the dual nature of money (being a creature of sovereignty, on the one hand, and the money creating activities of banks, on the other) as well as the role of the central bank as being both the 'banker of the sovereign' and the 'banker of banks.'

> the Member States to the commitment of the Member States to pay their debts ... The euro, and its underlying institutional construction, is about respect for the law.

The importance of the rule of law in the context of the monetary union is derived from the EU's general public law structure. As is generally recognised, the EU's legal-political form differs from both the state (including federal states such as the US and Germany) and the international organization (e.g., NATO, WTO). What characterises the EU is that it governs itself without comprehensive sovereignty. Unlike the state, the EU governmental apparatus cannot be considered sovereign and the European level has no political authority to override, suspend or change the general legal order established by the contracting Member States. Its legal order is not self-authorised. Its authorisation is attributed to the constituent power of the European peoples: "[t]he national parliaments when ratifying a treaty decide as representatives of their peoples. The result is attributed to the peoples. Hence, [the Treaties] can be regarded as an expression of the will of the peoples of the Member States" (Grimm 2015: 48). In this understanding it "is not merely an agreement between states but an agreement between the peoples of Europe" (Maduro 2008: 21). This agreement, in turn, "forms the 'basic constitutional charter' [of the EU]" (ibid.). This means that only the Member States acting collectively (as well as individually) in their capacity as (extraordinary) representatives of the constituent powers of the peoples are rightfully able transform the basic legal order through a new moment of constitutional politics, as if contracting anew '*every one, with every one.*' Like the international treaty organisation, the EU cannot, in principle, transform itself; it does not hold the competence to decide on its own competences (or *Kompetenz-Kompetenz;* Grimm 2017).

The constituted order, however, is unlike that of the international organisation. Most importantly, Union level legislative and executive acts have direct effect in the Member States and claim supremacy over potentially conflicting laws within domestic legal orders. The exercise of constituted powers at the Union level, in other words, does not require national ratification or implementation to be effective and are enforceable in national courts.[2] In this respect, the EU resembles the federal state; it subsumes subsidiary legal orders.

[2] To this effect in the context of the EU, see the German Constitutional Court's rulings in Case No 1 BvR 248/63 and 216/67 [1967] and Case No. 2 BvR 225/69 [1971]. In the former, the Court ruled that

These two characteristics of the EU are clearly discernible in the ECB's legal structure. The ECB's mandate and independence are enshrined in the EU Treaties. As such, they claim a protected status that only few national constitutional provisions can trump. It requires unanimity among the Member States and peoples to change the status of the ECB. Similarly, neither the ECB nor the other European institutions can decide to alter or abolish the fundamental tenets of its institutional structure.[3] Thus, the exercise of sovereign powers within the monetary sphere has been transferred to the ECB and no constituted body holds sovereign (legislative) rights *over* the ECB's legal form and mandate. At the same time, the ECB's legislative and executive acts are immediately effective within the territory of the Eurozone.[4]

with the treaty "A new public authority has ... been created, which is autonomous and independent vis-à-vis the public authorities of each Member State. Consequently its acts do not require approval ('ratification') by the Member States, nor can they be annulled by those States. The EEC Treaty to a certain extent constitutes the Constitution of the Community. ... [T]he Treaty ... forms its own legal order which is part of neither public international law nor the national law of the Member States" (Oppenheimer 1994: 413). In the latter, the Court ruled that "The effect of the Treaty, following its ratification in the Federal Republic, was to create an autonomous legal order inserted into the municipal legal order and enforceable by municipal courts" (ibid: 416). Before this, the ECJ had established the principles of direct effect and supremacy of Community law in *Van Gen den Loos* (1963) and *Costa v ENEL* (1964).

[3] See Grimm (2017: 47), who concludes that because the EU "lacks the constituent power" it is not sovereign." Habermas' (2012: 36) notion of the European population's *"pouvoir constituant mixte"* seeks to introduce the notion that the EU has a constituent power supporting it. However, Habermas does not clarify how European citizens as EU citizens are involved in the exercise of constituent power. As such, he fails to address the question of what happens in a potential conflict between the majority opinion of EU citizens and the majority opinion of the citizens of one Member State. Should an EU citizenry be allowed to override a Member State people's veto? If so, under what conditions? In any case, as Grimm (2017: 51) notes, there is little legal evidence to suggest that any aspect of popular sovereignty as constituent power has been transferred to the European level. This does not, however, necessarily mean, as Grimm (ibid: 55) suggests, that "the Member States may still be called sovereign, whereas the EU is not sovereign." If sovereignty rests in the representational relationship between the people and its governmental apparatus, as discussed in chapter 4, sovereignty may remain a relevant concept and essential aspect of the legal order even though no single institution or assemblage of institutions can claim to be 'the sovereign.' In other words, 'the sovereign' may have disappeared without sovereignty as such being affected.

[4] Open market operations or changes to the key interest rates, for instance, are not subject to approval by national parliaments or central banks. The ECB has, furthermore, the right and power to "make regulations to the extent necessary to implement" (article 34.1 Statute of the ESCB and the ECB) monetary policy (articles 3.1, first indent, and 19.1 Statute), sustain a functioning clearing and payment system (article 22 Statute), and relating to prudential supervision (article 25.2 Statute). The ECB has even been given the power to impose sanctions and fines on non-complying institutions (article 34.3 Statute). Like the price stability mandate (article 2 Statute) and the ECB's independence (article 7 Statute), furthermore, these rights are unamendable through the simplified amendment procedure (article 40 Statute). Such powers are similar to those exercised by independent government authorities but with the crucial difference that they cannot be overridden, vetoed or reversed by political authorities. They can be challenged in court, but this only underlines that the ECB is subject to the law alone.

The ECB's mandate and powers, in other words, are not products of a legislative power with retained sovereign prerogatives vis-à-vis the institution (as is/was the case with the Fed and the Bundesbank), nor is it a product of a single constituent power, which can decide unilaterally to alter or abolish it. It is, instead, the product of the constituent powers of the several Member State peoples. The positive law of the Treaties and the Statute is the legal expression of the shared will of the sovereign peoples who chose (in accordance with national constitutional provisions) to adopt the euro as a currency, thereby transferring and surrendering the right to exercise sovereign powers within the sphere of monetary affairs to the artificial person of the ECB. This transfer, however, does *not* involve the simultaneous transfer of the competence to alter the basic organisation of the exercise of those powers to the ECB or any other body. Furthermore, because the constitutional-contract establishing the ECB is not an act of a sovereign or of sovereignty in the singular (which claims for itself the inalienable right to alter or abolish anything it may have brought forth in the past) but of sovereign*ties*, it must be carefully stipulated and it must, in its essentials, be unalterable in the absence of a new such act.

The rule of law thereby becomes the crucial mechanism for regulating the relationship between the ECB and the Member States as well as the ECB's governmental activities. In the context of the agreement reached in the contracting moment, the law is supreme. This supremacy of law has two distinct applications for the channelling of the ECB's exercise of governmental powers: it protects it from politics, on the one hand, and protects society from the ECB, on the other.

Law as a Protection from Politics

As discussed in chapters 2 and 3, a key concern of the theory of central bank independence is the necessity of protecting the conduct of monetary policy from ordinary partisan politics and the so-called 'political business cycle':

> If stable money is regarded as a common good for the benefit of all, and if it is seen as a pre-condition for long-term prosperity and social justice, then it makes sense for society to create an independent institution that stands above the fray of day-to-day politics and can pursue this objective with minimum distraction. This is the basis for central bank independence (Issing 2002: 27).

In the Treaty and Statute this notion is captured most explicitly in articles 130 and 7, respectively, which oblige the ECB and the national central banks (NCBs) to refrain from 'seeking or taking instructions' from any other institution whatsoever. At the same time, the articles oblige the Union institutions and Member State governments to respect 'this principle and not to seek to influence' the central banks of the Eurosystem. The independence of the ECB (and the NCBs) from 'all political pressures' is thereby judiciable.[5] By placing the independence of the ECB at the level of primary law, it is the rule of law that governs the relationship between political institutions (national and European) and the ECB and the question of monetary policy is to be taken out of the political debate.[6] Between moments of constitutional politics, the democratic process should 'forget' the question of monetary policy, so to speak. This is the 'economic wisdom' that the law has been constituted as the guardian of (Herdegen 1998).

As Herdegen draws attention to, however, this is only the most direct insulation of the ECB from political pressures. The EMU legal framework includes a range of other legal provisions that are supposed to ensure the central bank's independence in the pursuit of price stability while securing a general orientation to governmental practice in the Member States that supports this. For instance, according to the theory informing the monetary union, a single monetary policy can only function smoothly and uniformly across the different constituent economies if these are not too dissimilar in certain respects. To put it in Schmittian terms (2008), the suppression of political sovereignty in the activity of governing can only be sustained if the homogeneity among the constituent entities is sufficient to preclude fundamental conflicts and tensions based on divergent socio-economic conditions. This principle is legally embodied in convergence criteria that outline the basic homogeneity necessary to participate in the project in the first place (article 140 TFEU) as well as in budget rules that outline in general terms the fiscal practices necessary for sustainable participation (articles 121, 126 TFEU; Stability and Growth Pact). While both convergence criteria and budget constraints – which reflect the same basic commitment to fiscal discipline and the attempt to regulate

[5] The so-called *OLAF* case (Case C-11/00 Commission of the European Communities v. the European Central Bank) was the first test of the implications and limits of the ECB's independence. While the ECJ ruled against the ECB's claim that its independence entitled it to design its own anti-fraud regime and that it could not be subject to the general European one (OLAF), the ECJ stressed that this limitation of the ECB's independence was justified because it did not constitute an avenue for exerting political pressure on the ECB in the performance of its core task, namely monetary policy (paragraphs 134 and 137 of judgement).

[6] In *Gauweiler,* Advocate General Cruz Villalón (2015: § 109, emphasis added) argued that "the ECB's independence is also intended to ensure that it is kept away from *political debate*."

governments' fiscal discretion through law – have been unevenly enforced, they reflect the basic (ordoliberal) notion of governing governmental practice through law. Rules enshrined in supranational law are to govern and constrain the discretion of political authorities; a discretion which might, in the final instance, threaten the achievement of price stability.[7]

The rule of law approach to governmental practice is also reflected in the prohibition on monetary financing (article 123 TFEU[8]). In the absence of such a clause, the ECB might be forced to support states following 'unsustainable fiscal paths' (see Heipertz and Verdun 2004: 767). Precluding such practices in law, then, appeared to be a desirable way of "safeguarding the credibility of ECB independence" (Artis and Winkler 1998; see also Heipertz and Verdun 2004). It promised to introduce a bulwark against governments being able to influence the actual conduct of monetary policy through their own actions. In central bank-speak, this is commonly referred to as the danger of 'fiscal dominance.' It refers to scenarios in which the central bank is effectively ensuring "the solvency of the government ... through the printing press" (Weidmann 2013) or in which the central bank is forced "to use monetary policy to maintain the market value of government debt" (Woodford 2001 as cited in Weidmann 2013). Through the protection against fiscal dominance, the ECB was not only to be protected from direct political pressures but also from indirect, even unintentional, ones resulting from (irresponsible) government practices in the Member States.

Both legal provisions – budget constraints and the no monetary financing clause – give legal expression to the notion that fiscal practices must be governed according to the logic of the market. Knowing that public debt will not be monetised, rational market actors will demand higher yields on bonds issued by governments pursuing unsustainable public policies. This, in turn, should impose government self-restraint.

[7] This is not to say that the protection of the ECB's mandate and independence were the only motivations for introducing such constraints. However, throughout the process of monetary integration from the Delors Report to the Maastricht Treaty and beyond there was a clear concern and pre-occupation with the so-called problem of 'moral hazard.' This problem concerns the ability of Member States to free-ride on the ECB's monetary policy with potentially destabilising consequences for the union as a whole and threatening, specifically, the independence of the ECB and its ability to achieve price stability (see Heipertz and Verdun 2004).

[8] A similar logic applies to the no-bailout clause (article 125 TFEU), which stipulates that neither the EU and its institutions nor other Member States shall be "liable or assume the commitments" of a Member State.

Ideally speaking, the law thereby reinforces the logic of the market, a notion that was explicitly discussed in the Delors Committee.[9] While a government controlled central bank might be able to postpone the potentially catastrophic consequences of unsustainable fiscal practices, they will eventually manifest themselves. According to this perspective, which mirrors that of the neoliberals (chapter 1) and the German central bankers (chapter 2), the economy operates according to natural laws. While access to the printing press, for instance, may provide the illusion that these can be suspended, any suspension is only temporary. The economic forces will, in time, manifest themselves with a vengeance. The sovereign powers to control economic policy that the Member States surrendered by adopting the euro (and which the supranational level did not claim) were thus in any case limited by the order of things. The EMU legal structure thereby enforces a 'reality check' on political authorities and the legal protection of the central bank from politics at the same time constitutes a protection of society from governments seeking to suspend the natural laws of the economy.

Law Protecting Society Against the Central Bank

In liberal democracies, a constitutionally established power is a constitutionally limited power. This is no different in relation to the ECB, whose powers are both explicitly limited (no monetary financing, for instance) and by virtue of enumeration (*enumeratio ergo limitatio*). EMU law not only protects the ECB from politics (and society from governmental irrationality), it also limits the powers of the ECB, whereby the law is to protect society from the arbitrary exercise of powers by the ECB. Its subjection to

[9] Prior to the work of the Delors Committee, but in many ways prefiguring some of the key discussions within it, Tommaso Padoa-Schioppa had addressed, in the context of European market integration, the notion that "the coordination of government actions is increasingly brought about by the 'invisible hand of markets', rather than by the more visible hand of government authorities" (Lindbeck 1977: 229-30 as cited in Padoa-Schioppa 1982: 20). Padoa-Schioppa, however, doubted whether capital markets alone would secure the economic policy coordination and convergence necessary for the functioning of the common market. Markets, he thought, were incomplete regulatory mechanisms, because they themselves needed regulation and supervision. As such, the "high road to policy coordination and economic convergence" should be found in a "complete monetary union" (Padoa-Schioppa 1982: 23). According to Lamfalussy (1989: 96), however, this alone would not solve the problem. Within a monetary union it was unclear whether market forces could exert "sufficiently strong disciplinary effects on national governments' fiscal behaviour." Markets might, as it were, expect other Member States or the Union institutions to step in as a debt guarantor of last resort. This problem, he thought, could be solved through "explicit no-bail-out provisions, which would encourage greater prudence on the part of both borrowers and lenders" (ibid: 97). A correctly instituted monetary union would, in other words, reinforce the hypothesised disciplining power of markets.

judicial review reflects this and is intended to ensure "that the central bank acts within the limits of its mandate and legal framework" (ECB 2002a: 47).

Apart from this, however, there are few (if any) institutional means of checking the ECB's powers. While the ECB and researchers within it tend to stress the importance of the ECB's accountability towards the European Parliament (see, e.g., ECB n.d.a; ECB 2002a; Fraccaroli et al 2018), there is little that any of the EU institutions, Member States or affected citizens can actually do to hold the ECB to account (see chapter 4; see also Curtin 2017). As the ECB (2002a: 47; see also Smits 1997) itself has noted, "[w]hile in theory, sanctions may appear a suitable means for enforcing central bank accountability, the specific nature of monetary policy means that, in practice, certain qualifications should be added." Or in the colourful prose of Otmar Issing (2002: 43):

> Should we fail in the pursuit of [price stability] the statutes of the ECB may not provide for any immediate sanctions or material punishment. As mentioned before, I would not regard such sanctions as either necessary or effective. However, central bankers may well take fright from a glance at Dante's *Divina Commedia*. There, a certain Adam of Brescia is mentioned, guilty of the crime of falsifying coins – that is, creating inflation. His punishment in one of the darkest – or rather hottest – corners of hell is a horribly inflated belly. Central bankers beware!

The absence of formal institutional checks on the ECB's exercise of powers is considered justified by the ECB and its officials in light of the specific nature of its governmental task. The necessity of overcoming the problem of politics with regard to monetary policy in the context of a political community that lacks a (German) "tradition of independence for central banks" (Smits 1997: 500), in other words, justifies the creation of an essentially politically unaccountable governmental institution.

That judicial review is the only formalised means of checking the ECB's powers means that, in contrast to both the Fed and the Bundesbank, it is subject to no political checks short of the 'threat' of Treaty change. Within legal bounds, the ECB's powers are absolute in the sense that they are unchecked by any other institution. This reflects the notion of the EU/Eurozone being a governmental order without a sovereign: within the constituted order, no institution or institutionalised process can politically determine what the ECB should or should not do. The law alone limits the ECB's powers and there are, in principle, no means of suspending it or authorising derogations from it in exceptional circumstances. The law is the law. This reflects the ideal of the rules-based approach to central banking: monetary policy ought to be conducted without discretion.

Such a 'perfect' regime, of course, is impossible to sustain, but the constitutionalisation of price stability reflects the ideal of overcoming the problem of politics and human agency in relation to the government of money. To quote Issing (2002: 28, emphasis added) again:

> if an independent central bank is assigned a clear and limited mandate, this represents *a constraint on the discretionary exercise of power not only by the government but also by the central bank itself.* In the absence of a complete and universally applicable rule for monetary policy, an independent central bank which is firmly committed to the single overriding goal of price stability is the closest realistic and credible approximation to a literal 'rule of law'. In particular, such a central bank does not have the discretion to pick and choose at will among several objectives.

The ECB traditionally places great emphasis on the notion of a clear and limited mandate (see, however, chapter 6; see also Borger 2019). "A clearly defined mandate lies at the very heart of the aforementioned 'contract' between the people and the independent central bank" (ECB 2002a: 50) and the Treaty "gives the ECB the very clear and limited mandate to maintain price stability in the euro area" (ECB 2017a). Mario Draghi (2015a, Draghi and Constâncio 2015) has, similarly, claimed that the ECB is a 'rule-based institution, not a political institution' in response to questions concerning whether political considerations informed its approach to the financial situation of Greece in 2015.[10]

The problem with a political decision by a supranational, unelected institution such as the ECB goes beyond the question of its dubious democratic credentials. In case the ECB makes political decisions (understood here as decisions not explicitly provided for in the law), it would break the contract established by the act of sovereignties in the first place. As such, it would be a challenge to the continued political existence of the Member State peoples as autonomous entities in that they would not have authorised the act. The law is thereby not only a protection against the danger of despotism in the exercise of governmental powers (as in the traditional liberal understanding of constitutionalism), it is also a protection of the sovereignty of the Member State peoples and their political right of self-determination, including the right of self-limitation (see *Maastricht* and *Lisbon* decisions of the BverfG). Acting beyond the mandate (*ultra vires*), according to this perspective, constitutes a breach of the sovereignty relation

[10] The ECB's role in the Greek crisis of 2015 is discussed in more detail in chapter 6.

between peoples, Member States and the ECB, as the initial 'sovereign decision' did not only specify the creation of the ECB and its objective but also a set of constraints on the ECB's right to exercise sovereign powers.

The Problem of Discretion, Legal Uncertainty and Change

The absence of 'a complete and universally applicable rule for monetary policy' points to the central limitation of the rule of law approach to central banking. The government of money cannot, as it were, be governed by laws and rules alone. No legal order can ever predict all possible future scenarios and make provisions accordingly. As such, the absolute rule of law remains an unobtainable ideal and the principle of *enumeratio ergo limitatio* can only be taken so far. Even a specified but general mandate such as price stability leaves considerable definitional discretion to the ECB. The mandate does not specify what interest rate to set or the timing of its change. It does not specify what open market operations to conduct and it cannot determine the interpretation of exceptional circumstances. A host of issues are left to the discretion and judgement of the central bankers. This is the first limitation of the pure rule of law approach and its remedy is sought, as I discuss in the next section, in the governmental logic of technocracy.

The rule of law approach in the context of the Eurozone's structure of sovereignty also entails a high degree of legal rigidity. The fundamental tenets of the law cannot, in principle, be changed without either a new act of sovereignties or without challenging the underlying contract. The law, however, is a product and a vision of a particular economic order. As a product of a certain constitutional imaginary, the law has a 'world-making capacity' (Loughlin 2015). It introduces certain principles and rules that public authorities including the central bank and governments should follow. One of the crucial principles of EMU law is that markets are supposed to do some of the disciplinary work that cannot, according to the constitutional-contract and the constitutional imaginary informing it, be done by a centralised public authority. However, in a situation where the economy does not function according to this logic or if the underlying socio-economic conditions change radically within a short period of time, the law may not equip the authorities (whether monetary or political) with the means necessary to tackle the expediencies of the situation. The cumbersome process of treaty change might even be seen to threaten the very survival of the constitutional order due to the circumstances at hand.[11] In such situations, the ambiguities of the legal text might be exploited in an act of reinterpretation that allows for conduct that was previously considered outside the law. If such a legal change happens, however, the question of its legitimacy, and thus of democracy, is bound to emerge. This is the second limitation of the rule of law approach as it relates to the specific case of the ECB. It cannot provide authorisation for its own change. As in the founding moment, it must seek authorisation in something external to itself and as such it opens up for a more active role for political decision-making, whether democratic or not.[12]

The Rule of Technocratic Expertise

The theory of central bank independence and the legal status of the ECB is premised on the central bank being relieved from (democratic) political pressures to act in certain ways based on political rather than economic expediency. One of the central justifications for the independence of the central bank is that it allows for an optimisation of monetary policy for its own sake rather than it being balanced against potentially conflicting objectives. By delegating certain tasks and transferring the right to exercise certain sovereign powers to the central bank, according to the theory, the political community restricts its own political freedom in order to enjoy the benefits of a rational, time-consistent monetary policy. Such an outcome, however, is conditioned on monetary policy actually being performed 'expertly' (see Vauchez and Mudge 2016 and Marcussen 2006). Central bank independence is not enough on its own. The scientific principles of monetary policy must be enshrined in law but since the law cannot be complete, its gaps must be filled by expertise. Monetary policy, in other words, must become technocratic.

Technocracy as the Highest Form of Bureaucracy

[11] This is the logic of the state of exception or emergency politics; the theme of chapter 6.

[12] These are limitations internal to the rule of law approach. I leave out the question of the viability of the rule of law approach or the question of its normative justifiability. One might, for instance, advance the critique that Hannah Arendt (2006) levelled at the faith in the rule of law as a mechanism for checking power and argue, as she does, that only power can check power without destroying it. One might also, as Walter Benjamin (1978) did, advance a Marxist critique of the rule of law as entrenching and seeking to naturalise class rule and particular relations of exploitation and domination.

In 'The Types of Legitimate Domination,' Max Weber discusses the rationality of bureaucracy within what he calls the 'legal type of legitimate domination.'[13] Placing bureaucracy within the legal type – i.e., rule *of* law and *through* legally specified procedures – Weber stresses that the bureaucratic method of ruling does not rely on personal discretion or opinions. The person of the bureaucrat and her opinions, as it were, are irrelevant. What the bureaucrat might think about a particular issue in her personal capacity should have no bearing on how she does her job. This is specified in procedures that the individual bureaucrat has a negligible influence on. It is the office, the *bureau,* that governs, not the person. The bureaucratic form of domination rests, like the rule of law, on the acceptance or "belief in the legality of enacted rules and the right of those elevated to authority under such rules to issue commands" (Weber 1968a: 215).

The bureaucrat, however, is more or less indifferent to the way in which the rules came about as long as they can make a credible claim to being obeyed by those "who stand in certain social relationships or carry out forms of social action which in the order governing the organization have been declared to be relevant" (ibid.). Bureaucracy is thus a value-neutral form of domination by an "administrative organ" (ibid: 218) whose "specific commands ... [are likely to be] obeyed by a given group of persons" (ibid: 212).

While it might be argued that Weber is describing bureaucracy, not technocracy, it should be remembered that the term 'technocracy' was only coined in the first quarter of the 20th century, by some accounts in 1919 by W.H. Smyth, a follower of Veblen and an early proponent of the Technocracy movement. Back then it meant something very different from what it does today.[14] Weber might not have been familiar with the term

[13] *Herrschaft* is difficult to translate into the English. While 'domination' retains the lordship (*dominus*) connotation, it does not convey an image of public power that is particularly legitimate. To Weber, however, *Herrschaft* is a neutral word for the activity of ruling and being obeyed and he uses *Herrschaft* and *Autorität* as near synonyms (in the introduction he writes: *Herrschaft ("Autorität"*)) and as such I do the same when referring to Weber's text. Weber (1968b: 946, emphasis in original) clarifies his understanding of *Herrschaft* in the essay of the same name (translated as "Domination and Legitimacy"): "*domination* shall be identical with *authoritarian power of command ... domination* will thus mean the situation in which the manifested will (*command*) of the *ruler* or rulers is meant to influence the conduct of one of more others (*the ruled*) and actually does influence it in such a way that their conduct to a socially relevant degree occurs as if the ruled had made the content of the command the maxim of their conduct for its own sake. Looked at from the other end, this situation will be called *obedience*." In this thesis I only use 'domination' when referring to Weber.

[14] The American Technocracy movement was inspired by the works of Thorstein Veblen (1904), one of whose key ideas was that capitalists engage in the conscious destruction of social value (by limiting production to raise prices, thereby causing unemployment) in order to increase profits. Instead,

before his death in 1920, but even if he was, its meaning was different from what he was trying to capture, namely the general phenomenon of ruling according to formalised procedures. The notion of government by experts and the emphasis on the technical element, however, was a key element in Weber's (1968a: 218, emphases added) writings on the subject:

> The rules which regulate the conduct of an office may be technical rules or norms. In both cases, if their application is to be fully rational, *specialized training* is necessary. It is thus normally true that only a person who has *demonstrated* an adequate technical training is qualified to be a member of the administrative staff of such an organized group, and hence only such persons are eligible for *appointment* to official positions.

The crucial distinction between bureaucratic rule and the other forms of rule (charismatic and traditional) is that technical qualifications within the particular domain of administrative practice are essential for appointment to office. That officials "are *appointed,* not elected" (ibid: 220, emphasis in original), furthermore, means that elevation to authority depends not on popularity, promises or ancestry but on merit and expertise within the relevant field. This principle of technical bureaucracy, technocracy, is embodied in the Treaty and the Statute of the ECB (articles 283.2 and 11.2, respectively, emphases added): "[All] members of the Executive Board shall be *appointed* by the European Council, acting by a qualified majority, from among *persons of recognised standing and professional experience in monetary or banking matters.*" It is not a political appointment in the sense of marking out a particular policy-making approach (whether this holds true is another matter), but a matter of choosing the most able candidate.[15]

In accordance with the logic of the theory of central bank independence, this dedication to specialisation makes

Veblen proposed, experts in the industrial process ('engineers') should be placed in charge of production and it should be governed not by the profit motive but by the maximisation of social value. The Technocracy movement generalised such ideas and campaigned for turning the comprehensive system of government over to 'engineers' working for the public good understood as the maximisation of the production of goods and services.

[15] While nationality, gender and political allegiance should, in principle, be irrelevant for appointments to the Executive Board, this principle is imperfectly applied in relation to the ECB. In practice, the large Member States always have a national on the Board. The appointment of Board Members, furthermore, is often subject to debates about the future policy-direction of the ECB and as such the appointment process gives rise to attempts to influence the ECB's monetary policy-making. This undermines somewhat the ECB's claim to political neutrality. It underlines, however, that politics can never be taken out of the question of monetary policy entirely.

> the purely bureaucratic type of administrative organization ... from a purely technical point of view, capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of exercising authority over human beings ... It thus makes possible a particularly high degree of calculability of results for the heads of the organization and for those acting in relation to it (Weber 1968a: 223).

In a capitalist economy this calculability makes the technocratic administrative apparatus a particularly suitable organisation of the exercise of public power. Its "superiority" in this regard "lies in the role of technical knowledge" (ibid.), since "[b]ureaucratic administration means fundamentally domination through knowledge" (ibid: 225). In order to be technical, the knowledge needs to be of the rules governing certain phenomena (say, the economy). Domination through technical knowledge is therefore, in principle, rules-based; it is based on technical knowledge of the laws according to which the economy works. The expert is thus akin to the engineer in the bridge-currency analogy (see chapter 2). Acts of public authority thereby become transparent and those who are expected to obey (financial market actors, citizens, governments) can with a certain degree of confidence predict how the monetary authority will act in the future and adjust their behaviour in the present accordingly (see ECB 2002b).[16] More importantly, this is supposed to ensure that while the technocratic authority may act discretionarily to fill the gaps left by the legal framework, it will not do so arbitrarily: the logic of the technocratic form of domination itself ensures that even discretion is rules-based and predictable (see Papademos 2004). As such, technocracy complements the rule of law through correcting its inherent defects and filling out the blanks in the spirit of the law itself.

The Telos of Technocracy and Its Grounding

While technocracy is not arbitrary but based on a certain systematic knowledge – a knowledge that can, in principle at least, be checked by outsiders – this says little about its objectives. A certain body or field of knowledge can be employed for varying and potentially competing ends. Such ends cannot be internal to the knowledge or expertise itself and like the rule of law technocracy requires an external impetus: "at the top of a

[16] This notion informs the economic rationality behind the general movement towards greater transparency in central bank communications (see Krippner 2007) and the central bank's governmental technique of 'forward guidance' in the context of the Crisis (see McKay et al 2016; ECB 2017b).

bureaucratic organization, there is necessarily an element which is at least not purely bureaucratic" (Weber 1968a: 222). It needs something outside itself, so to speak, as its "ultimate source of authority" (ibid: 219). This impetus, however, is different from the rule of law. Whereas the rule of law requires a positive formulation of the law in its totality (or at least in its fundamentals), technocracy requires only an objective, a *telos*. On the basis of this, it can, in principle, fill out the rest by itself. What grounds the legitimacy of technocracy is its superior ability to achieve any given objective. As the ECB (2002a: 46) has it, "the conduct of monetary policy and the performance of the other tasks have been made subject to independent decision-making for a specific purpose: the maintenance of price stability in the euro area." The ECB, then, "can derive 'output legitimacy' from the successful performance of the tasks entrusted to it." Furthermore:

> an independent central bank, which successfully and consistently provides the 'public good' of a stable and trusted currency, can earn the highest levels of public support, obtain the confidence of the citizens and enjoy full legitimacy in spite of its intentional distance from the normal political process (ibid.).

Conversely, reflecting the German central bankers' notion of the importance of public trust (discussed in chapter 2), researchers within the ECB have argued that if the central bank fails in achieving its mandate, the public's trust in and support for it is bound to decline, making "it vulnerable to political pressure" (Ehrmann et al 2013: 782; Ehrmann and Fratzscher 2011). In that sense, 'output' is the defining form of technocratic legitimacy.

This, however, does not address the question of the source of the teleological impetus. Here democracy enters the picture again and the ECB appeals, as discussed above, to the "robust degree of democratic legitimacy" (Issing 2002: 32) that the ECB derives from the "input legitimacy" (ECB 2002: 46a) of its "democratic *naissance*" (Zilioli and Selmayr 2001: 49). What else, one might ask, can ground and found the authority of the technocratic institution?

Weber's discussion of bureaucracy reflects this notion and he even suggests that bureaucracy and democracy are based on some of the same basic principles: equality and the rejection of inherited (arbitrary) privilege. As such, Weber (1968a: 226) claimed, "[e]verywhere bureaucratization foreshadows mass democracy." But the logic goes further, Weber suggests. Understood as the 'rule of the people,' modern democracy implies delegation to bodies more specialised in the activity of ruling; "Mass democracy

… unavoidably has to put paid professional labour in place of historically inherited 'avocational' administration by notables" (Weber 1968b: 984). The "*demos* itself, in the sense of a shapeless mass, never 'governs' large associations, but rather is governed" (ibid: 985). Democracy, technocracy and the rule of law thereby appear to be perfect companions in fostering a well-functioning polity; balancing political representation of the will of the people with efficiency in achieving it as well as means for the ruled to ensure that the rulers do not rule despotically.

The output legitimacy of technocratic domination, however, means that its legitimacy can never be finally accomplished; its performance in terms of its *telos* is perpetually subject to evaluation, as noted in chapter 2. Technocratic legitimacy "cannot be instituted by a simple procedure … or by fixed rules … [N]or can it be regarded as an historical achievement. It is something that needs to be perpetually constructed and validated" (Rosanvallon 2011: 95). It is, as such, in constant need of supplying proof of its trustworthiness and "[e]ach intervention, each decision is tantamount to a refoundation of the institution" (ibid: 96). In other words, the fact that technocracy's actions were in the general interest of the people yesterday does not mean that they are so also tomorrow. This means that the technocratic institution must subject itself to the people's scrutiny, whether or not this is given institutional form.

In the context of the Eurozone Crisis, the question of public trust in the ECB was problematised in ECB public discourses and research both on and within the ECB (see Cœuré 2012, 2013; Ehrmann et al 2013; Ehrmann and Fratzscher 2011; Gros and Roth 2010; Fischer and Hahn 2008). A lack of public trust in the ECB made it attractive and viable for political actors to challenge both the ECB's independence, its objectives and the monetary union as a whole, the argument claimed. Without the public's trust, in other words, monetary policy was in danger of becoming repoliticised at both the foundational and governmental levels; whereby monetary policy would once again be subjected to the 'destabilising effects' of competing political opinions and convictions. This problematisation of the question of public trust reflects the notion of the 'organic' relationship between the technocratic power and the political subject it governs (for). As Zilioli and Selmayr (2001: 49) noted, "No public organization, even less a supranational organization [such as the ECB] can fulfil its tasks properly without the general support of the citizens from which, ultimately, it derives all its authority." While in the Bundesbank context, this relationship was discussed mainly as providing a grounding for the central bank's power vis-à-vis the government, it can potentially also provide other political actors with a source of power *against* the central bank. This reflects that democracy in relation to technocracy does not involve the *demos* in ruling or choosing officials directly but in "the measure of influence which the *demos,* or better, which social circles from its midst are able to exert upon the content and the direction of administrative activities by the means of 'public opinion'" (Weber 1968b: 985).

In the absence of electoral legitimacy, the question of public opinion becomes an inescapable aspect of the democratic legitimacy of a form of domination that is defined by its superior ability, even indispensability, in the achievement of certain objectives (ibid: 991). It serves to ensure that bureaucratic domination does not, whether in pursuit of technical excellence or group interests, detach itself too much from the pursuit of the public interest. While the technical achievement of the public good might be compromised by directly involving the "political 'master'" – always "a dilettante facing the expert" (ibid.) – in governmental activity, the technocratic authority cannot be allowed unchecked reign without undermining its democratic claim to govern.

Technocracy Against the Rule of Law and Democracy

The notion of a direct and organic link between the ECB and the *demos* presents a distinct problem in the context of the Eurozone. Regardless of whether public opinion supports the ECB or not, this notion poses a potential challenge to the notion of the ECB being governed by the law of the founding contract. This is because it conceptualises the foundational power of the people(s) as being not only present in moments of constituent (law- and *telos*-giving) politics but as ever-present in the legitimation and authorisation of the exercise of governmental powers. However, because no institution holds political authority over the ECB, the people cannot be made formally present in relation to the ECB's governmental activity through electoral representation in a constituted body such as a legislature, as is the case for the Fed. Its presence vis-à-vis the ECB must take the form of public opinion. In an abstraction of the principle supporting the Bundesbank's ability to resist government pressure, 'the people' emerges, through public opinion, as the power that authorises (or not) the central bank's exercise of power.

The people is present in the activity of governing only as a 'sleeping sovereign': a force that reigns but does not govern (see Tuck 2016; Agamben 2011). But the people's foundational power is not exhausted in the formal process of the founding, law-making moment but is envisioned as a source of continuous evaluation and renewal of the technocratic *telos*. The people is envisioned as an active but vague and elusive force providing the technocratic institution an organic legitimacy as the subject in whose name and for whose welfare the technocratic authority exercises power. Following the notion of *salus populi suprema lex esto,* this technocratic obligation may demand even radical departures from the strict letter of the law.

Technocracy's challenge to the rule of law is thereby associated with the potential legal illimitability of its exercise of powers in the name of the public interest; in the name of the democratic imperative of governing *for* the people, as it were. However, technocracy and democracy are also at odds in important ways. As Weber (1968b: 991) highlighted,

> [w]e must remember the fact … that 'democracy' as such is opposed to the 'rule' of bureaucracy, in spite and perhaps because of its unavoidable yet unintended promotion of bureaucratization. Under certain conditions, democracy creates palpable breaks in the bureaucratic pattern and impediments to bureaucratic organization.

Thus, while the "power position of a fully developed bureaucracy is always great, under normal conditions overtowering" (ibid.), democracy always entails the right to choose the 'irrational' against all expert advice. As the grounding authority of technocracy, democracy can also always suspend entirely or radically transform technocratic administration. This reflects that technocracy is a technology of governing *given a certain order of values*. Democracy, on the other hand, is a means of arriving at such an order and it can therefore always choose to instate a new order of values, thereby rendering certain forms of technocratic expertise obsolete or irrelevant. Whereas the manifestation of democracy as 'irrationality' challenges technocracy as such, democracy as the grounding of values challenges only specific forms of technocratic rule, not the technocratic principle of domination.

Technocracy, on the other hand, also poses a distinct challenge to the principle of democratic self-determination. Most importantly, in governing according to its *telos*, technocratic government cannot accept what appear as arbitrary limitations on fulfilling its objective in the most efficient manner possible. Technocracy thereby has an inbuilt tendency to overflow the boundaries between the sphere of social life that it is mandated to govern and spheres that it is not. If a neighbouring sphere is seen, in a purely technical sense, to be threatening or simply relevant for achieving its *telos*, the technocratic authority will seek to intervene in it and to try to create the conditions necessary for the realisation of its mandate.[17] As such, spheres of social life not governed technocratically are perpetually threatened by technocracy's quest to fulfil its (democratic) mandate.

The problem of containing technocracy within specified bounds also has a specific legal dimension. As noted above, technocracy promises to respond to the problem of the inability of law to predict and provide a solution to all possible scenarios. The law is, in principle, static between moments of law-making and in the event of unforeseen circumstances, this may make a strict reliance on the rule of the letter of the law dangerous to the legal order. In such situations, technocratic governmental authority can give executive discretion a rules-based anchoring, supplying the defects of the law without undermining it. Technocracy as a governmental logic, however, is dynamic because its justification and legitimacy rests not only on the letter of the law but also on its ability to deliver on its *telos*. If the letter of the law is considered an impediment to this, the technocratic body might 'supply the defect of the law' not by filling its gaps but by ignoring, changing or suspending it. It will do "whatever it takes" (Draghi 2012). Draghi's qualification "within our mandate" is ambiguous in this context because the ECB's mandate is both the general positive law framework governing its exercise of power and the general *telos* of price stability. The question, then, is what the hierarchy between the two should be. If the technocratic authority considers, in accordance with its expertise, that the realisation of the *telos* (price stability) demands the suspension of the law (say, article 123 TFEU), the technocracy will, paradoxically, have *compromised its mandate while fulfilling it*. The same is true if it sticks to a strict interpretation of the law that undermines its *telos*. The democratic impetus of the law and of the *telos* are, as such, in a potentially irreducible conflict and the choice between them is inescapably political. However, within the public law structure of the Eurozone, as opposed to the US, there are no institutional mechanisms for arriving at such a decision. This does not mean that such a decision will not be made but simply that it will be arrived at, as discussed in the next chapter, on the basis of 'might' rather that 'right.'

[17] This is discussed in more detail in chapter 6, but the involvement of the ECB in the troika, its threats in secret letters to governments, and its preoccupation with explaining what kind of fiscal policies Member States should be pursuing in public discourses are examples of this.

These contradictions within the mandate of the ECB, even if the mandate is considered perfectly democratic, highlight the limits of addressing the problem of politics in relation to monetary policy through the constitution of the central bank as a sovereign representative. The problem of politics, as it were, does not disappear through the institutional attempt to depoliticise it. It merely manifests itself in a different form.

The Rule of the Peoples

If there is a sequential relationship between the three governmental logics discussed in this chapter, democracy is both logically and chronologically the principal. In the contemporary European political imagination, anything else would be unimaginable. All political projects must in some way claim to be based on popular sovereignty and the people's right to influence and authorise the performance and organisation of governmental activity. As discussed above, this is no less true of the ECB: democracy entered at a foundational stage and constituted the law and the system of values and norms that the technocratic authority of the ECB operates within and promotes. Democracy is invoked as the foundational force grounding the authority and legitimacy of the legal order and the technocratic *telos*. The law constituted in the founding moment is thereby seen to express the democratic will of the peoples and the insulation of the ECB from subsequent political contestation serves as a means of protecting and promoting this expression in the most effective manner.

The notion of democracy contained in this conception sees it as a founding expression of political will, a constituent power, but not a governing power. But is there a space for democracy as a way of governing within the Eurozone? If so, what form does it take? What is the relationship between the legal and technocratic elements of the EMU's organisation of the exercise of sovereign powers and democracy as way of deciding and acting in concert? What, in other words, is left of and for democratic politics in the EMU's constitutional order?

Tying the Hands of Government in the Name of Democracy

When the ECB was created, little attention was devoted to the question of its democratic legitimacy. Or rather, the question was posed in a manner that made it easy to address without placing too onerous requirements on the future ECB. In 1990, for instance, Karl Otto Pöhl sought "to solve" the question of "the 'democratic control'" of the ECB, which was "frequently raised, particularly by the French and the British." According to Pöhl, this was not difficult because "an independent [ECB] would, in my opinion, be conceivable before the completion of political union if the governments ... are prepared to surrender the corresponding sovereignty." There was "no need to wait for complete political union, a European government and a parliament with real responsibilities" because "[t]he system would have an adequately democratic legal base if it came about by an agreement between democratic governments, if the agreement were ratified by democratically elected parliaments and if the system were provided with a clearly defined mandate ... As for the rest, the system would be measured by its success."[18]

The democratic 'input' for the ECB could unproblematically be reduced to the founding moment and its performance in terms of that democratic mandate would constitute the source of its continued 'output' legitimacy. This, in turn, would be checked through reporting to the other European institutions, the EP in particular. The conclusions reached in the Delors Report reflected this and stressed that the EMU institutional framework "would have to promote efficient economic management, properly embedded in the democratic process" (Delors Report 1989: 21). It made few demands on the ECB in that process, however. In so far as the issue was addressed at all, the Report only outlined accountability requirements as "reporting ... in the form of submission of an annual report by the ESCB to the European Parliament and the European Council; moreover the Chairman of the ESCB could be invited to report to these institutions" (ibid: 22). The problem of the ECB's democratic legitimacy was thus largely ignored or reduced to the question of accountability understood as "verifying that the rules and principles laid down for the central bank are respected" (Bini Smaghi and Gros 2000: 146).

In order for such accountability to function adequately, in turn, "the rules and principles for central bank action can thus not be continuously changed by the government according to specific and changeable interests" (ibid.). This, then, entails that "[a] central bank cannot be made fully independent if its objectives are not clearly and precisely defined" and, further, "it cannot remain independent if it does not give a public account of its actions" (ibid: 147). The ECB's independence is legitimated by its

[18] Pöhl, K.O., "Herr Pöhl discusses the basic features of a European monetary order," speech in Paris, 16 January 1990, HAEU, TPS-193, p. 5-6.

giving account of rather than being *held to account for* its actions, which is, as a number of scholars have noted, a rather weak form of democratic accountability (Buiter 1999; Berman and McNamara 1999; de Haan and Eijffinger 2000; Kaltenthaler et al 2010; Curtin 2017).[19]

The democratic accountability of the ECB follows from the conception of its foundation of democratic legitimacy: it is based on the founding act that created the law rather than the continuous expression of democratic will in and through political institutions composed of elected representatives. Through the notion of accountability, democracy re-enters the framework but only in a vague form without any express powers. Its role is limited to checking whether the technocratic authority remains faithful to the original expression of will. Even then, however, there are no institutional means of sanctioning potential transgressions. The lack of democratic powers vis-à-vis the ECB reflects the notion that law, not political authority, was supposed to constrain the ECB's governmental activities. It also reflects a specific conception of democracy and of democratic representation in the activity of governing.

The dual constraint of the law discussed in the first section of this chapter entails that democratic government is constrained by the democratically established law and independence of the central bank. At the same time the democratically established independent central bank is constrained by the democratically established law and, to a lesser extent, the disciplining power associated with democratic accountability. While involved in all aspects of the construct, however, democracy is reduced to the initial sacrifice of political freedom concerning monetary policy. The order as a whole can, of course, be reconstituted, whereby political freedom is reintroduced in a founding moment, but within the constituted order political freedom is highly constrained.

A monetary order without political freedom is essentially what the notion of central bank independence seeks to realise through the removal of the conduct of monetary policy from politics. In the Eurozone in particular, where the depoliticisation

[19] What many contributions to the debate on the ECB's accountability highlight (even those not critical, see Issing 1999; Bini Smaghi and Gros 2001) is that the Treaty framework specifying how the ECB is to be accountable leaves much discretion to the ECB as to how this is to be done. While the ECB may have augmented its accountability practices vis-à-vis the EP relative to Treaty requirements, much of this is unenforceable and subject to the discretion of the ECB. The ECB's accountability practices are thus largely a 'gift' from the ECB to the EP (and the European citizens). Whether it, like gifts, entails a certain expectation of reciprocity and an expectation that the gift will not be turned against the giver is an open question.

of monetary policy is accompanied by the denationalisation of money, this produces a monetary order akin to the gold standard: from the perspective of the individual government monetary policy is an externally given constraint on economic policy. Political freedom concerning economic policy at the Member State level is, in principle, constrained by the original democratic decision and will of each of the Member State peoples to subject themselves to the institutional structure. The justification for the constraints on democracy as an active governmental force thus stems from a conceptual separation between government and the popular will akin to that discussed in relation to the Bundesbank: the people's foundational will for price stability justifies the constraint on the economic policymaking freedom of government as a necessary means of promoting a popular will more foundational than that expressed in periodic elections.

The EMU structure thereby incorporates the traditional liberal suspicion of government and presents its constraints on democratically elected government not as limitations of democracy but as a means of realising a true democratic will that would otherwise be compromised by partisan politics and self-serving political elites. While a government might not be 'evil,' this conception stresses that it cannot be trusted to adequately constrain itself from acting 'irrationally' or, simply sub-optimally: government in *T+0* cannot, as discussed in chapter 3, commit government in *T+1* without commitment devices such as central bank independence.

This is not necessarily a problem of democracy as such, since democracy can, in accordance with the theory, tie its own hands (government) to the mast of time consistency through measures such as central bank independence. The will of the people can thereby be better realised through excepting certain policy issues from the ordinary democratic process. Because there is a potentially antagonistic relationship between electoral representation and the people's foundational will, the latter may more 'authentically' be represented by independent institutions. One might, of course, object that 'really existing democracy' works through elected representatives, whereby the limitation on their powers becomes a limitation of democracy. This, however, would miss the point. The ECB's independence is not presented as a means of overcoming the shortcomings of democracy but the "shortcomings of the parliamentary system." It is seen as "a counterweight to the preponderance of parliamentary power in general" (Christodoulou 2005:185).

Informing the justification for central bank independence is a conception of democracy as being separate from and somewhat trapped by the political process. The problem is government and its partisanship, not democracy. As such, constraining the political freedom of governments and parliaments need not entail an impoverishment of democracy. It might, in fact, enrich it.

Tying the Hands of the People in the Name of Democracy

While government may be constrained by the EMU's constitutional framework, then, democracy is not necessarily constrained. The euro, however, constitutes not only a constraint on the governmental capacity of individual governments but also on the people's ability to express political will. This constraint is not absolute; it does not, in principle, affect the ultimate sovereign right of the people to determine the constitutional ordering of its governmental apparatus. Through the initial transfer of sovereign powers to the ECB, however, the possibility of exercising this sovereign right is tempered by the fear of the potentially catastrophic consequences associated with reversing it. This fear is central to the notion of the irreversibility of the euro. The question is whether it can be understood as being democratic. Or, rather, what conception of democracy allows for perceiving such a constraint on the people's ability to express political will as being democratically legitimate?

Even if a) the euro and the ECB are considered products of an act of the constituent power of the peoples, b) are trusted in public opinion, c) the ECB's accountability practices are considered to 'work,' and d) the constraints on governments' political freedom in terms of economic policy are considered legitimate, it is not immediately clear that this would make the governmental structure democratic. Positing 'the people' as the foundation for governmental power is not unique to the democratic form of government, nor is the notion of the rulers having to retain the public's trust or govern for the population at large. In *De Cive,* for instance, Hobbes held that the initial assembly of the multitude erecting sovereign power is by definition democratic. The governmental order created by the founding assembly, however, needed not be. The undemocratic governmental order may thereby be democratically founded. In Machiavelli's *The Prince,* similarly, the distinctly monarchical prince could never make himself safe against a hostile people. If the people turned against the prince, the principality would be lost but this did not make the prince's politics democratic.

Despite invoking the popular foundation of the legitimacy of political rule, neither Hobbes nor Machiavelli were developing theories of popular participation in the activity of governing. As Canovan (2005: 27) highlights, there is a long, and for many years dominant, tradition of political thought which invokes 'the people' as the foundational political subject, the "constituent sovereign," without necessarily reserving for the people an active role in government. This conception of the people's sovereignty is very much in line with the notion of the ECB deriving its mandate from a 'democratic *naissance*' in a sovereign decision by the European peoples. That the founding moment is said to be based on the sovereignty of the people(s) does not necessarily make the constituted governmental form democratic. Monarchy can be justified in this way as can the mixed constitution of the (old) republican tradition,[20] which incorporates elements from the rule of the (common or poor) people (democracy), rule by the most qualified (aristocracy), and rule by a supreme military commander (monarchy). The ECB might therefore be non-democratic in its governmental form (technocracy being a modern variant of aristocracy) even if it is accepted that it derives its ultimate authority from the people(s) as political subject(s), it has the people's trust, and it governs for the people.

If the ECB is a manifestation of techno-aristocracy, the question is whether democracy exists elsewhere in the Eurozone's constitution. The question of democracy, in other words, becomes one of identifying the active democratic element in a mixed regime.

The idea of taking certain issues out of democratic politics without thereby undermining democracy as such is at the heart of the liberal theory of democracy. In liberal thought, constitutionalism and constitutional protections of individual rights constitute not so much a constraint on democracy as that which allows democracy to flourish. Without protections of property rights, for instance, there can be no meaningful democracy because the minority will always threaten to sabotage and revolt against majority decisions that go against them. As Stephen Holmes (1995: 29-30) argues with reference to James Maddison:

> For a popular government to persist ... the mass of poorer citizens must keep the confidence of the wealthy. Without the willing cooperation of the rich, no system as inherently unstable as collective self-rule could possibly last. If property-holders

[20] Machiavelli's *Discorsi* and Montesquieu's *The Spirit of the Laws* are perhaps the best-known examples from this tradition.

> believe that democratic procedures will lead to confiscatory policies, they will refuse to go along. They will sabotage the workings of popular government, and they will use their private wealth to resist collective decisions. The poor will counterattack. The likely outcome is class warfare, social turmoil, and the general call for a dictator on horseback.

Ultimately, then, the insistence on the pure democratic form (understood as majority rule) ends up undermining itself. A (very) similarly logic[21] informs the notion of taking monetary policy out of democratic politics. In the absence of institutional safeguards, the democratic control of money risks, following the myth of the inflations, producing the conditions for democracy's own undoing. An independent central bank pursuing the primacy of price stability thereby becomes a precondition for a stable democracy. The de-democratisation of monetary policy is seen as fundamental condition for the maintenance of the social norms conducive to the functioning of democracy. Without it, democracy risks collapsing into chaos and/or authoritarian dictatorship.

The de-democratisation of monetary policy serves, in this view, to provide the existential preconditions for a functioning democracy. Still, however, this does not address the role of democracy as an active governmental force. That is, does the de-democratisation of monetary policy make democratic politics more meaningful in the spheres of governmental activity that are not de-democratised?

The Maastricht Treaty stipulates that economic policy remains a Member State responsibility. If democracy is to enter as an active governmental force it must be sought here. The question, then, is how the de-politicisation of monetary policy (and the legal constraints on fiscal policy) affects the democratic conduct of economic policy. The bridge-currency analogy of Wilhelm Vocke (see chapter 2) implies that there are two ways in which we can understand constraints on economic policymaking. We might, on the one hand, see the stability of money as an *a priori,* legal-institutional constraint on the political freedom of governments. This implies that certain courses of government action will be ruled out from the outset because the central bank will refuse to sponsor them. If the government's policy is democratically mandated, this will constitute a constraint and a limitation on what democracy can decide to do in terms of economic

[21] According to Röpke (1957: 19), "Erosion of property and erosion of money go together; in both cases, that which is solid, stable, firmly held, assured and meant to last is replaced by that which is brittle, precarious, fleeting, uncertain, and meant for the day."

policy. On the other hand, the democratically mandated government might ignore the central bank's warnings and take control of monetary policy in the name of implementing a policy intended to improve public welfare (stimulate employment, for instance). While this may, according to the Bundesbank approach as well as the theory of central bank independence, provide the illusion that economic policy is democratically controlled, the workings of the 'natural laws' of the economy will ultimately undermine its intended positive effects and may bring unintended destructive effects that undermine democracy as such. Unconstrained democratic control of economic policy is in any case an impossibility: it is either constrained by the institutional structure at the outset or by the order of things in its effects.

What institutional and legal constraints do is to enforce the realisation of constraints on the democratic decision-making process, thereby making democracy more realistic in its demands on economic policy and focussing its energies on what it can actually do in terms of economic policy. By dispensing with the illusion that you can have your cake and eat it, it forces democracy to confront the 'real' choices between competing values and distributional policies in a manner that reflects the 'real' priorities of the people. Democratic government, in this conception, is made more 'authentic' by the enforced realisation of the always already existing material constraints on economic policy. For instance, once the power of the printing press – paradoxically, as Friedman noted, both essentially impotent and fundamentally destructive – is removed from the political realm, democracy faces economic reality as it is, not as it wishes it to be. Consequently, the contemporary liberal democratic regime of 'constrained democracy' (Müller 2011) of which central bank independence is part, is the legal-political form given to the attempt to make the people realise the inherent constraints of democratic politics. Ignoring such constraints comes at a price. They do not disappear in the absence of the legal-institutional constraints. Their manifestation is merely postponed, potentially with catastrophic consequences. In the Eurozone, then, the legal-institutional separation of monetary and fiscal policy simply formalises the 'real' limits of democratic sovereignty that exist by virtue not of the law as such but by the (economic) order of things. The right of sovereignty may be unlimited in principle, but its exercise cannot but be conditioned, constrained and oriented by economic reality. The law and the institutional depoliticisation of monetary policy does not create this state of affairs, it only makes it explicit and forces democratic politics to reckon with it in moments of economic policy decision-making.

The Limits of Constrained Democracy

The discussion in the preceding subsections has focussed on the conception of democracy that allows for conceiving of the general Eurozone governmental order as being somehow democratic. It has not, however, addressed the openings for democracy that emerge from tensions between the rule of law and technocracy, on the one hand, and how democracy *eo ipso* may create difficulties for a particular legal-institutional order such as that of the Eurozone.

As discussed above, there is a potential contradiction between the rule of law and technocracy: governing in the name of the *telos* may demand the abrogation of the letter of the law, and vice versa. Given that the two structuring conditions for governmental activity derive from the same source of authority – the original decision of the Member State peoples – the hierarchy between them cannot necessarily be settled *a priori.* The question, then, is how such a conflict is to be resolved and by whom?

A contradiction between two facets of a foundational expression of political will demands a political decision; a new act of sovereignty. In this regard, democracy offers a procedure for deciding in a legitimate manner on suspending, altering or abolishing either the letter or the *telos* of the law (or both) in either the limited sense of the concrete situation or in a more generally applicable sense. Democratic sovereignty can thus be invoked as judge in a conflict between the rule of law and technocracy that is irresoluble within the legal-institutional order itself.[22] Within unitary structures of sovereignty, this decision can emerge from the ordinary political process, as for instance, was the case in relation to the Fed's controversial decision to bail out the insurance giant AIG during the Financial Crisis. Within the Eurozone's governmental structure, however, there are, as discussed, no institutionalised means for making such a decision. This does not mean that a decision is not made, but that it is made in a manner that leaves its legitimacy in doubt.

[22] If a court of law makes such a decision it is not acting as a court but a political body and the validity of its ruling will tend to depend on its political reception (see Schmitt 2015a; Ackerman 2000).

The decision may not necessarily be undemocratic, but the problem of establishing its democratic legitimacy becomes somewhat thorny. The problem is how to make the people present in the evaluation of a political decision. This is not a problem specific to the Eurozone, but it takes on a particular meaning in a governmental order where the institutional expression of sovereignty is divided.

There is in the Eurozone and the EU more broadly no political institution able to invoke a direct mandate from the people (as in the contemporary US) and there are no provisions in the Treaties, which, as in Switzerland, allow for a mixed exercise of constituent power by the people as a whole and the peoples of the Member States. The EU has not, despite Habermas' (2012) reconstructive efforts, formalised the possibility of 'a European people' authorising fundamental changes to the basic meaning of the constitutional order in their names as citizens of both the EU and their respective Member States. The people as an active force must take a different form in relation to the ECB and Eurozone governance in general.

In *Constitutional Theory,* Carl Schmitt (2008: 131) invoked acclamation as "the direct expression of a people's will." However, he noted, "In modern, large states, the acclamation ... has changed its external form. In these states, it expresses itself as 'public opinion.'" In terms of political effect, in other words, public opinion has taken on the role of the public square. As noted, the ECB attributes considerable importance to public opinion expressed as public trust (measured in Eurobarometer polls). The importance of public trust follows from the logic of 'output legitimacy' as the defining form of legitimacy for a technocratic institution but it also touches on the more difficult question of establishing the legitimacy of legally questionable act: if the ECB is able to demonstrate that it governs effectively for the people(s), thereby gaining the people(s)'s trust, this constitutes a continuous justification for the ECB's existence as an independent technocratic body even though its acts transgress the original mandate.

This conception of the role of the people corresponds to Locke's (1988: 427, emphases in original; see also Canovan 2005: 15ff) notion that "*The People shall be Judge;* for who shall be *Judge* whether his Trustee or Deputy acts well, and according to the Trust reposed in him, but he who deputes him and must, by having deputed him have still a Power to discard him, when he fails in his Trust?" This conception is reflected in the ECB's description of its accountability, which, although not allowing the EP any formal powers over the ECB, concedes to it a representative function and the power to "form a judgement on the ECB's performance against its objectives" (ECB n.d.a., see also Fraccaroli et al 2018). This conception, then, entails that if the ECB has forfeited the people's trust through its actions, the people retains the 'reserve' power of naming new rulers or recreating the regime (Locke 1988: 428).

The possibility of a negative judgement appears to introduce the possibility of evaluating the democratic legitimacy of any political decision and as such, democracy could potentially become an active force in deciding in the conflict between the letter and *telos* of the law. At best, however, surveys of public trust provide a measure of popular satisfaction but cannot provide explicit political authorisation. Even measured popular distrust (as was the case in Eurobarometer surveys between November 2011 and November 2018[23]) is subject to the politics of interpretation and is difficult to employ as either affirmation or rejection of particular acts or of the institution itself. Similarly, the EP's role as a political representative of the peoples depends on the peoples actually seeing it in that way; which there, at present, is little evidence to suggest. Furthermore, the corollary of the notion of public opinion as acclamation is the fact "[t]hat no special will is perceivably expressed simply signifies the enduring consent to the existing constitution" (Schmitt 2008: 132). Thus, in the absence of an effective expression of dissent, the ECB's interpretation of its mandate must be considered legitimate. The democratic legitimacy of the ECB, whether in normal or extraordinary circumstances, rests on *the people deciding through their passivity*. The absence of (successful) revolt becomes a sign of consent (a variant of this argument is found in Genovese et al 2016).

This conception, of course, offers only a thin understanding of democracy as an active force. It sees governmental acts as deriving their legitimacy from a "comfortably unmobilised political climate" (Wallace and Smith 1995: 145). Its force in terms of reorganising governmental practice, however, is potentially radical. As long as they do not manifest their discontent effectively, the peoples can be understood to have decided in favour of practices that depart from the letter of the law (this notion is discussed in more detail in chapter 6). But if the absence of revolt is interpreted as implied consent, this entails a radical departure from constrained democracy. Democracy becomes,

[23] Survey available at: http://ec.europa.eu/commfrontoffice/publicopinion/index.cfm/Chart/getChart/chartType/lineChart//themeKy/9/groupKy/27/savFile/194 [accessed 7 May 2019].

however absurdly, unlimited through its potentiality for authorising silently. Democracy becomes an active authorising force, but only through its passivity.

Conclusion

When does the rule of law become so rigid that law prevents, rather than facilitates, the realisation of social objectives? When does technocracy pass from being rule by technical knowledge and established procedures in the general interest to becoming instead an unaccountable power exercised by unelected leaders for opaque purposes? When is democracy so hollowed out that what remains is only an empty shell? While this chapter has not addressed such questions directly, the discussion of the rule of law, technocracy and democracy in this chapter highlights that despite complementarities, supposed or real, there are important tensions and contradictions between the three dimensions of the constitutional imaginary and institutional construction of the Eurozone. While it seeks the elimination of politics in the government of money through law and technocracy, it cannot but reintroduce it through the tensions it creates. The form in which politics re-emerges, then, becomes the crucial question.

Democratic legitimation by silence is a problematic notion and it reflects that democratic politics as an active governmental force sits uneasily with a constitutional structure based on the rule of law and technocratic authority. While democracy is necessary as a foundational authority- and legitimacy-bestowing power, it is unwanted as an active governing force. The contradictions between the rule of law and technocracy discussed in this chapter nevertheless mean that the political and constitutional meaning of the people cannot be exhausted in the constituent moment. However, if representative institutions, such as the European Parliament, were empowered to effectively sanction legally ambiguous ECB acts, they would be able to override the expressed political will of the Member State peoples in the constituent moment. It would become endowed with the creative power of democratic sovereignty. Several proposals to this effect have emerged during the Eurocrisis (see chapter 7). What they share is that they point beyond the current constitutional structure of the EMU as a political order without a sovereign. Overcoming the contradictions inherent in the Eurozone's constitutional order may, in other words, both challenge the existing constitutional imaginary and demand a reconfiguration of the political relationship between the peoples, Member States and the Union. The manifestations of such contradictions as well as the question of how they point beyond the existing constitutional structure, are the subjects of the next two chapters.

Chapter 6

The Emergency Politics of the ECB

Introduction

Sovereign representation, whether partial or absolute, embodies a promise to honour the original contract. This, in turn, entails that the sovereign representative must act on its own interpretation of this promise. The ECB did this with its emergency politics during the Eurozone Crisis. In doing so, it played an extraordinary role in managing the Crisis and is often credited with having 'saved the euro'; in particular through unconventional monetary policies such as the Outright Monetary Transactions (OMT) and Quantitative Easing (QE) programmes (launched respectively in 2012 and 2015). In addition to these measures, the ECB was involved in a number of unconventional uses of conventional monetary policies (e.g., negative interest rates and loosening collateral requirements); it played a crucial role in formulating economic policy conditionality in the Troika and the European Stability Mechanism (ESM) along with the Commission and the IMF; it has overtly and covertly threatened Member State governments (e.g., in 'secret letters' to heads of governments); and it played a highly controversial role in the Greek crisis of 2015. As a result of its activities during the Crisis, furthermore, the size of its balance sheet, a rough indication of its involvement in the Eurozone economy, more than tripled between 2007 and 2018.[1] In short, the ECB's emergency politics during the Crisis was both qualitatively and quantitatively extensive.

The question, then, is: why did the ECB become such an important actor during the Crisis? How does this role relate to its constitutional authority and independence? One aspect of the answer to these questions is derived from the nature of its governmental activity and of the crisis itself: the ECB, like other central banks, played a crucial role in the Crisis because it was a crisis of money, banking and finance. The ECB's technocratic expertise within this sphere of policymaking made it, supposedly, well-placed to identify relevant policy measures. This aspect of the ECB role in the crisis,

[1] See https://www.ecb.europa.eu/pub/annual/balance/html/index.en.html [accessed 9 December 2019].

however, does not differentiate it from other major central banks. During the Great Recession, central banking became 'the only game in town' across the world (see, e.g., Bini Smaghi 2014; El-Erian 2016). In the Eurozone, this situation may have raised concerns about adequate political oversight and democratic accountability that other central banks did not face to the same extent. This aspect of the ECB's role in the Crisis, however, does not fundamentally challenge the constitutional construction of the EMU as outlined in chapters 4 and 5. If there was a problem of democratic legitimacy associated with the ECB's unconventional uses of conventional monetary policies – its 'ordinary' emergency policies, so to speak – it was the product of an already existing democratic deficit in the EMU's institutional structure. As such, it does not raise additional problems in terms of the constitutional position of the ECB.

The ECB's emergency politics, however, went beyond this. In addressing the Crisis, the ECB took on the role of a 'constitutional guardian.' What it protected, however, was not the letter of the constitution (the Treaties) but the very existence of the Eurozone. It acted, in other words, not only in the name of price stability, but in the name of the general political stability of the Eurozone, its governmental order and governing ideology.

Constitutional guardianship entails, by definition, a conservative element: the constitutional order is to be protected. The question is how the constitution is understood. The potential conflict between the written law of the constitution and its *telos* (discussed in chapter 5) means that there may be an inherent ambiguity as to what the 'essence' of the constitution is. Constitutional guardianship therefore entails a decision not only on safeguarding the constitution but also its meaning. This means that the conservation of the constitution may demand its transformation in some important respect; conservation through transformation, as it were. This is precisely what the ECB's constitutional guardianship entailed.

The ECB's actions to preserve the euro follow logically from its position as a sovereign representative of the peoples of the Eurozone. The euro is based on the expression of political will for the euro. Representing the will of the European peoples therefore entails the obligation of protecting the product of this will. The expression of the will of the peoples in the Treaties, however, is not confined to the existence of the euro but includes, as highlighted in chapter 5, a number of other obligations. Some of these may be in conflict with the technocratic interpretation of the necessities associated with preserving the euro in an existential crisis. As a result, the ECB may confront the choice between honouring two equally valid but competing obligations, both stemming from the same original expression of political will. The existential crisis forces a decision.[2]

This chapter discusses two significant manifestations of emergency politics by the ECB and how they relate to the contradictions inherent in the ECB's foundation of authority: the ECB's OMT decision and its involvement in the Greek crisis. These two instances of ECB emergency politics highlight the contradictions between the rule of law, technocracy and democracy. At the same time they highlight how these contradictions reintroduced the problem of politics in relation to the monetary order in a double sense: with respect to efforts at reforming the Eurozone's governmental framework, and with respect to the relationship between democracy at the Member State level and the governmental necessities of the euro. Before turning to how the ECB's actions in the two cases challenged the existing constitutional order and reopened the problem of politics (discussed in more detail in chapter 7), the first section outlines in conceptual terms the particular form of emergency politics that the ECB engaged in, namely constitutional guardianship.

In the original EMU construction, as highlighted in chapter 5, rules and institutions were supposed to be mutually reinforcing. Government in accordance with technocratic knowledge was to fill the inevitable gaps in the rules, but the general *telos* of the constitutional construction as a whole was supposed to be reinforced, not threatened by, a set of rules and prohibitions. During the Crisis, however, emphasis was systematically skewed towards an 'institutional approach' to Eurozone governance in justificatory discourses. With this shift of emphasis, the importance of rules was downplayed in favour of technocratic discretion. This challenges a central tenet of the Eurozone's constitutional order, namely the law as a protection not only of the ECB's

[2] 'Existential crisis' is not an objective description of a set of events (see White 2015, forthcoming). When it comes to socio-economic phenomena, a crisis is to a large extent a matter of perspective and for some it will appear more critical than for others. Naming something an 'existential crisis' is, accordingly, to be understood as a way of painting a situation as requiring and justifying extraordinary actions by a certain (set of) actor(s). Schmitt (2005) famously defined sovereignty precisely in relation to the ability to 'decide on the exception,' since the ability to do so effectively entails the privilege of defining what the norm is. According to Schmitt, then, the relevance of emergency political action is not limited to the exceptional moment: it defines both the nature of sovereign authority in the political community as well as its basic norms and values.

independence from politics, but also as a protection of society against the arbitrary exercise of powers by the ECB. The turn to institutional discretion at the same time raises the stakes of democratic accountability and control of the ECB. But the question is whether democratic accountability and control can be strengthened meaningfully without threatening the continued existences of the peoples as separate political subjects.

Constitutional Guardianship and the ECB

At the height of the Eurozone Crisis in 2012, yields on Eurozone Member States' government debt were diverging to the extent that the continued existence of the euro was perceived to be in jeopardy. Extant extraordinary measures by Union institutions and Member States had not done enough to assuage market fears and the ECB's use of both conventional and unconventional monetary measures had had only modest effects (see Mody and Nedeljkovic 2018). The Eurozone was in an 'existential crisis' and while the Eurozone's political leaders appeared "manifestly incapable of mastering events, something had to be done … That something was a forceful intervention by ECB President Mario Draghi" (Baldwin et al 2015: 11).

The symbolic significance of Draghi's (2012) promise to do "whatever it takes to preserve the euro" can hardly be exaggerated. By announcing that decisive action would be taken – that decisive action being the OMT programme – Draghi was widely understood to have saved the euro and the continued existence and integrity of the Eurozone. A 2015 report by sixteen prominent European economists reflected the general consensus when it hailed Draghi's promise as the turning point in the crisis. It switched "markets from the 'doom is inevitable' expectations back to the old 'we will get through this thing' expectations" (Baldwin et al 2015: 11). While it did not solve the Crisis, it provided an indication that the euro's collapse would be averted. It indicated, in Draghi's (Draghi and Constâncio 2012a) words, that "a fully effective backstop to avoid destructive scenarios" would be implemented. It would bring about the calm necessary for other crisis measures to be put to work. To Jürgen Habermas (2015) this meant that all European citizens owe Draghi "a debt of gratitude for uttering a single sentence that saved them from the disastrous consequences of the threat of an immediate collapse of their currency."

The ECB, in other words, is widely considered to have acted as the guardian of the currency. But its *Hüter der Währung*-role differed somewhat from that associated with the Bundesbank in the German context. Whereas the Bundesbank's '*Hüterschaft*' consisted in its *ordinary* vigilance against the demands of government and others in the eternal fight against inflation, the ECB's guardianship was *extraordinary*; it was an emergency political guardianship. The Bundesbank's guardianship of the currency, furthermore, was a product of its ability to maintain price stability. In the context of the Eurozone Crisis, this order was reversed: the currency had to be saved first if the mandate of price stability was to remain meaningful in the future. It was not price stability but the very preservation of the currency that was the primary objective of central bank intervention.

Despite these differences, there is nevertheless, at least at a symbolic level, a connection between the Bundesbank's *Hüterschaft* and the ECB's role in the Eurozone Crisis. Through the mythical link between price stability and general political stability, the Bundesbank presented itself as a general guardian of the post-war German (economic) constitutional order; on a par with the Bundesverfassungsgericht (BverfG), one might add. In saving the euro, the ECB performs a similar function by averting the 'catastrophic consequences' of the euro's collapse. But whereas this role was a product of the mythical construction of the Bundesbank's authority, the ECB's role as the guardian of the constitution is more explicit: without the euro, a fundamental constitutional link between the peoples and states of the Eurozone disappears. Without the euro, the common sovereign representation of the peoples of Europe in the institution of the ECB breaks down. Along with it, a whole series of constitutional constraints that are derived from this basic constitutional construction would collapse. The transnational constitutionalisation of central bank independence as a solution to the problem politics in relation to money that the euro entails would evaporate.

Whether the ECB's actions during the Crisis – including its announcement of the OMT programme and involvement in the Greek crisis – preserved or transformed its constitutional mandate and with it the Eurozone's constitution, is a point of significant controversy. Perhaps more than anything, this controversy highlights a crucial dimension or difficulty of constitutional guardianship: it may not so much protect the constitution as define its essence. But in defining its essence, it may transform central aspects of the existing constitution if considered necessary for the protection or realisation of this essence. As such, Schmitt argued, the question of the guardian of the constitution is inescapably political. While a question of the highest political importance, Schmitt considered constitutional guardianship to be best performed by an office beyond the control of the traditional political authorities of government and parliament. Like the independent central bank according to its theory, the guardian needed to be beyond the ordinary squabble of politics with its intrigues, power struggles and horse trading. It "fundamental proposition [was] 'independence'" (Schmitt 2015b: 162).[3]

The guardian's independence, in turn, needed to be based on its ability to "connect itself immediately with [the] unified will of the ... people and to act, on that basis, as the guardian and preserver of the *constitutional unity and wholeness of the ... people*" (ibid: 173, emphasis added). The guardian must, in other words, be an organic representative of the people and its task is above all the protection of the continued unity of that people.

The Schmittian notion of the guardian of the constitution highlights that the existential crisis demands decisions and actions that are inherently political because they involve the decision on the essence of the constitution as well as on the means necessary to defend it. Regardless of what institution makes such decisions, it will act as a political power. It settles a question of legal ambiguity and/or fundamental disagreement over the meaning of a constitutional norm, thereby producing new law by redefining the meaning of clauses or redefining the hierarchy of norms. The organ that puts "the disputed content of a statute beyond doubt ... acts as a legislator. And if it puts beyond doubt the ambiguous content of a constitutional statute it acts as a constitutional legislator" (Schmitt 2015a: 117).[4]

[3] In this respect, Schmitt's conception of the constitutional guardian resembles his conception of the dictator, who must also be "independent of the influence of any other institution" and "able to issue orders and to execute them immediately" (Schmitt 2014: 4). The evaluation of such actions, in turn, can only be "related to the question whether the means, in a very technical sense, are appropriate or not – that is, whether they have achieved their goal." Thus, under dictatorship, "only the goal governs" and it is "freed from restrictions imposed by the law and is only determined by the need to create a concrete situation" (Schmitt 2014: 8).

[4] To Schmitt, the question of constitutional guardianship could not be a purely legal question. Even if such a question were settled by a court, the decision would not be legal but political. For Schmitt, the narrow and formal evaluation of the legality of a particular act was largely irrelevant for the question of constitutional guardianship: the "[f]ormalist constitutional law [of Kelsen] stops where the real problem begins" (Schmitt 2015a: 112). The relevant question concerned, rather, conflicts in which "the case is unclear and doubtful, be it for reasons of fact, or be it by virtue of the necessary incompleteness and vagueness of every written constitution" (ibid: 101). In such cases, i.e., when the constitutional principle in question is subject to legitimate contestation and differing interpretations or if constitutional provisions are contradictory, "the question is not a 'purely legal question' and the decision of the court is something other than a judge's decision" (ibid.). "[T]he judge will find himself

The inescapable ambiguity of the legal order demands, according to Schmitt (ibid: 118), political authority for the "authoritative removal of doubt" concerning competing interpretations of the law or measures necessary to protect it. Political authority is thus needed to fill legal gaps, iron out constitutional kinks, and extend the application of the constitution to situations unfamiliar to or unpredicted by the law. This reflects that while the constitution takes legal form, this is only its language. Form should not blind to essence and in essence the constitution is "a political entity" and must find "a genuinely political guardian" (Schmitt 2015c: 226). To Schmitt, then, the political task of guarding the constitution belongs to the highest representative of the political community, the office that represents its political unity.[5]

The open-endedness of Schmitt's conception of the guardian of the constitution was unacceptable to Kelsen, as was the notion of the essence of the constitution being defined in the emergency situation. According to Kelsen, all political acts, even emergency degrees, are legal acts and there is nothing 'outside' the constitution. The relevant question is only of determining the relative position of a concrete act in relation to the constitution and "Guarantees of the constitution are therefore ... nothing but means for the prevention of unconstitutional [legal acts]" (Kelsen 2015a: 30). A political act, whether executive or legislative, can, in turn, be unconstitutional if it is enacted without due regard to constitutional procedure and/or if it violates the fundamental norms specified in the constitution. But while norms may be threatened in an emergency situation, they are independent of it, not defined by it. It is, rather, the existing norms that determine whether emergency decrees are legal: they must conform to the law of the constitution and are therefore subject to legal evaluation (see also Kennedy 2011: 287). If this were not the case, they would simply be illegitimate usurpations of power.

in a position to take political measures or to prevent them, and to become politically active in a way that will make him a powerful political factor" (ibid: 102).

[5] While the Weimar Constitution made the emergency political power of the President explicit, the important issue is not whether the power is legally enshrined but rather that the constitution needs unified political authority in order to address fundamental existential threats. The need for this form of unity in the face of "*the economic and financial state of exception*" (Schmitt 2015b: 150, emphasis added) is greatest in pluralistic political systems, i.e., political systems based on a plurality of competing political forces with none able "to establish itself as the decisive factor in the formation of the will of the state." That is, unified guardianship of the constitution is primarily necessary in a situation in which a plurality of powers prevents decisive and unified action in the state of exception, whether due to procedural obstacles or internal disagreement. The ordinary political system itself can thereby turn a difficult situation into an existential threat to the constitutional order. As such, a dictatorial office (in the technical sense of the term) is necessary, according to Schmitt.

Kelsen's conception of the constitution as a comprehensive legal order regulating all political acts entails that guardianship of the constitution "must not be conferred upon one of the organs whose acts are to be subjected to control" (Kelsen 2015b: 175). The guardian of the constitution must, in other words, not be in the hands of legislative or executive powers but located in a specialised organ dedicated to deciding "on the legality of all acts immediate to the constitution" (Kelsen 2015a: 51). That is, the constitution can only be protected by vesting the power of constitutional guardianship in the hands of an independent constitutional court in the form of judicial review.

The OMT and the Ambiguity of the Law

The conflict between Schmitt's and Kelsen's visions of constitutional guardianship manifested itself with particular force in the constitutional complaint against the OMT programme in the *Gauweiler* case at the German Constitutional Court (BverfG) and, through referral, the European Court of Justice (ECJ). However, evaluating whether the OMT programme was legal or not, and whether the ECJ was right or wrong to confirm its legality, is not my purpose here. Such an exercise would to a significant extent miss the point of the OMT controversy. What the controversy revealed was a tension between the letter of EMU law and its *telos*. In the existential crisis, the ECB's mandate itself turned out to be ambiguous because it demanded fidelity both to the letter of the law and to the peoples' expressed constituent will for the euro. In so far as the former fidelity principle constituted a threat to the latter, the ECB was forced to make a decision. This decision, in turn, could only be political as it concerned the very meaning and hierarchy of constitutional norms. The emergency situation thereby *reopened the problem of politics* in relation to the monetary order, and the wider economic governmental order associated with it, in a foundational sense. The constitutional dispute nevertheless highlights a number of the contentious issues associated with the OMT programme and can serve as a fruitful avenue into understanding the emergency political nature of the measure.

The ECB's Usurpation of Powers

The BverfG considers itself as, and was created with inspiration from, the Kelsenian conception of the guardian of the constitution (see e.g., Stone Sweet 2002; Collings 2015). In the *Gauweiler* case, this was clear in its approach to the OMT programme (see

Borger 2019). By announcing it, the BverfG worried that the ECB had (in the manner of the Schmittian guardian) redefined the meaning of some of the core norms of the EMU constitution. If that were the case, the ECB would have violated the German constitution and the continued sovereignty of the German people because it had exercised powers not delegated to it and/or abrogated norms established through the original expression of sovereign will in the law of the Treaties. The OMT programme, the claimants argued and the BverfG appeared to agree, amounted to a "structurally significant transgression" of the ECB's mandate and as such it might constitute "a unilateral usurpation of powers" (BverfG 2014: 3 (b)). By introducing a 'fully effective backstop' in the sovereign bonds market, the ECB had effectively become a lender of last resort to the Member State governments, thus flouting one of the fundamental norms of the EMU constitution, namely the no monetary financing clause of art. 123 TFEU. In doing so, furthermore, it had violated the constitutionally established procedure for altering the constitutional order. The ECB, in other words, had acted unconstitutionally and violated the division of competences between the Member States and the Union by extending its own competences and suspending the EMU's foundational legal framework.

The OMT programme worked through a guarantee that the ECB would step in to buy potentially unlimited amounts of sovereign bonds of certain Member States in secondary markets. The bonds in question were those of Member States who had signed up to a bailout programme under the European Financial Stability Facility (EFSF) or ESM and whose bond yields had soared as a consequence of the Crisis (ECB 2012). The ECB thereby attached conditionality requirements to the programme but so long as a Member State showed a willingness to abide by the programmes, the ECB would ensure that the market for the bonds in question would not dry up. The ECB thereby became a "debt buyer-of-last-resort" (Baldwin et al 2015: 11) or, simply, a lender of last resort to the Member States of the Eurozone (De Grauwe 2013).

The ECB did not promise to buy the bonds directly from the Member States in question (i.e., on the primary market). This would have been in blatant violation of the no-monetary-financing clause (art. 123 TFEU). Despite never actually being activated, the OMT programme nevertheless affected the workings of the primary market of government bonds through its influence on investors' expectations. Its very inclusion in the arsenal of monetary policy weapons was enough to assuage market fears. The ECB thereby employed its powers to intervene in government bonds markets and affect the market price of sovereign debt. Its promise to employ public power to provide a fully effective last resort backstop rendered the bonds in question a markedly less risky proposition for investors and it precipitated a fall in yields and ensured a functioning market for the bonds in question.

Suspending Market Discipline

One of the crucial issues in the *Gauweiler* case was whether the ECB had a right to interfere in and suspend the market's free pricing of Eurozone government debt in this way. The claimants' argument in this regard rested on a traditional, albeit somewhat dogmatic, understanding of the EMU constitution. According to this perspective, one of the crucial aspects of the EMU was its legal reinforcement of market discipline on Member State economic policies. Within such a (ordo/neoliberal) disciplinary regime, the market is seen as providing a mechanism for evaluating most effectively and authentically the true value and risk-profile of any given (financial) product or activity. When the market price concerns government debt, the market evaluation concerns the general orientation of government policy and the underlying structural position of the economy in question (competitiveness, default risk, growth potential, etc.). In short, the evaluation concerns the general 'soundness' of a government's budgetary position and economic policies. A government that ignores the market's evaluation risks losing credibility, its ability to finance itself, as well as its ability to retain and attract economic activity and investment. The legal framework of the EMU, including constraints on the ECB's powers such as the no monetary financing clause, then, was supposed to signal to markets as well as Member State governments that there were no alternatives to market discipline: governments would not be able to escape market discipline through implicit guarantees associated with euro-membership.

Market discipline is central to the process of European market integration in general and the governmental order of the EMU. As a 2007 ECB working paper argues:

> financial integration ... is instrumental for financial markets to provide an accurate assessment of the risk-return profile of government bonds. Accurate asset pricing implies that *governments pursuing unsound fiscal policies will be forced to offer higher yields* to attract risk-averse investors, in order to compensate them for the higher default risk. Via this channel, progress in financial integration will ultimately reinforce any market-driven disciplinary effect (Magnanelli and Wolswijk 2007: 7, emphasis added).

Under perfect market discipline, government policy is governed by the impersonal and 'objective' mechanism of the market because "[g]overnments have to take into account these [potentially] higher financing costs when planning their fiscal policies. Ceteris paribus, market discipline provides a deterrent against unsound fiscal policies, and thus supports fiscal discipline" (ibid: 10).[6] Employing public power to interfere with such market pricing can therefore only lead to distortions, inefficiencies and moral hazard.

In order for market discipline to function adequately certain constraints on the exercise of public authority need to be in place to prevent interventions in the market pricing of public debt in accordance with political priorities. In the EMU, this is reflected in the fiscal rules of the Stability and Growth Pact (SGP), which, in line with the ordoliberal notion of the economic constitution, are part of the legal framework intended to help realise the competitive free market order. The same is true of legal prohibitions such as the no bailout-clause (art. 125 TFEU) and the no monetary financing-clause (art. 123 TFEU). These serve not only to prohibit the practices in question, but also to shape expectations of market actors by conveying the message that governments failing to correct unsound fiscal practices will not be saved the Union or the other Member States. For market discipline to function, the Member States have to remain fully and individually responsible for their fiscal positions. They must, in other words, retain sovereign powers within this sphere. Surveillance and punishment procedures such as the Excessive Deficit Procedure (EDP) signal to markets that the community is serious about individual responsibility, thus encouraging markets to evaluate government debt individually rather than on the basis of an assumption of solidarity, which would in any case, according to this perspective, only be able to provide temporary relief.[7]

[6] The question of market discipline in relation to fiscal soundness was explicitly addressed in debates within the Delors Committee. See, for instance, Baer, G. "Economic Union: implications of a monetary union," HAEU, TPS-184; Committee for the Study of Economic and Monetary Union (CSEMU), "II. How to define the final stage of economic and monetary union," p. 2, 31 January 1989, draft of chapter 2 of Delors Report, HAEU, TPS-196; Lamfalussy, A. "The need for co-ordination of fiscal policies in a European Economic and Monetary Union," 31 January 1989. HAEU, TPS-196; Borio, C.E.V. "Macro-co-ordination of fiscal policies in an economic and monetary union in Europe," appendix II, p. 13, 1 February 1989. HAEU, TPS-196.

[7] The normative basis of this economic constitution rests on the attempt to avoid 'moral hazard,' or 'the overexploitation of the commons' of a shared currency. At the same time, it reflects the notion of making democratic politics more authentic through, for instance, the removal of access to the 'Siren song' of the printing press, whereby budget policy would be constrained by the requirement of being fully financed. This, in turn, would have the effect of forcing the state's politics to become 'reasonable'

Whether or not market discipline reinforced by rules functioned according to theory in the years preceding the Eurozone Crisis is to a certain extent irrelevant. What is clear is that the market's pricing of Eurozone government bonds generally converged in the years leading up to and following the euro's introduction. With the onset of the Eurozone Crisis in 2009-10, however, this changed and yield spreads on Eurozone government bonds increased to the point where the solvency of certain Member States was threatened by the increased refinancing costs that this entailed. The 'truth' that the market spoke was, in other words, that the fiscal position of certain Member States (Greece, Ireland, Italy, Portugal and Spain in particular) rendered them on the brink of bankruptcy and, in so far as a redenomination risk was factored into the higher yields, exit from the euro. However, from the perspective of preserving the integrity of the euro, this 'truth' was unbearable. Remaining true to the letter and spirit of the original EMU legal framework was seen as a threat to the very existence of the EMU. In order to safeguard the euro, the ECB *had to* step in to suspend the market pricing of government debt by promising to act as a lender of last resort with the OMT programme and, later, with the public sector dimension of the QE programme.

The ECB justified its right to act as the lender of last resort to governments by introducing a new approach to governing. Or, rather, the ECB emphasised the technocratic dimension of its mandate in order to justify this role. This was clear already in Draghi's (2012) 'whatever it takes'-speech. Here Draghi underlined that the problem was the "premia that are being charged on sovereign states borrowings," i.e., the market's pricing of government debt. While such prices might, he concedes, be justified on the basis of economic fundamentals (the regime of market discipline assumes that they are), Draghi claims that they are not. In terms of economic fundamentals, he argues, "the euro area has done either like or better than US or Japan." And even in the exposed

and 'economical' by forcing it, like the household, to 'live within its means': spending would have to be financed exclusively through taxes and borrowing on market terms. There would be no lender of last resort when market liquidity dried up. The legal framework was thereby intended to reinforce the discipline of the market. This conception of what the EMU's fiscal framework does still resonates in EU policy-circles. As Commissioner Valdis Dombrovskis put it in the context of the conflict between the Commission and the Italian government over the proposed Italian budget in late 2018: "Breaking rules can be tempting on a first look. It can provide the illusion of breaking free ... But, at some point, the debt weights [sic] too heavy and you end up having no freedom at all" (*The Guardian* 2018, 23 October). As such, the Commission's tough stance on the budget should not be seen as an act of hostility but of help; the Commission is only seeking to prevent what would otherwise be inevitable.

Member States, "progress in undertaking deficit control, structural reforms (sic) has been remarkable." In other words, the increasing yield spreads are, in the ECB's analysis, unfounded. The market's evaluation of the general economic policy position of the Member States was not reflecting an underlying truth. What was at stake, rather, was a misperception of the "risk of convertibility" – i.e. the market's evaluation of the potential reversibility of the euro. But since "the euro is irreversible," this convertibility-premium is a mistake of the market in need of correcting.[8]

What Draghi did with the 'whatever it takes'-promise was to substitute the market's evaluation of the economic situation of the Member States with the ECB's own evaluation of their progress as the basis for governmental action. Through this substitution of market evaluation with a technocratic evaluation, the OMT is presented as a technical matter intended merely to correct a market misperception that hampers, in a purely technical sense, the smooth functioning of "monetary policy transmission and the singleness of the monetary policy [of the ECB]" (ECB 2012).

The ECB's shift to a technocratic evaluation of the sustainability of government debt[9] was addressed in the *Gauweiler* case (and again in the *Weiss* case concerning the ECB's QE programme). The claimants and the BverfG challenged the ECB's right to interfere with the "price formation [*Preisbildung*] on the market."[10] In its preliminary reference, the BverfG thus argued that

[8] Draghi presents the OMT programme as one 'leg' of the general Eurozone Crisis response (Draghi and Constâncio 2012a). The other 'leg' is composed of the economic policies of the Member States. This introduces an important contradiction. One the one hand the risk premia are based on "unfounded fears" (Draghi 2012; Draghi and Constâncio 2012a). On the other hand, in the August press conference, Draghi (Draghi and Constâncio 2012b) claimed that "in order to create the fundamental conditions for such risk premia to disappear, policy-makers in the euro area need to push ahead with fiscal consolidation, structural reform and European institution-building." The risk premia are thus, paradoxically, artificial and irrational to the extent that the threaten the survival of the euro but real and rational to the extent that they demand structural reforms and austerity in the Member States in question.

[9] This is not to say that the ECB has entirely abandoned references to market discipline and EMU rules. The ECB, for instance, insists, somewhat contradictorily, that neither the OMT nor the QE programme is intended to suspend the market formation of prices. Article 4(1) of its Decision 2015/774 on the QE programme, for instance, explicitly states that "To permit the formation of a market price for eligible securities, no purchases shall be permitted in a newly issued or tapped security." When pressed on the length of the so-called 'blackout period,' the ECB noted "that the length of the period is measured in days rather than weeks" (ECJ Judgement of 11 December 2018 (C-493/17) in *Weiss*: 115).

[10] BverfG, Order of the Second Senate of 14 January 2014 (preliminary reference) - 2 BvR 2728/13 – in *Gauwiler v Deutscher Bundestag*: 87(cc), also 90, 92.

> Spreads always only result from the market participants' expectations and are, regardless of their rationality, essential for market-based pricing. To single out and neutralise supposedly identifiable individual causes would be tantamount to an arbitrary interference with market activity.[11]

The ECJ's response to this challenge is notable in that it does not defend the OMT programme as being unrelated to the question of price formation in the market. It justifies, rather, the ECB's right to interfere on the basis of is technical assessment of the concrete situation, thereby affirming the ECB's shift towards the technocratic evaluation of government debt. The ECJ argues that since the ECB "is required, when it prepares and implements an open market operations programme [like the OMT], to make choices of a technical nature and to undertake forecasts and complex assessments, it must be allowed ... a broad discretion."[12] As such, unless "a manifest error of assessment"[13] can be shown, one must accept the ECB's expert opinion as valid. That its "reasoned analysis has been subject to challenge does not, in itself, suffice to call that conclusion into question" because "in view of the [ECB's] broad discretion, nothing more can be required of the [ECB] apart from that it use its economic expertise and the necessary technical means at its disposal to carry out that analysis with all care and accuracy."[14] According to the ECJ, then, the ECB has a right to pass (technocratic) judgement on the truth of the market's pricing of government debt and act to correct it in accordance with its own interpretation and evaluation of the situation.

The Essence of the EMU Constitution

The notion of the ECB's 'broad discretion' in this regard has become a crucial element in the ECB's self-conception and governing philosophy (see ECB 2015a, 2017c; Draghi 2015b; Cœuré 2015; Praet 2015; Mersch 2016, 2017a; Gren 2018). In discussing this approach, Draghi (see, e.g., 2015c, 2016a, 2019a) labels it an 'institutions-based' rather than 'rules-based' approach to governing and argues that the ECB's successful handling of the Crisis was the result of its moving "from a rules-based system to an institutions-

[11] BverfG, *Gauwiler* 2014: 98.
[12] ECJ, Judgment of 16 June 2015 (C-62/14) in *Gauweiler v Deutscher Bundestag*: 68.
[13] ECJ, *Gauweiler*: 74; see ECJ, *Weiss*: 24.
[14] ECJ, *Gauweiler*: 75; see also ECJ, *Weiss*: 91.

based monetary integration system" (Draghi 2016b). This, he argues (Draghi 2019a), provided a "greater flexibility of action" during the Crisis.

The crucial critique that Draghi (2019a, see also 2015c) advances of the EMU's original "rules-based approach" to fiscal policy and economic coordination is that it failed to achieve the stability-oriented government policies that is was supposed to. Member States violated the rules and the markets neither differentiated adequately between the government debt of different Member States nor punished unsustainable public or private sector finances. Market discipline did not, in other words, work to correct economic practices that were 'unsound.' It therefore needs to be replaced with, or at least supplemented by, a different rationality of government. Sticking to the rules when they were not working risked placing the whole economic governmental order of the EMU in jeopardy.

Draghi's critique emphasises that the existing governmental means of the EMU – market discipline reinforced by law – had failed to achieve the ends of stability oriented economic policies and financial stability. In line with the discussion in chapter 5 of the difference between the rule of law and technocracy, Draghi (2019a, emphasis in original) argues that this is because

> rules are generally static and require countries to adhere to specific *actions*, whereas institutions are required to achieve prescribed *objectives*. Rules therefore cannot be updated quickly when unforeseen circumstances arise, whereas institutions can be dynamic and employ flexibility in their approaches.

Allowing "discretion and flexibility in the use of our tools," the institutions-based approach reflects the technocratic privileging of the teleological understanding of the mandate. The Eurozone must institutionalise technocratic evaluations of everything from labour market structures to banking practices as the basis of governmental action. This is necessary in order to secure, at a basic level, the survival of the euro but in doing so it defines the true essence of the constitution: stability oriented economic policies.

In the original EMU construction, rules and institutions were supposed to be mutually reinforcing. Government in accordance with technocratic knowledge was to fill the inevitable gaps in the rules, but the general *telos* of the constitutional construction as a whole was supposed to be reinforced, not threatened by, a set of rules and prohibitions. Draghi's juxtaposition of a rules-based and an institutions-based approach to economic and monetary policy, however, reflects the potential tension between technocratic government and the rule of law. It reflects, furthermore, the difference between having a single sovereign representative within one particular sphere of policymaking and the existence of multiple such representatives within others. As Draghi (2019a, see also 2015c) highlights: "the EU has thus far employed two methods of governance to facilitate cooperation." Within some spheres, decision-making authority has been invested in "common institutions with executive power." "In others, executive power remains with national governments, with cooperation through common rules, such as the framework for fiscal and structural policies." According to Draghi (2015c), the latter approach proved inadequate during the Crisis, thereby creating a demand for a "quantum leap in institutional convergence."

The emphasis on technocratic discretion introduces a central role for centralised public authority in Eurozone economic governance. The question is what this role consists in. As a number of analysts of the Eurozone Crisis have noted, the general governmental apparatus of the Eurozone turned to more authoritarian enforcements of a certain set of policies through both emergency politics 'of last resort' and conditionality requirements of structural adjustments and austerity (Somek 2015; Streeck 2015; Wilkinson 2015a, 2019; White 2015, forthcoming). The markets could no longer be trusted to engender economic reforms and convergence, meaning that coercive public authority 'had to' step in in order to ensure the outcomes that were 'supposed to' have emerged from the Member States' internalisation of the demands of the markets reinforced by law.

The shift from impersonal market discipline to public intervention and even outright coercion in Eurozone governance is evident in a number of ways. In the ECB's OMT and QE programmes the nature of the shift is particularly evident. In the two programmes, the ECB has retained for itself the right to withdraw its support for specific Member States on the basis not only of their compliance with bailout conditionality but also simply on the basis of "*the attitude* of the Member States concerned" (ECJ, *Gauweiler*: 117, ECJ, *Weiss*: 135, emphasis added). It is the ECB's evaluation of whether a government is politically dedicated to following a "sound budgetary policy" (ECJ, *Gauweiler*: 117) that determines whether a particular Member State may benefit from the support offered through the programmes. If not, the ECB retains for itself the right to unleash the forces of the market on the Member State in question.[15] The emergency politics of the ECB does thus not suspend the applicability of the law entirely but works through its selective application (see also White 2015, forthcoming). The ECB thereby becomes the ultimate protector of Member State public finances, but only as long as Member State governments display the right 'attitude.'

While the means of its realisation may have changed as a result of the ECB's emergency politics, the EMU's governing economic ideology has not. Rules and markets were supposed to ensure the spontaneous and 'voluntary' convergence of Member State economic policies. Their failure to do so adequately (or non-catastrophically), however, introduced the necessity of active public interventions.

Necessity, Law and Democratic Authority

Following the presentation of the OMT programme in a press conferences on 6 September 2012 (Draghi and Constâncio 2012a), the ECB's 'irreversibility claim' is challenged by a journalist: "What gives you the democratic legitimation, the authority to say that? Because I have looked it up in the Treaty. It does not say anywhere that it is the role of the ECB to decide what kind of currency the European countries have." In other words, is there a democratic basis for the ECB's substitution of technocratic discretion for market discipline and rules in its guardianship of the euro? Draghi does not address this question in the press conference but in subsequent public discourses, ECB officials have grappled with the answer to it. If the emergency political necessities of the Crisis trump the letter of the law, how do they relate to the democratic legitimacy of the constitutional order?

The question of the democratic credentials of the ECB's emergency politics was central to the *Gauweiler* case. In its proceedings, the BverfG conducted a so-called *ultra vires* review of the OMT programme. The *ultra vires* review is based on the notion that a transfer of sovereign powers from the Member States to the EU cannot at the same time involve a transfer to the EU or any of its institutions the competence to decide on its own competencies, i.e., *Kompetenz-Kompetenz* (see also chapter 5). The BverfG's

[15] Given that this right may conflict with the imperative of preserving the unity of the currency, the threat may be empty. It does, however, underline the shift from market to technocratic evaluation of governmental practices.

position is based on the notion that since there is no 'European people', no European *demos,* as a foundational political subject of the EU (*Maastricht* and *Lisbon* decisions; see also Weiler 1995, Craig 2011), the EU can only exercise sovereign powers to the extent the European peoples, the European *demoi*, have transferred such powers explicitly in the Treaties. The Member State *demoi* remain the fundamental political subjects, the collective constituent legislator, of the EU. And they remain, as discussed in chapter 4, in the plural: the peoples of Europe. From this follows, as discussed in chapter 5, that when EU institutions exercise sovereign powers, they must do so within the limits of the mandate specified by the Treaty and they must not interpret their mandate in an manner that violates the basic contract (Craig 2011: 395).

The BverfG links the question of *ultra vires* to the constitutional identity of Germany as a democratic state:

> [The] substantive content of what is guaranteed by the right to vote is violated only, but always so, if this right is in danger of being rendered ineffective in an area that is essential for the political self-determination of the people, i.e., if the democratic self-government of the people ... is permanently restricted in such a way that central political decisions can no longer be made independently (BverfG, *Gauweiler* 2014: 19).

In performing an *ultra vires* review, the BverfG thus "examines whether the legislative instruments of European agencies and institutions remain within the limits of the sovereign powers conferred upon them or whether they transgress those limits" (BverfG, *Gauweiler* 2014: 21). Has the ECB as a limited sovereign representative, in other words, overstepped its limits? In *Gauweiler* the question was whether the OMT programme violated the ECB's 'democratic *naissance,*' the expression of sovereign will contained in the original constitutional contract among the peoples of Europe. In the absence of a new such contract, the BverfG saw its constitutional guardian role as ensuring that acts of the ECB did not challenge the continued existence of the German people (and by extension, the European peoples) as the (respective) popular sovereign(s) and constituent powers of Germany (and the other Member States) as well as of the EU and its institutions. This, in turn, could only be done through a (Kelsenian) evaluation of whether the emergency act conformed to the existing law in terms both of content and procedure.

The BverfG's defence of the German constitutional identity as a democracy sees the *positive expression* of the people's will as the source of all law. For the people's will to be known, there has to be a specific act expressing it. This contrasts with the organic form of representation that the Schmittian guardian of the constitution exercises. In the Schmittian conception, it is not necessary for the people to express its will positively through formalised procedures. In fact, the people does not need to express its will positively at all so long as it does not effectively reject the existing constitution or acts that seek to defend it (see Schmitt 2008: 132). In Rousseau's (2012: 30) words: "so long as the Sovereign, being free to oppose them, does not do so ... the agreement of the people [to the orders of rulers] must be presumed from the universal silence." Acts of public authorities can, in other words, be considered expressions of the general will as long as there is no open revolt against them. This means that in the existential crisis there is an alternative source of law: *necessity*. When the existence of the community (whether of *a* people or of people*s*) is placed in jeopardy, 'necessity' and the will of the people must logically coincide and necessity becomes "the ultimate grounds and very source of law" (Agamben 2005: 26).[16] This does not necessarily bypass the notion that all law is derived from the will of the people(s), but it is an implied will for survival rather than a positive expression. As such, it is also more open-ended and subject to the discretion and interpretation of the organ that acts as the guardian of the constitution in the emergency situation.[17]

The necessity associated with the emergency situation in the summer of 2012 and its relationship with the law was central to the *Gauweiler* case. As the Advocate General noted, the situation was "regarded as exceptional" (Cruz Villalón 2015: 3) and raised questions about "whether the euro could survive" (ibid.) and the "possible disintegration of the euro area" (ibid: 7). Given such exceptional circumstances, the ECJ was "confronted with the difficulties which extraordinary circumstances have long presented for public law" (ibid.). In the OMT case, the difficulty concerned the exact nature and limits of "the powers of the ECB" (ibid.).

[16] See also Romano (1909: 362 as cited in Agamben 2005: 27): "[necessity] constitutes a true and proper source of law ... It can be said that necessity is the first and originary source of all law." The reasoning informing this idea is that law as a structing condition of social and political life emerges, at its most basic level, from the necessity of establishing the 'rules of the game,' without which social and political life would be impossible (see also Arendt 1970). This logic, however, feeds into the state of exception through the existential threat that it poses to the community. The community's survival, without which its laws are rendered meaningless, thereby becomes the most fundamental law of the community itself.

[17] As Schmitt (2008: 131) notes: while "the people are superior to every formation and normative framework" they are not an organised entity. This means that "their expressions of will are easily mistaken, misinterpreted, or falsified." The people's will only exists through interpretation.

The Advocate General summarised two positions in this regard. The ECB's position was that

> the OMT programme is a proper instrument for dealing with exceptional circumstances, since, despite its 'unconventional' nature and the risks it entails, *its objective is merely to do what has to be done in order to restore* the ECB's ability to make effective use of its monetary policy instruments (Cruz Villalón 2015: 7, emphasis added).

As an extraordinary measure intended to restore the ordinary functioning of the ECB's monetary policy, it should, like the acts of the Schmittian guardian, only be evaluated on the basis of its effectiveness.

On the other hand, the BverfG raised "the question of the limits to which the powers of the ECB are subject in exceptional circumstances" (Cruz Villalón 2015: 93), thus reflecting the Kelsenian notion that even emergency decrees are subject to legal scrutiny. The question of determining the limits was crucial because it was unclear to the complainants and the BverfG what was "the real aim of the OMT programme." If the real aim was, simply to restore the functioning of monetary policy, it might be acceptable even if it was not entirely legal. Only acts which are "*manifestly* in violation of powers and … *highly significant* for the allocation of powers" should be considered *ultra vires* (BverfG, *Gauweiler* 2014: 24, emphasis added). In the view of the claimants and the BverfG this seemed to be the case for the OMT programme and they suggested that "the ultimate object of [the OMT] programme is to transform the ECB into a 'lender of last resort' for the States of the euro area" (Cruz Villalón 2015: 7). If this were so, the ECB would have changed the meaning of central treaty provisions without an explicit democratic mandate. It would have usurped the competence to decide on its own competences. The claimants and the BverfG thereby raised doubts as to the temporary nature of the emergency measure, arguing that it amounted both to a significant extension of the ECB's powers and mandate (thus violating fundamental norms of the constitution), and to a transformation of the competence to decide on the competences of the EU institutions (thus violating procedural aspects of the Treaties and the continued independent political existences of the Eurozone peoples).

Permanent Transformation and Political Authority

The BverfG's position in its initial referral of the case to the ECJ highlighted that the question of the OMT programme's legality was a question relating to the constitutional balance of powers between the peoples, Member States and the Union. It was a question of the political right to determine the values and norms according which the Eurozone is governed.

By virtue of its independence and responsibilities as a sovereign representative of the Eurozone peoples, the ECB had to act on its own interpretation of the situation, regardless of whether that interpretation was in violation of the legal framework. But because it thereby altered the principles informing the ECB's exercise of sovereign powers, and with it the governmental order of the EMU as a whole, the OMT programme cannot be considered a temporary suspension of the rules that brings about the conditions necessary for their re-application after the threat has passed. It introduced, rather, a permanent transformation of the fundamental legal framework of the EMU. As such, the measure is creative: it alters both the substantive content of the constitution (abolishing legal prohibitions) and its modality of governing (from treaty rules to technocratic discretion). It may even be said to alter the political form of the Union, because it challenges the principle of the Member States remaining masters of the Treaties in treaty-making and -amending moments. The OMT measure as the ECB's act of constitutional guardianship *par excellence* thereby calls for a novel form of authorisation for the reconfigured hierarchy of constitutional norms that it entails.

In so far as the OMT programme was problematic, then, it was so on the basis of the question of political authorisation. If the individual peoples' sovereign right to determine and authorise the contents and limits of the ECB's powers was violated by the OMT programme, it was violated on the basis of the ECB's interpretation of the peoples' shared will for the continued existence of the euro. The question of the legitimacy of the OMT programme is thus ultimately a political question and the contradiction between the rule of law and technocracy that it revealed can only be overcome through an appeal to popular will. The problem is that the very form in which central bank independence has been institutionalised in the Eurozone precludes the possibility of expressing popular will one way or the other with regard to the ECB; short of treaty change, that is. The democratic evaluation and judgement of the measure thereby becomes a question for the constituent power of the Member State peoples in a moment of extraordinary politics. In the absence of such, the democratic legitimation of the 'new ECB' (Beukers 2013) can only remain incomplete or non-existent from a procedural point of view.

In ECB discourses the problem of political authorisation and democratic legitimacy is explicitly recognised in calls for stronger forms of democratic accountability at the Union level (see, e.g., Draghi 2012, 2013; Cœuré 2013; Mersch 2017b; Fraccaroli et al 2018). In the context of explaining how to understand the OMT programme, Benoît Cœuré (2012), Member of the ECB's Executive Board at the time, argued that

> The notion that the euro is a currency without a state is in my view misguided. The euro is a currency with a state – but it's a state whose branches of government are not yet clearly defined.

Cœuré thereby implicitly recognises the problem of political authority in relation to the euro. The euro entails a state-like governmental structure, but this Eurostate-in-becoming is inadequately constituted and defined. Alongside the necessity of clarifying the distribution of powers in the Eurostate-in-becoming, Cœuré presents a particular vision of the ECB's accountability. It is accountable to "les Européens" (translated as: "the people of Europe") and "les citoyens de l'Union européenne" (translated as: "the people of the European Union") and such accountability is particularly relevant "in times of crisis, when policies become less conventional and more complex." Cœuré, then, makes an additional observation referring to an article by Habermas 'and others' (Peter Bofinger and Julian Nida-Rümelin):

> a rallying cry of the American War of Independence – "No taxation without representation" – has a new and unexpected resonance in today's Europe. Once we create scope in the euro area for policies that result in redistributive effects across national boundaries – they write – [a] European [legislator][18] who represent[s] the people[19] must be able to decide and vote on these policies. I tend to sympathise with this view.

Cœuré, in other words, affirms the need to empower a legislature based on a unitary 'people' in order to be able to legitimise decisions concerning the government the Eurozone. What the ECB needs, then, are "clearly identifiable and fully empowered interlocutors." In this vision, the ECB's accountability towards the European Parliament (EP) takes on a significance beyond mere reporting requirements and monetary dialogue. If the EP is the representative of a 'European people,' it would, presumably, be able to exercise legislative power on behalf of that people, thereby becoming a

[18] *Le législateur européen*, in Cœuré's speech, *ein europäischer Gesetzgeber*, in the original article by Habermas, Bofinger and Nida-Rümerlin (2012).

[19] *Le peuple* in Cœuré's speech, *die Bürger* in the original article.

sovereign representative, if not *the* sovereign representative, of *le peuple*. Such a political authority would, like the legislature in a unitary state, be able to grant transformations or radical reinterpretations of the ECB's mandate democratic legitimacy. It would introduce the possibility of generating new political authorisations at the European level without having to involve Member State governments or peoples. As such, it would be able to free Eurozone governance, including the ECB, from the strict adherence to the contents of a political decision reached in an ever more distant past. The ECB, according to this perspective, needs to be brought out of its loneliness and into a structure of generating political authority in the present that enhances the governmental capacity of the Union.

Disregarding the question of the accuracy of Cœuré's analysis of the Eurozone as a state-in-becoming or the feasibility of his vision, it underlines that the ECB considers the problem of political authorisation following the emergency politics of the Crisis central (see also, e.g., ECB n.d.a, Draghi 2016a, Mersch 2017b; Fraccaroli et al. 2018). In this regard, Cœuré's institutional approach constitutes a procedural response: political authorisation is to be generated through a transformed institutional structure that sees the EP emerge as a true legislative force on the basis of a claim to being "the direct representatives of the people of Europe" (Draghi 2016a; see also Draghi 2018b). The notion of the unitary 'people of Europe' being the source of the ECB's authorisation, however, does not only figure in ECB justificatory discourses as referring to the EP. On its website and in public speeches by ECB Executive Board members, 'the people of Europe' has become the referent for the ECB's governmental activities. The ECB's (n.d.b.) "mission is to serve the people of Europe"[20] and it "ultimately acts on behalf of the people and for the people" (Mersch 2017b: 13). Following the Crisis, the ECB thus invokes the kind of organic political authorisation and representation that the Schmittian constitutional guardian embodies, but which the BverfG has rejected the existence and even possibility of in its case law

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With the OMT programme, the ECB shifted the foundation of its authority from an expression of political will in the past to necessity and the will for survival in the present.

[20] This formulation was changed in 2016 from referring to the "citizens of Europe" (see Lokdam 2016).

At the same time, it justified its emergency act with reference to a future constitutional structure able to generate political authorisation in the present at the European level. For this more perfect constitution to be realised, however, a new settlement of the foundational problem of politics is necessary. In this regard, the ECB's discourse on 'the people of Europe' and its insistence on the necessity of strengthening the European centre stresses that the ECB's emergency politics re-opened the problem of politics in the foundational sense from the perspective of the ECB itself. The question, then, is how it is to be addressed. Before turning to this question in the next chapter, the next section highlights a different but equally important manifestation of the problem politics, namely that associated with conflicts between the expression of democratic will at the Member State level and the Eurozone's constitutional order.

The Peoples against the People: The Case of Greece

The OMT programme emphasised the re-emergence of the problem of politics in relation to the fundamental monetary-political order at the European level. But the re-emergence of the problem of politics was not limited to this. The Crisis also exposed the continuing relevance of the ordinary problem of politics for the EMU as a constitutional order. In this regard, the Greek case stands out in several ways. Particularly the election in 2015 and the ensuing confrontation between the leftist Syriza government and the 'European powers-that-be' revealed the full extent of the contradictions and tensions between the existing legal framework, technocratic discretion and the expression of democratic will. It is this confrontation that serves as the focal point of the analysis in this section. Even before that, however, the Greek case emphasised the continuing problem of politics for the monetary order: national level politics did not spontaneously adapt economic policy and structures to the demands of the euro. The disciplinary framework of the EMU did not foster the economic homogeneity deemed necessary for the sustainability of the euro. The possibility of a politics that did not conform to the rules and the discipline of markets revealed the continuing threat that ordinary politics posed to the monetary order.

The transformation of the Eurozone's governmental apparatus during the Crisis cannot be understood in isolation from the emergence of political movements and parties at the Member State level that challenge the Eurozone's governmental order 'from below.' The conflicts between Member State governments and the European level governmental apparatus that have resulted from such challenges tell a distinct story about the nature of dual sovereign representation. They highlight both the nature of the constraints that Eurozone membership is considered to entail and the coercive powers available to the European level for enforcing them. This is the focus of the present section. But such conflicts also reveal, like European level transformations, that the re-emergence of the problem of politics involves the question of the foundation of legitimate governmental authority. If the political self-determination of a Member State people can be suspended for certain ends, how does this affect that particular people's autonomous political existence, its sovereignty? The question of addressing the problems of ordinary politics and foundational politics thereby becomes intertwined.

The Problem of Politics 'From Below'

The Greek sovereign debt crisis, whose depths were revealed in 2009-2010 in many ways kickstarted the Eurozone Crisis proper. But it is not the economics of the crisis or its causes that are of interest here. It is, rather, the nature of the Greek challenge to the euro as a monetary order and how it relates to the general exercise of governmental power by the European level that I focus on.

To put the dominant European narrative of the Greek crisis crudely,[21] the debt crisis revealed that successive Greek governments had, to an extraordinary extent, failed to live up to the demands of the EMU, specified in particular in the Stability and Growth Pact. As such, it revealed both the failure of the EMU as a disciplinary regime and the continued possibility of destabilising Member State economic policies. The EMU had insufficient means of enforcing its demands on Member States and had left too much discretion at the hands of governments. In so far as the accumulation of unsustainable debt constituted a threat to confidence in the euro, the Greek problem became a problem for the Eurozone as a whole. And through its threats to other national banking systems and/or investor confidence in other Member States' sovereign bonds, it became an internal affair for each of the Eurozone's other Member States.[22] Politics within each

[21] This narrative can be challenged and there are good reasons for doing so. But since it is not the accuracy of the analysis of the causes of the crisis that are of concern here but the governmental responses to it, something akin to the 'official' narrative serves my purposes best.

[22] This reflects Lutz' (1989: 233-4; see also chapter 1) notion that an international monetary system demands "confidence in political stability at home and abroad." In the absence of this confidence, economic activity becomes governed by political considerations concerning "the real or supposed

of the Eurozone's Member States remained, in other words, a threat to the monetary order as a whole and the system of economic government associated with it.

This threat came to a head in April 2010, when Greece petered on the brink of sovereign default after its credit rating had been downgraded to 'junk' and its access to capital markets had frozen up. It was in this context that Greece was offered a bailout package by the Troika of the Commission, the ECB and the IMF. This bailout, like subsequent ones, was subject to conditionality, including public sector spending cuts, tax increases, wage restrictions, pension reform, and privatisations. In short, a long list of austerity-policies and economic reforms that would otherwise not have been implemented by the national government were demanded and implemented in return for the bailout.

The question, then, is how this was possible. Against massive protests and widespread political disenchantment, a series of policies, programmes and priorities established (democratically) over decades were undone. But what allowed the Troika in conjunction with the changing – elected and unelected – Greek governments of the post-2010 era to radically reform the makeup of Greek society? There is no simple or single explanation for this but one political priority stands out: membership of the euro. As Lucas Papademos, former vice president of the ECB and head of Greece's technocratic government from November 2011 to June 2012, put it to the Greek Parliament: staying in the Eurozone "is the only choice" (*CNN* 2011, 14 November). This statement can be read in two ways. On the one hand, one may emphasise its 'There Is No Alternative to staying the Eurozone' dimension. This was the message Papademos conveyed. On the other hand, one may emphasise the 'choice' dimension: the only relevant choice is whether to stay in the Eurozone. While this may not have been Papademos' message, it is an unmistakable assumption informing it. It underlines that as long as the commitment to Eurozone membership remained, the demands of the euro – now formulated as commands by the Troika and the Eurogroup – would be law. Any policy-programme followed from the choice for (or against) the euro and the threat of politics to the

general security or financial security of the countries concerned" rather than purely economic ones. An international currency system thereby demands the willingness of governments to make the necessary sacrifices to maintain the currency system.

monetary order was to be overcome through a fundamental political commitment to that order.

The notion of the euro being the 'only meaningful choice' resurfaced in the context of the Greek crisis of 2015. The election of the Syriza government in January 2015 promised to mark a turning point on austerity. Given a relatively clear popular mandate, the government promoted an anti-austerity economic programme and sought to renegotiate the conditionality terms of the bailout packages. When the Troika and Eurogroup refused to budge, the demands of the democratically elected government were pitted against technocratic commands in the July referendum. The Greek people as the popular sovereign would decide in a manifestation of emergency politics 'from below.' And yet, despite the clear popular 'oxi' to the existing deal and status quo, the European 'powers that be,' in Yannis Varoufakis's terms, were unmoved. If the Greeks would not accept the terms of the bailout, they would have to leave, or take a "time-out" from[23], the euro (see also Wilkinson 2015b). This was the 'only choice.'

Ein Exempel Statuieren: Mythical Violence in Greece

The European level's approach to the confrontation with Syriza can perhaps best be understood along the lines of what Walter Benjamin (1978) called 'mythical violence.' In Benjamin's essay "Critique of Violence" the notion of mythical violence is introduced in order to highlight that inherent in any contract and any law is a reference to a violence without which it would lose its compelling force. The creation of law and order and the violence necessary to enforce it are inseparable. But more than that, even when expressing and defending certain values enshrined in law, both the making and the enforcement of a legal order manifests hierarchies of power. They define the limits of the possible and fix relationships of domination and subordination. Lawmaking power and law-preserving violence[24] thereby serve the same purpose: the manifestation of the boundaries of the acceptable and the authority to determine what those are. In any given situation, determining whether something is lawmaking or law-preserving is futile: it is

[23] From leaked draft of Eurogroup decision on Greece dated 12 July 2015 - 15:00, p. 4. The time-out was taken off the table later the same day so the threat of expulsion from the Eurozone remained only as a latent one (see *RT* 12 July 2015; see also Wilkinson 2015b).

[24] Benjamin uses the German term 'Gewalt,' which is notoriously difficult to translate because it can refer both to physical violence and rightful authority.

both simultaneously because its ultimate end is the creation or fixation of boundaries and distinctions.

At the time of its election, the Syriza government's demands were seen as a threat to the established order. They were seen not merely as a threat to the financial interests of lenders but as a challenge to the principles informing the way in which the Eurozone Crisis had been governed. More importantly even, it threatened to undermine the notion of the EMU as not an external constraint on the democratic freedom of the Member State peoples, but as a means of making democracy at the national level more authentic (as discussed in chapter 5). If the Greek government was given concessions and would later turn out to be successful in bringing Greece out of its state of exception, the very notion of the EMU as being simply a legal reinforcement of the inherent constraints of the economic realm would crumble. The EMU's constraints on Member State economic policies would appear merely arbitrary and open the door to similar challenges of the EMU's basic economic order and ideology elsewhere as well.[25]

The Greek case was not only addressed on its own terms but also symbolically and in terms of the broader message it conveyed. Through the threat of unleashing the violence of sovereign default on the Greeks, then, the Eurogroup sought to make an example of the Greek government in order to demarcate the boundary between the possible and the impossible. It was the Eurozone's equivalent of Benjamin's mythical violence: Apollon and Artemis killing the merely human Niobe's children in revenge for her affront to their goddess mother, Leto, but leaving Niobe behind as a mourning statue of stone and a reminder to others of the consequences of challenging the existing order of things (Benjamin 1978: 294). The draconian demands on Greece were not merely a punishment for a transgression of the existing law of the EMU. They also established a new order: expressions of democratic will at the Member State level were suspendible if in conflict with the demands of the Eurozone's governmental order. This was not a temporary state of exception, at the end of which waited a return to the status quo ante. It was the instantiation of the principle that as long as membership of the euro is not given up, the euro's demands – interpreted by the Troika and the Eurogroup –

[25] Perhaps not incidentally, support for the Spanish anti-austerity party Podemos peaked at the time of Syriza's election in January 2015 and declined significantly in the wake of the Syriza government's "thoroughly unsuccessful revolt against the EU elite" (Mudde 2015).

trump demands emerging from the democratic process in the individual Member State. The decision on the euro claimed supremacy with regard to all past, present and future democratic decisions. Importantly, however, the relationship of subordination is asymmetric: it only applies to Member States in need of financial assistance. 'Access to democracy' is thereby contingent on a Member State's access to money.

Access to Money as a Means of Coercion

The ECB played a role in the emergency political negotiations between Greece and the Eurogroup in July 2015 following the referendum, but its role was not limited to this. After the Greek government called the referendum on the bailout programme, the ECB's Governing Council exercised its power to control a Member State's access to money by deciding not to raise the cap on Emergency Liquidity Assistance (ELA) to Greek banks; a move that prompted a bank holiday and the introduction of capital controls. This decision was in direct and explicit response to the Greek government's decision to call the referendum (see ECB 2015b). In line with the notion of central bank independence entailing the power to act against a democratically elected government if its actions are perceived as a threat to the central bank's mandate, the ECB acted in response to and against a political decision in a particular Member State.

The ECB also played a crucial role in bringing the Greek crisis to a head in the first place. In early 2015, the ECB had outstanding loans to Greece equivalent to around 68% of Greek GDP. In 2010, furthermore, the ECB (2010) waived "the minimum credit rating threshold in the collateral eligibility requirements for the purposes of the Eurosystem's credit operations in the case of marketable debt instruments issued or guaranteed by the Greek government." Despite being rated 'junk', in other words, Greek sovereign bonds continued to be treated as eligible collateral in Greek banks' dealings with the ECB. The ECB, in other words, made an exception to its ordinary operating framework in order to support the Greek financial system. According to Draghi (2015a), this showed that "one can really say that the ECB is the central bank of Greece."

The support provided through the waiver, however, was conditional. And in early February 2015, ten days after the election of the Syriza government, the ECB decided to lift the Greek waiver, thereby restricting Greek banks' access to its ordinary lending facility (ECB 2015c). The justification for doing so was that the Greek government could no longer be 'assumed' to be committed to adhering to the conditionality requirements of the existing bailout programmes (ECB 2015c). The ECB thereby effectively forced Greek banks to make use of the more expensive ELA.[26] The ECB, in other words, reacted to and punished political developments in Greece that were considered a threat to the general monetary order even before they had manifested themselves in a change of political practice. In doing so, it highlighted that the Member State's governmental apparatus was not fully sovereign within its territory: the ECB implemented a decision that the government would not otherwise have done and which it could not veto.

The ECB was justified in suspending the eligibility of Greek bonds, according to Draghi (2015a), on the basis that it is "also the central bank of all the other countries." The ECB cannot, according to this notion, intervene in Greek affairs in a manner that jeopardises its responsibilities to all the other members of the euro. Its responsibility to 'all the other countries,' however, can mean a number of things, including that ECB's actions to support Greece must not have undue negative effects on other Member States. What Draghi invokes, however, is not the material effects of its lending to Greece but that "[t]he ECB is a rule-based institution. It's not a political institution." The important rule in this regard turns out to be Article 123 TFEU, "the prohibition of monetary financing" or the same article that was interpreted flexibly, to say the least, with the OMT programme. What Draghi invokes is the positive law of the ECB's mandate. It is not necessarily the material interests of the other Member States that are at stake, but the fidelity to the original expression of political will in the founding moment. As a sovereign representative of the European peoples, it cannot make an exception for a single people as this would be in violation of the original democratic will of all the peoples, including the Greek.

In light of the discussion of the OMT programme above – which was associated with a move from a rules-based to an institutions-based approach to governing – the insistence on a strict application of rules and the positive law of the original Treaty rings hollow. The hollowness of this insistence is underlined both by the timing of the lifting of the waiver and by its reintroduction in June 2016, i.e., once it had become clear that

[26] ELA follows the Bagehot principle for lending of last resort: funds are relatively freely available but come at a punitive interest rate in order to prevent moral hazard. The interest rate charged on ELA lending is not public but is estimated to be around 100-150 basis points higher than the ECB's benchmark interest rate (*Reuters* 2015, 22 June).

the Syriza government would, after all, comply with the bailout programme. As the ECB (2016) press release states: "[the Governing Council] acknowledges the commitment of the Greek government to implementing the ESM macroeconomic adjustment programme and, therefore, expects continued compliance with its conditionality." The introduction, lifting and reintroduction of the waiver highlights the importance of the technocratic evaluation of a government's general attitude when it comes to applying the rules. In emergency political mode, the rules are not suspended *tout court* but are applied selectively and in accordance with particular objectives (see White 2015, forthcoming). In this case, the suspension of the rules served in the first instance to protect a compliant Member State from the forces of the emergency. But when compliance could no longer be 'assumed,' the rules were re-applied in order expose the Member State in question to those forces once again. The emergency was not a given but a state that was manipulated in accordance with the desired ends.

The emergency situation, in other words, became a means of addressing the problem of politics in relation to the monetary and economic order. It was used in order to force the fundamental decision between accepting the demands of continued membership of the euro and pursuing an elected government's political agenda. On two separate occasions, the ECB employed its control of the access to money to force a reckoning between two conflicting expressions of democratic will: the will for the euro and the will for an anti-austerity economic policy.

In the structure of dual sovereign representation, the Greek people faced itself in a standoff between its political will for the euro and its political will for a break with austerity. In principle equally valid, these wills could not be squared because neither the Greek government nor the Greek people could alter the governmental order of the euro by its own accord. This does not mean that the Greek people were or are 'unsovereign' but rather that the foundational decision on the euro constituted the defining political question. The expression of political sovereignty, with regard to economic government at least, was reduced to the question of Eurozone membership. The ECB itself justified pushing the Greek government and people in this direction precisely with reference to its mandate. Since the Greek people had co-authorised it in adopting the euro, they must, as long as they remain parties to the contract, be assumed to accept the consequences of it. In a conflict of dual representation, the ECB thus appeals not to the hearts and minds of the people, to the popular sentiment in favour of its objective, as the Bundesbank did. It appeals to the form and content of the founding decision to create the euro and itself. It refers to the constitutional order (the Treaty) as a source of its independent power to act against democratically elected governments.

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The Greek crisis revealed that the expression of political will through the institutional apparatus of the Member State remained a threat to the monetary order. In doing so, it highlighted a tension inherent in the structure of dual sovereign representation: the people may face itself in a conflict of political will through its sovereign representatives. In such a situation, however, the ECB as a shared sovereign representative does not represent any one people alone. As such, it may see itself as being 'forced' to employ coercive means against one of its constituent peoples in case it sees its political behaviour as a threat to the whole. This, in turn, introduces a further element of discretion to the ECB's exercise of powers: the discretion to determine when to apply the rules of the EMU and when to suspend them. This determination turns on a technocratic evaluation of whether the political choices of a people and its government constitute a threat to the order and its embodied ideology. The effects of the ECB's governmental activities are thereby not limited to the monetary sphere but manifest themselves in any sphere the ECB considers relevant for realising its *telos.* The perceived necessities associated with governing in the name of its *telos,* in other words, necessitates interventions in and based on developments in spheres of policymaking that are outside the ECB's formal remit. Seen together, then, the OMT programme and the Greek crisis raise the question of whether the exercise of sovereign powers by limited sovereign representatives can be constrained, regulated and directed by law alone. On the one hand, the ECB's actions clearly transcended the limits imposed on it by the Treaties. On the other, Member State challenges to the existing order (through their actions in the past as well as political programmes in the present) highlighted that EMU law had failed to constrain government discretion with regard to economic policy. This raises the question of whether the Eurozone can be governed effectively (and legitimately) without an omnicompetent sovereign authority.

Conclusion

The Eurozone Crisis manifested the contradiction between the rule of law and technocratic authority. With the OMT programme, the ECB made a decision and chose technocratic discretion in the name of its *telos,* sacrificing in the process the meaning of one of the fundamental constitutional values enshrined in the legal mandate. The ECB thereby displaced its foundation of authority from a constituent decision in the past to an appeal to necessities, and even popular will, in the present. This, however, is in conflict with the constitutional order of limited, functionally differentiated sovereign representation. This constitutional ordering is not open to constitutional transformations, to higher lawmaking (Ackerman 2000), except in formal moments of constituent power politics. As such, the OMT programme and its transposition of governmental authority reopens the problem of politics in the foundational sense and raises the question of democratic authorisation, including the question of the political subject capable of such authorisation.

From the perspective of the ECB and other conservative European actors, the Greek case revealed that the problem of politics in the ordinary sense continues to haunt the constitutional construction of the Eurozone. The economic convergence and relative homogeneity that was, and still is, seen as a prerequisite for a well-functioning EMU and single currency had not come about through voluntary self-restraint by governments. Market discipline reinforced by the legal framework of the EMU had proven too weak. It 'had to' be enforced through the exercise of coercive public authority, expressed in the combination of conditionality and controlling the access to money. When the Greek population elected a government that was seen as threatening the project of creating economic convergence through conditionality, the extent of the European level's powers of coercion became clear and the Greek government and people were forced to decide between continued Eurozone membership (and the 'necessary' economic programme associated with it) and the possibility of expressing democratic will in opposition to those demands.

Like the OMT case, the Greek case raises the question of political authorisation. But it does so in a slightly different manner. In this case, it is not so much the law governing the ECB as a sovereign representative that was in question but the relationship between competing sovereign representatives, on the one hand, and the relationship between the continuous possibility of expressing democratic will and the governmental necessities associated with the political will for Eurozone membership, on the other. In the Greek crisis, the former was sacrificed at the altar of the latter in a manner that established the boundaries of the possible and impossible in terms of the political freedom to determine economic policy at the Member State level. Individual expressions of democratic will became conditional on those expressions not being in conflict with the governmental order of the euro. The question of sovereignty was essentially boiled down to the constituent decision on whether or not to remain in the euro.

The emergency politics of both the OMT and the Greek case reflect a decidedly Schmittian notion of constitutional guardianship. The response to the Crisis did not only address the forces of the Crisis itself but also defined the essence of the constitution that was to be protected. However, because these cases involve not just one foundational political subject but many, the Schmittian question of preserving existential unity becomes a thorny one, not least for the question of the Eurozone's post-crisis political form. In so far as the euro represents a form of existential unity, the ECB acted to protect it. But in doing so, it may have compromised the constitutional construction of limited sovereign representation because its actions point towards a unity of the constituent power of the people that is supposed to be absent from the EMU, whether in its procedural or organic form. The ECB may thus have undermined its own foundation of independent authority in a constitutional contract among several, formally equal, political subjects by displacing its temporality of authorisation from the past expression of political will*s* to the present embodiment of *a* political will. This reflects that the Eurozone's governmental order was perceived as being both too weak (it did not constrain governments adequately) and too rigid (because of the absence of procedures for altering it short of Treaty change). In both these respects, the problem of politics re-emerged: the foundations of the constitutional, and thus monetary, order needed revisiting and the problem of ordinary democratic politics continued to be a threat to the stability of the order. The ECB's constitutional guardianship did not lead to a closure of the problem of politics but opened it and underlined its continuing relevance for the question of monetary order.

Chapter 7

The Technocratic Necessity of European Sovereignty

Introduction

The Eurozone Crisis revealed the continuing relevance of the problem of politics as a means of expressing political will for the monetary order. The euro had been created as an attempt to address this problem by removing monetary policy from ordinary politics at the Member State level and entrusting it to an independent technocratic authority, the ECB. The ECB's independence, furthermore, was constitutionalised in order to secure a solid foundation for its power to single-mindedly pursue the overriding objective of price stability, even when this conflicted with the wishes of any or all of the Member States. At the same time, a body of rules for Member State economic policies were agreed, which were intended to foster convergence around stability-oriented economic policies.

With the Crisis it became clear that the constraints on Member State governments' economic policies implicitly and explicitly associated with membership of the euro had not produced the stability-oriented economic policies that they were supposed to. Politics at the Member State level continued to be 'unruly' and represent a threat for the stability of the monetary order. At the same time, the 'necessities' of the Crisis pushed the ECB to act on the basis of a much wider interpretation of its mandate than originally envisioned. The monetary and economic situation following the outbreak of the Crisis quite simply did not conform to the assumptions underpinning central bank independence as the institutional solution to the problem of price stability. This revealed the existence of a vacuum of legitimate governmental authority at the European level. It highlighted that the foundations of the governmental order of the Eurozone needed revisiting, at least from the perspective of those seeking to protect and enforce that order. The Crisis, in other words, called for a refoundation of the constitutional construction of the EMU, thus opening up the problem of politics in the foundational sense. And it did so both in relation to the European level monetary order, and in relation to economic government within the Member States. It re-emerged, in other words, in relation to the constitutional order of government through dual, functionally differentiated and limited sovereign representation that was supposed to have settled the problem of politics in the first place.

In this chapter, I discuss a prominent vision for responding to this problem that has emerged from within the logic of the existing order as a response to the perceived problems associated with it. It is a vision of 'conservation through transformation': it presents a radical, even 'utopian' vision of reform that is supposed to be better able to serve and protect the essence of the stability-oriented EMU constitution. Promoted in programmatic speeches by a number of European leaders (see, e.g., Macron 2017, 2018a, 2018b; Juncker 2018; Draghi 2019a, 2019b; Cœuré 2018), this vision reflects a perceived need to move beyond the current constitutional order of the Eurozone in particular. The euro, according to this vision, can no longer rely on governing through rules and constraints on Member State economic policies alone. It demands the possibility of exercising effective and unified public authority. The euro, as it were, demands 'European sovereignty.'

The envisioned solution to the problem of politics in relation to the monetary order that this represents constitutes a break with the EMU's original constitutional structure of limited sovereign representation. It constitutes a break with the idea – promoted in particular by the Delors Report and by (German) central bankers such as Karl Pöhl, Otmar Issing and Jürgen Stark – that constitutionalised central bank independence combined with rules for the fiscal behaviour of states is a means of ensuring the stability of the monetary and economic order that is superior to the constitution of supranational sovereignty. This is not to say that rules and central bank independence have been abandoned as ideals. It means, rather, that the realisation of the stability-ideology that the EMU's constitutional structure embodies cannot rely on these factors alone. The realisation and protection of a stability-oriented economic and monetary order is no longer considered adequately realisable through the constitutional construction of dual, limited sovereign representation. In this regard, the reintegration and re-unification of sovereign representation is presented as the solution to the problem of politics in relation to the monetary order in both the foundational and ordinary sense.

While a vision of radical constitutional reform, the notion of European sovereignty as a response to the problem of politics has not arisen from a vacuum. Over the last decade or so, a variety of contingent and general, temporary and permanent measures have been adopted in 'emergency mode' (White 2015, forthcoming). The constitutional order of the Eurozone, its basic style and organisation of exercising governmental authority, has undergone a series of wide-ranging transformations (see e.g., Beukers et al 2017; Dawson and De Witte 2013; Tuori and Tuori 2013; Ioannidis 2016). As a result of these, the Eurozone's regime of government is to a large extent already deeply involved in controlling Member State economic affairs, perhaps even to a greater extent than the federal level is in the US (see F. Fabbrini 2013). But the transformation is still largely seen as being incomplete or inadequate in one way or another (see S. Fabbrini 2013). There is still an urgent need to 'reinforce the foundations of the EMU' (Five Presidents' Report 2015: 4). It is the meaning and logic of the notion of European sovereignty as a response to this need that is the subject of this chapter.

In focussing on the vision of 'European sovereignty,' the chapter focusses on a particular vision presented by certain segments of the 'EU elite.' In a context in which there is widespread agreement that the EU and the Eurozone needs reform, however, this vision is only one among many. The narrow focus on this vision is nevertheless justified in the context of the present thesis for two reasons. First, this vision is most closely associated with the ECB and a number of ECB officials have promoted it actively. As such, it would appear that this vision represents the solution to the problem of politics in relation to the monetary order favoured by the institution most immediately associated with protecting it. More importantly, this vision emerges from within the logic of the existing order as a response to governmental problems associated with realising and protecting it. In contrast to most other visions of Eurozone reform, it is not an attempt to redefine the basic normative values of the order but an attempt to protect its ideological and material substance by changing its political and constitutional form. In so far as it is transformative, it is so in constitutional terms, not ideological. It seeks to preserve the essence of the constitution through its reform. The question of whether it would succeed or be self-defeating if it were to be realised remains open, but the very perception of a necessity of European sovereignty underlines the inescapability of politics in relation to the monetary order.

The Crisis of Dual Sovereign Representation

The EMU as a governmental order faced three distinct but interrelated problems in the context of the Eurozone Crisis. It faced, first, the problem of securing Member State obedience to the demands of the euro. As discussed in the previous chapter, this problem was to some extent overcome through employing the control of the access to money in a coercive manner. This 'solution' to the problem, however, introduced a different kind of problem: the problem of legitimate authority. Second, the EMU faced the problem of a lack of general governmental capacity. The European level may have been able to intervene in the internal affairs of debtor Member States and the ECB may have been able to redefine the meaning of its mandate, but the European level was, and still is, unable to develop and implement a general European economic policy autonomously. The general economic policy position of the Eurozone remains an aggregation of the economic policies implemented at the Member State level. The European level therefore remains only indirectly in control of the economic policy of the Union as a whole. Finally, the EMU, and the EU more generally, faced the problem of redefining its fundamental claim to authority. This problem is the product of the two former, but it is distinct from them. The EU in general has traditionally relied on generating legitimacy from its ability to produce certain outcomes. It has relied on 'output legitimacy' (Scharpf 1999) and based its authority and claim to obedience on a logic of governmental effectiveness (Isiksel 2016). It was able, or so the assumption goes, to secure outcomes that the Member States individually would not have been able to. The ECB epitomises this 'functional' basis of authority: despite its lack of 'input legitimacy,' it claims legitimate authority on the basis of its superior ability to secure price stability across the Eurozone.

While the Crisis may be said to have put the EU's functional constitution into sharp relief (Isiksel 2016), it has also, particularly in terms of its 'output legitimacy,' been severely challenged (see e.g., Schmidt 2015). The EU is no longer automatically perceived (if it ever was) to promote the economic welfare of its citizens in a Pareto-efficient manner. The euro in particular creates winners and losers and it has involved sacrifices at the individual Member State level that are difficult to square with the notion of it being a 'symbol of unity' and a means of promoting economic growth and prosperity for all. In the wake of the Crisis, the EMU faced a crisis of authority that manifested itself as a problem of the authority to intervene in Member State affairs, a problem of the authority to govern economic policy comprehensively, and a problem of redefining the foundation of the constitutional order's authority.

Overcoming the Member States' Sovereign Power over Economic Policy

European interventions in Member State affairs respond to the problem that domestic political processes do not necessarily always respect the constraints on democracy that EMU membership entails. As such, politics at the Member State level constitutes a threat to the stability and viability of the euro. Such conflicts present a distinct problem for the structure of dual sovereign representation. The basic assumption of the structure is a version of *pacta sunt servanda*: Member State politics is supposed to conform to the original agreement because the Member State itself was party to authorising it. The democratic *naissance* of the construct was supposed introduce the self-restraint on democratic decision-making processes necessary for the common currency to function and for all to benefit from it. The political freedom to continuously express changing opinions concerning economic policy was therefore supposed to have been sacrificed in the constituent moment in order to secure an economic and, in particular, monetary stability that had previously proven elusive (see chapter 4).

During the Crisis, the political freedom of Member States with regard to economic structures and policies was suppressed in emergency mode. Securing obedience in such a manner, however, is problematic in several ways. The legitimacy of such interventions is, for one, questionable. But perhaps more importantly from the perspective of Eurozone governability, they demand a sense of emergency. While emergency politics relies on a certain 'securitisation' narrative and a particular interpretation of concrete events (White forthcoming), it must refer to some nucleus of a general sense of fragility or instability. Emergency political coercion is a governmental approach that only works effectively when conditions are amenable to it and there is a general sense of things being out of hand and on the brink of collapse. As a permanent approach to governing, however, it fits uncomfortably with an ideology of stability and order. From the perspective of the ideology of stability, the ordinary government of the Member States from the European level must be regularised.

During the Crisis, several measures were implemented to regularise the government of Member State economic affairs. One means of doing so was found in the so-called 'golden rule' of balanced budgets contained in the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (or Fiscal Compact). The introduction of the golden rule in national legal "provisions of binding force and permanent character, preferably constitutional" (art. 3(2) TSCG) in many ways simply concretised the constraints perceived to be demanded by the euro. In terms of method, however, the Fiscal Compact, which was ratified outside the framework of EU law, differed somewhat from the traditional *pacta sunt servanda*-method of the EMU. Rather than creating or reinforcing rules at the European level, the Fiscal Compact sought to introduce the golden rule into the expression of the will of the people in their respective constitutions. Thereby the constitutional expression of political will for the euro and for the basic outlines of economic policy were to be aligned. Constraints on government spending would not be externally imposed limits on the Member State peoples' sovereignty, but an expression and concretisation of it. A government running persistent budget deficits would not (only) be violating EU law and agreements, but its own constitution.

As a solution to the problem of politics at the Member State level, however, the approach of the Fiscal Compact does not diverge structurally from that traditionally associated with the economic policy dimension of the EMU. The Member State is still the only political actor able to give legal effect to economic policymaking decision. Even in Member States subject to structural adjustment programmes, it is only through the agency of the state that reforms take legal effect. The European level does not have the authority to implement, for instance, a budget on a Member State's behalf. Despite efforts to strengthen the surveillance and punishment mechanisms available to the European level, the economic policy of the Union remains dependent on the cooperation (or emergency political coercion) of Member States. Regardless of legal limits, the Member States remain the sovereign representatives of their respective peoples within the sphere of economic policy.

The Member State's sovereign powers within economic policy means not only that the European level cannot take control of the economic affairs of the Member States, but also that the European level cannot conduct an autonomous economic policy. It cannot in any comprehensive manner control the uses to which public spending is put. These limits on the European level's governmental capabilities have led to calls for reforms to make the EMU 'genuine' (Van Rompuy 2012) by 'completing' (Five Presidents' Report 2015) and 'deepening' it (Commission 2017). Reforms are, in other words, presented as means of making the EMU more like it was always already supposed to be. They introduce nothing new but serve to realise the order that the Member States and their peoples had signed up to in the first place. The reforms are thus presented not as infringements of Member State rights, but as concretisations of the original political will of the Member State peoples for the euro and all that it entails.

Democracy as the Constituent Decision on the Euro

This perspective informs the so-called 'Five Presidents' Report,' which presents a vision for 'completing' the EMU. In its first chapter, the Report (2015: 4) explicitly addresses the nature of the relationship between the emergency politics of the Crisis and its problematic relationship with the existing institutional and democratic structure of the EU:

> The challenges of recent years forced national governments and EU institutions to take quick and extraordinary steps. They needed to stabilise their economies and to protect all that has been achieved through the gradual and at times painstaking process of European integration ... it is clear that the quick fixes of recent years need to be turned into a lasting, fair and democratically legitimate basis for the future.

The ad hoc approach of the Crisis was driven by the necessity of conserving the European "house that was built over decades" and is justified as such, but it is unsustainable and democratically illegitimate in the long term. It is, therefore, "high time to reinforce its foundations" (ibid.), the importance of which is underlined by the continuing necessity of doing "a lot more... to improve economic policies" (ibid.).

The Report stresses that "[t]he euro is more than just a currency. It is a political and economic project" in which "monetary sovereignty" is shared (ibid.). The Report, furthermore, explicitly recognises that this is associated with the sacrifice of a number of political freedoms when it comes to economic policy. "[N]ational adjustment tools," for instance, have been given "up on entry" (ibid.). The sacrifice of these, however, is justified with reference to "benefits of using a credible stable currency within a large, competitive and powerful single market" (ibid.) and the EMU being a "means to create a better and fairer life for all citizens" (ibid: 2). The EMU's failure, however, means that these promises of promoting the common good of all Europeans have not been fully realised. In order to do so, then, the EMU needs further reform and the reforms already undertaken need to be better monitored and enforced. As an example of what needs to be done, the Report notes that the European Semester's "Country-Specific Recommendations need to be concrete and ambitious." These recommendations, however, "should remain 'political', i.e. Member States should have *a degree* of freedom concerning *the exact* measures to be implemented" (ibid: 9, emphasis added).[1]

The notion of the Member States only retaining 'a degree' of political freedom regarding their economic policies underlines that "only a select few states in the eurozone retain the luxury of being able to generate change in domestic economic policy through electoral alternation" (Isiksel 2016: 225). That is, as long as a Member State is in some way subject to the European institutions' evaluation of their economic policy position for access to money (through the ECB, for instance), it must, by and large, accept the demands of the Commission.[2] According to the Report, however, this is not a big problem in terms of democracy because, "in an increasingly globalised world, Member States have a *responsibility* and *self-interest* to maintain sound policies and embark on reforms that make their economies more flexible and competitive" (Five Presidents' Report 2015: 4, emphasis added). According to this perspective, democracy at the Member State level is always already constrained by external forces and any authentic expression of political freedom must conform to the limits of the possible. Political freedom is, as it were, unfettered as long as it conforms to what is expected.

There are various other examples of such rhetoric in the Report and in general it leaves little if any room for meaningful democratic input into formulating the basic principles of economic policymaking at the Member State level. The Report seeks the justification for this order of things in political union, which is presented as providing "*the foundation for all of the above* [the various reforms] through genuine democratic accountability, legitimacy and institutional strengthening" (ibid: 5, emphasis added). As such, the Report acknowledges that the limitations on democratic decision-making in the Member States will need to be compensated for at the European level. The democratic strengthening of the European level, however, focusses only on concepts

[1] Introduced in 2010, the European Semester is a process aimed at, in the words of the Commission, "ensuring sound public finances (avoiding excessive government debt)[,] preventing excessive macroeconomic imbalances in the EU[,] supporting structural reforms, to create more jobs and growth[, and] boosting investment." See https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/european-semester-why-and-how_en [accessed 10 December 2019].

[2] The Italian government's confrontation with the Commission over its 2019 budget highlighted the difficulty a Member State faces when trying to implement a significant change to economic policy that the Commission does not approve of. Combined with the ECB's right to withdraw support for Member States in its QE programme on the basis of a government's attitude, the European level holds considerable means of 'persuasion' in such confrontations.

such as 'accountability,' 'transparency,' 'dialogue,' 'discussions,' 'debate' and 'exchange of opinions' (ibid: 17). There is no indication that parliaments, whether national or European, should have any form of decisive power in the envisioned 'political union.' Parliaments in this framework are truly reduced to talking clubs, with particularly elected representatives in national parliaments on the "losing side of a reinforced two-level game" (Crum 2018: 269).

If the stability of the euro demands the suppression of democracy as an active force for shaping economic policy, this leaves democracy at the Member State level, as discussed in relation to the Greek case in chapter 6, with essentially only a single important question: do we want the euro? When it comes to economic and monetary policy, democracy is reduced to the constituent decision on the basic monetary and economic order. Within the constituted order, economic policy becomes subject to the overriding concern of securing unity and relative homogeneity in order to safeguard the viability of the order. Democracy as the decision-making process that gives expression to the will of the people is a foreign element within this order and as such it can enter only at the founding moment, if at all. Politics as the continuous ability to redefine the values and priorities informing the activity of governing must be suppressed in the name of the stability of the monetary order.

European Sovereignty in the Name of Stability

The conclusion that political freedom must be suppressed in the name of stability echoes the Hobbesian notion of the sovereign as the means of allowing the political community to escape the destructive effects of competing interpretations of the Good of politics. In the 'completion of the EMU' as in Hobbes' *Leviathan,* the imperative of, and supposedly common interest in, stability justifies the suppression of the political freedom to express and act on competing opinions. The sacrifice of political freedoms at the Member State level, furthermore, is not only justified with reference to the stability of the internal order but also with respect to Europe's place in the world. Political freedom in the Member States, in other words, makes the European project vulnerable not only to internal collapse but also to foreign domination.

In this context, the continuing ambiguity of public authority in the Eurozone is unsustainable:

> In spite of the undeniable importance of economic and fiscal rules and respect for them, the world's second largest economy cannot be managed through rule-based

> cooperation alone. For the euro area to gradually evolve towards a genuine Economic and Monetary Union, it will need to shift from a system of rules and guidelines for national economic policy-making to a system of further sovereignty sharing within common institutions (Five Presidents' Report 2015: 5).

The EMU must, in other words, shift towards a system in which the Union level has "its own fiscal capacity and a means of *imposing budgetary and economic decisions on its members*" (Commission 2012: 31, emphasis added; see also Trichet 2011a). The Union must evolve in a manner that allows it to implement economic policy with the same authority as it does monetary policy. It must move towards a structure that allows it "to take decisions immediately applicable in a particular economy that puts the euro area financial stability in danger" (Trichet 2011b; see also the discussion in chapter 6 of Draghi's notion of an 'institution-based' approach to governing).

Suppressing the potentially destructive effects of conflicting economic policies at the Member State level and securing the governmental capacity of the Union within the economic realm is central to visions of 'European sovereignty.' What unites such visions is that the notion of European sovereignty promises an avenue both for overcoming and suppressing internal divisions and for strengthening the European level's governmental capacity.

Sovereignty as Governmental Capacity

The notion of 'European sovereignty' reflects a particular conception of sovereignty. Seeking to explain how European level reforms "will change the relationship between the Union and the Member States," Mario Draghi (2013) outlined this conception in some detail. While Draghi concedes that the reforms in question will entail a marked change, he asserts that they are, in line with the above, not producing something new. They are merely "'perfecting' something that has already begun." As such, "Policy-makers are," quite simply, "following through the consequences of the decision to create a genuine single market supported by a single currency."

In this context, Draghi claims that there are essentially two ways "to look at sovereignty." The former he associates with Bodin and this sees sovereignty as a "normative" concept "historically favoured by absolutism." It defines sovereignty "in relation to rights: the right to declare war, and treat the conditions of the peace, to raise taxes, to mint money and to judge in last resort." In contrast to this, Draghi outlines a "positive" view, which sees sovereignty as relating to "the ability to deliver in practice the essential services that people expect from government." In this view, sovereignty is not necessarily related to the expression and realisation of political will but is a means of governing effectively: "A sovereign that is not capable of effectively discharging its mandate would be sovereign only in name."

Draghi (2013, emphasis added) somewhat questionably associates the latter view of sovereignty with Locke and claims that "the sovereign exists only as a fiduciary power to act for certain ends. *It is the ability to achieve those ends that defines, and legitimises, sovereignty*." Citing James Madison's Federalist Paper no. 45, then, Draghi (2013) asserts a functional or teleological understanding of sovereignty and public authority: "'no form of government whatever has any other value than as it may be fitted for the attainment of [the public good].'" When "deciding which powers should be at national or European levels," one should "look at effectiveness, not at abstract principles that may be empty in today's world." While Draghi does not specify what those 'empty abstract principles' might be, his insistence that a "pragmatic focus on policy efficacy ... should be the motor of further integration" suggests that sovereignty should at least not be 'confused' with the freedom to express values and opinions in, through and on economic policy at the Member State level. Draghi (2019a) thus develops a functionalist view of sovereignty that entails that "True sovereignty is reflected not in the power of making laws [but in] the ability to control outcomes and respond to the fundamental needs of the people: what John Locke defines as their 'peace, safety, and public good.'"[3]

This conception of sovereignty sees it essentially as a question of governmental capacity, "the actual ability to control things" (Loughlin 2016: 63). Sovereignty as the "rightful authority" (ibid.) to express political will in institutional form and governmental practice is of little relevance. Or rather, 'true sovereignty' is define in such a way that rightful authority follows from governmental capacity. Any insistence on rightful authority as determining in what form and for what purpose governmental capacity is to be exercised is counter-productive: "The ability to make independent decisions does not guarantee countries ... control [of their fates] ... independence does not guarantee sovereignty" (Draghi 2019a).

[3] It ought to be noted that associating this view with Locke is a stretch. Locke conceives of the legislative as the supreme power of government, subject only to the people's ultimate power to "remove or alter the legislative" (*Two Treatises,* bk. 2, ch. XIII). That true sovereignty should be unrelated to the rightful authority to make laws is a manifest misreading of Locke.

The definition of sovereignty through governmental capacity contains an implicit critique of the original EMU structure. In this structure, the Member State, by virtue of remaining the sovereign representative of its people within the economic policy domain, retained the 'rightful authority' to make laws and define economic policy according to will. In the sphere of monetary affairs, on the other hand, the ECB had the rightful authority to enact laws and decisions without involving the Member State level. The sovereignty of the people of each Member State was expressed in a structure of dual sovereign representation, which divided and thus limited the governmental capacity of both Member States and the ECB. The source of authority and the subject of political authorisation, however, was neither divided nor limited. As such, every people of the Eurozone could in principle always decide to withdraw from the euro or express its political will in a manner that conflicted with the demands of the euro. This introduced a source of instability into the governmental order. The 'more perfect EMU' therefore demands a reconstitution of governmental capacity, because its division and the continued possibility of expressing rightful authority against the project jeopardises the realisation of 'peace, safety and public good.' The continuous existence of plural relations of sovereignty within the Eurozone constitutes a threat to its continued unity.

The reference to Madison is notable in this respect. Devoted to the question of the "Alleged Danger from the Powers of the Union to the State Governments," Federalist no. 45 (Madison 2009 [1788]: 97) outlines a conception of the distribution of powers between the different levels of government as resting on the question of how best to ensure "the public good, the real welfare of the great body of the people" (ibid: 98). The question of the rights of the States vs the governmental powers of the Union is thereby presented as one regarding which level is best capable of realising the will of the people. According to Madison, insisting on the sovereign rights of the States against the Union is potentially a betrayal of the people as it might make the realisation of the will or welfare of the people impossible. From this it appears to follow that Union authority over the states is justified in so far as it is able to make the realisation of the will of the people more feasible in the face of external threats and "global disorder" (Macron 2018a) as well as internal strife and the reappearance of "a sort of European civil war" (ibid.).

The question of sovereignty as the supreme power to realise the will of the people thereby becomes a question of being able to control the political community's fate. And this "is what the EU gives to *the people of Europe*: a way of sustaining an open international order while also bending its outcomes to their will" (Cœuré 2018, emphasis added). Because the European states are unable on their own to exert themselves on the factual conditions of global trade and finance, for instance, the Union offers a better avenue for effective sovereignty: "the EU gives its citizens more democratic control over globalisation than is afforded to people in other countries" (ibid.). Asserting state rights against the EU (which Brexit is an example of, according to Cœuré) is thus, in line with Madison, potentially a betrayal of the will of the people because the EU's "capacity to harness globalisation to the popular will" (Cœuré 2018) is greater than that of the Member States individually. In the realm of global affairs, sovereignty is only possible "through European integration" (Cœuré 2018; see also Draghi 2019b). In so far as the EU needs reform, it needs it to "achieve its full potential" (Cœuré 2018).

The People of Europe as a Foundation of Sovereign Authority

The question of realising 'the will of the people' raises two distinct questions: who is the people? And how is its will to be known and made the foundation of governmental activity?

As a politico-legal category, the 'the people' is a notion of singularity; it wills in the singular. For the will of the people to become the foundation of governmental activity, it must be expressed through a process that reduces the inevitable multiplicity of opinions to a single authoritative expression of will. Within the democratic sovereign state, the process of reduction and ultimate closure can be achieved in multiple ways, including ordinary and extraordinary elections, referenda, and through the more elusive notion of public opinion. As long as the process of reduction is generally agreed upon, any closure will (generally) be accepted as authoritative. In the Eurozone, the process of reduction and closure is more complex due to there being no supreme political authority at the European level. If a conflict exists between competing expressions of popular will by autonomously existing peoples concerning matters of common concern, how can closure be obtained?

In the realm of monetary policy, closure is obtained through the ECB's representation of the shared will of the peoples, expressed in the constituent decision, for the euro and for price stability. As long as the euro is not abandoned, the ECB wills and governs on behalf of the people within the realm of monetary affairs. For the purposes of monetary policy, the peoples are governed as if they were one people. This logic is clear in ECB justifications for unconventional monetary policies such as the OMT and QE programmes during the Crisis, where interventions in favour of (or against) a particular Member State are justified with reference to "safeguarding an appropriate monetary policy transmission and the singleness of the monetary policy" (ECB 2012, 2015d; see also chapter 6). OMT's, for instance, could not be justified with reference to helping individual governments by bringing down yields but only with reference to maintaining the ability of the ECB to govern the Eurozone as one. In the Crisis, this logic was extended to the general 'Eurozone government' (on this notion, see Sacriste and Vauchez 2019), whereby the ESM, for instance, was only "to be activated *if indispensable to safeguard the stability of the euro area as a whole.*"[4]

While being governed as one within the sphere of monetary policy, however, the peoples of the Eurozone remain in the plural when it comes to economic or fiscal policy. In the sphere of policymaking defined as 'economic,' the singleness of popular wills cannot be taken for granted because there exists no process or institution that reduces multiplicity to singularity. The Member State peoples remain free to express their wills through their respective governmental apparatuses. Multiplicities of opinions are not reduced to one, but to 19. In the absence of a single institutional expression of the peoples' will, a single sovereign representative, even constitutional constraints remain only limits on the peoples' freedom to express political will. The question of the governmental capacity to control the community's fate is two-sided as long as the peoples remain in the plural. The problem of governmental capacity at the Union level, including the question of being able to 'impose budgetary and economic decisions on its members,' is thus intimately tied to the question of the nature of the foundational political subject: the peoples or the people?

In justifying its authority to depart from a narrow interpretation of its mandate and objective of price stability, the ECB has sought to invoke a more organic notion of the relationship between itself and the 'the people of Europe' (see chapter 6). While the ECB may have departed from the content of the constituent decision, there is a certain

[4] 2011/199/EU: European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (emphasis added).

logic, however problematic, to the invocation of 'the people' in the singular in this regard. As discussed in chapter 6, emergency politics presents the legitimacy and even legality of any given act as being derived from the existential necessity of protecting the will and welfare of the people. The OMT programme's departure from the strict letter of the law was justified with reference to the continuing political will for the euro and the Eurozone's *salut public* (see, e.g., Draghi 2012). In the securitisation discourse associated with the kind of constitutional guardianship exercised by the ECB, the will and welfare of the people become merged with and indistinguishable from governmental practice on its behalf. As such, it seems only natural to the ECB and its officials to invoke and appeal to 'the people of Europe' in the singular when justifying its 'increasingly complex' and wide-ranging role in Eurozone government (see Draghi 2016a, 2016c, 2016d, 2017, 2018b, 2018c, 2018d, 2018e, 2018f, 2018g, 2019b; Cœuré 2012, 2013, 2016, 2018; Mersch 2017b; Constâncio 2017; Lautenschläger 2017; Angeloni 2019). The notion of an organic relationship to a singular foundational political subject reflects a shift from a formal basis of authorisation to one that is more informal and more akin to that discussed in relation to the Bundesbank in chapter 2. The question is how it relates to the broader notion of 'European sovereignty' as the general phenomenological capacity to affect change in the world.

The securitisation discourse and its corresponding invocation of an organic link between the European governmental apparatus and the people of Europe in the singular has not only been presented in the context of the most 'urgent' phase of the Crisis. It is also invoked in the context of 'perfecting' the EMU and overcoming polarisations within it in order to strengthen Europe's position in the world (see, e.g., Macron 2017, 2018a, 2018b; Cœuré 2018; Draghi 2017, 2019a; Juncker 2018; Lautenschläger 2019). However, in this context, as opposed to the German, it is not only the central bank that is the organic representative of the people, but the European governmental apparatus as a whole. Only the European level can give the citizens of Europe the capacity to determine their own fate (Cœuré 2018). The will of the European people, therefore, needs neither elective representation nor other procedures of reduction and closure but can be deduced from the governmental activities of the Union. Following the Rousseauian notion of the acts of rulers being considered expressions of the general will so long as they are not opposed by the people (see chapter 6), it can arise organically.

The legitimacy of the Union's governmental capacity is thus defined 'negatively' from the absence of an effective expression of dissent.[5]

In this regard, the invocation of the 'European people' rather than 'European peoples' takes on a distinct significance. On the one hand, it introduces a unified foundational subject of authorisation in the present, thereby reducing the importance of original, formal expression of a unity of wills in the Treaties. On the other hand, it reduces the importance of expressions of popular will at the Member State level. Relative to the great whole of the European people, the populations of the individual Member States are but minorities, to paraphrase Wilhelm Vocke (see chapter 2). Any part of the European population's potential or actual opposition to governmental acts or constitutional transformations can be set aside in the name of the greater good and stability of the whole.

The necessity of European unity is central to the vision of European sovereignty. Macron (2018b) introduces his vision of European sovereignty by stressing the imperative: "let's not be weak, let's not be passive." European sovereignty is thereby presented as a means of becoming a more active and powerful governmental force both internally and externally. The primary problem of European sovereignty is, according to Macron, effective self-determination in relation to global forces. It expresses the refusal "to allow others to decide for us" (ibid.). It expresses the effort of Europe to take "its destiny into its own hands" and develop "'*Weltpolitikfähigkeit*' – the capacity to play a role, as a Union, in shaping global affairs" (Juncker 2018: 5). Europe, in other words, "has to become a more sovereign actor in international relations" and "*The geopolitical situation makes this Europe's hour: the time for European sovereignty has come*" (ibid., emphasis in original).

The strengthening of Europe's power in the world, however, demands internal unity, as "division would be fatal; it would further reduce our *actual* sovereignty" (Macron 2018b, emphasis added). Since "[d]ivisions push us into siege warfare," the external dimension of sovereignty is inextricably linked to the internal suppression of divisions. In this regard, Macron (ibid.) stresses the importance of championing

[5] In this narrative, Brexit might be interpreted as 'proof' that individual peoples can indeed manifest their dissent by exiting. The absence of other exits, then, can be seen as a form of affirmation by 'silent referenda.'

"economic, fiscal and social convergence" and "competitiveness created by reforms in each State" (Macron 2018a). The Eurozone, furthermore, needs to be "stronger, more integrated" and have "its own budget, enabling investment and convergence" (Macron 2018b). It must have "a budgetary capacity to promote stability and convergence" (Macron 2018a). European sovereignty is thus directly related to addressing the problems of the EMU discussed above. And the euro is central to European sovereignty because "long-term economic power can only be built around a single currency" (Macron 2017).[6] It expresses the unity of Europe and it "must become the face and the instrument of a new, more sovereign Europe" (Juncker 2018: 10). In order for the euro to become the symbol of European sovereignty, however, "we must first put our own house in order by strengthening our Economic and Monetary Union ... Without this, we will lack the means to strengthen the international of role of the euro. We must complete our Economic and Monetary Union to make Europe and the euro stronger" (ibid: 10-11). In order to become sovereign, in other words, Europe must overcome the continued possibility of Member State politics obstructing the achievement of unity.

The single currency, according to the perspective discussed, needs European sovereignty just as European sovereignty needs the single currency. At the same time, European sovereignty is justified with reference to the threat of civil war, on the one hand, and outside domination, on the other. In the final instance, then, the demands of the single currency must be realised both for and through European sovereignty: European sovereignty is necessary in order to be able to implement reforms even in the face of Member State opposition, but the reforms are at the same time necessary for European sovereignty to become effective in relation to the outside world.

In so far as visions of European sovereignty make reference to democracy and political freedom,[7] is to be realised through the European level. In this regard, the EP and its members are invoked as "the direct representatives of the people of Europe" (Draghi 2016c; see also Macron 2018a). Democratic freedom at the Member State level, however, is downplayed, particularly but not only, with regard to economic policy. In relation to Member State economic policy, emphasis is placed on stability, convergence

[6] In the French original: "une puissance économique durable ne peut se construire qu'autour d'une même monnaie" (Macron 2017).

[7] In Juncker's 2018 State of the Union, references to democracy are all but absent.

and competitiveness reforms, not democracy and freedom. If democracy is to play a role at all, it is at the European level. 'European sovereignty' thereby espouses a vision of democracy that subscribes to the notion of a unified 'European people' rather than the continued existence of the European peoples. This, perhaps, reflects that a notion of unified sovereignty at the European level cannot but be based on a unified European people as its political subject of authorisation. It would, after all, be the representation of the unity of the European people. Governmental necessities in the face of global threats and internal division thus demand a reconfiguration not only of sovereign representation but of the foundational political subject itself.

Monetary Order and the Problem of Politics after the Eurozone Crisis

The autonomous political existences of the Eurozone peoples have been challenged, if not superseded, by the emergence of a 'Eurozone government' during the Crisis. Not in affect, perhaps, but to a large extent in governmental effect. The idea of European sovereignty based on a political relationship between the European governmental apparatus and a 'people of Europe' remains, of course, a vision, a 'utopia' (Macron 2018b). From the perspective of European institutions such as the Commission and the ECB, however, European sovereignty has emerged as a kind of technocratic necessity. It expresses both a critique of the constitutional construction of the E(M)U for failing to deliver what it was supposed to and a means of overcoming this failure by strengthening the governmental capacity of the centre. The notion of European sovereignty thereby highlights that the problem of sovereign authority has re-emerged in the context of the Crisis and it has done so, among other things, in relation to securing the stability of the monetary order. While I have focussed almost exclusively on the question of sovereignty as it relates to the authority and governmental capacity to conduct economic and monetary policy, the emergence of the problem of sovereignty is not limited to this. European sovereignty is as much a response to movements demanding national sovereignty in the context of divisions over liberal values and immigration (see Macron 2018a, 2018b; Juncker 2018) as it is to the problem of economic governmental capacity.

Sovereignty, Economic Government and the Euro

That European sovereignty is a response to 'non-economic' developments as well does not reduce its meaning and significance in relation to the economic and monetary order of the Eurozone. The vision's relationship to the euro-project, however, is not entirely straight-forward. Given that the euro was born as an attempt to overcome the destabilising effects of national monetary sovereignty (see Draghi 2019a; see also chapter 4), European sovereignty may appear as a logical 'completion' of the EMU in that it seeks to supersede national sovereignty entirely. Visions of political union to complement monetary union have long informed thinking about the future of European integration and the idea of the EMU's incompleteness is not new. In that sense, the vision of European sovereignty inscribes itself within the tradition of 'forging Europe through crises,' to paraphrase Monnet's famous cliché.

From an ideational point of view, however, deeper political and economic integration is neither inevitable nor necessarily a logical consequence of the single currency. The envisioned centralisation of economic governmental capacity at the European level reflects the idea of a *gouvernment econonomique* contained in the Werner Report. As discussed in chapters 2 and 5, however, this institutional configuration was abandoned not only due to pragmatic considerations but on principle by the Delors Committee. A stability-oriented monetary order, which found its guardian in an independent central bank, did not need, and might even be threatened by, a supreme economic policymaking authority. Such an authority was considered a threat to central bank independence and to the achievement of price stability as the ultimate objective of the monetary order. Reflecting the ordo/neoliberal consensus at the time, the problem of monetary union was to curtail the sovereign powers of governments in the name of stability, not to redefine them at another level.

From the ideological perspective of securing a stability-oriented monetary and economic order, the problem of centralised economic government is that its authority and power may, once established, be put to uses other than those of securing economic and monetary stability. This aspect of (supranational) political authority was what troubled economic thinkers such as Hayek and Röpke as well as (German) central bankers such as Karl Otto Pöhl, Otmar Issing and Jürgen Stark. From this perspective, a sovereign authority controlling economic policymaking could not be trusted to remain committed to a stability-oriented economic and monetary order. A unified sovereign deriving authority from a unitary people is, after all, illimitable and thus potentially capable of even radical changes in ideological outlook. The potential 'damage' a limited sovereign representative can do, on the other hand, is exactly that, limited. Even if the vision of European sovereignty is, at present, dominated by technocratic governing principles and promoted by a set of leaders still wedded to a broadly neoliberal ideological outlook, there can be no guarantee that the next generation of leaders will remain so. A sovereign European economic government, in other words, reintroduces the problem of time inconsistency. With unified sovereignty, then, the problem of politics at the national level may be solved but it re-enters through the backdoor at the European.

Relying on technocracy as a check on such an economic government's ideological disposition, as discussed in chapter 5, is to rely on an in principle unprincipled governmental logic: it governs on the basis of effectiveness and *telos,* not ideological conviction. As such, the notion of securing stability through European sovereignty, whether democratic or technocratic, at the same time introduces the potentiality, if not actuality, of politically controlling and/or technocratically altering the general ideological orientation of economic and monetary policy. The notion of sovereignty as a response to the problem that politics at the Member State level poses to the stability of the monetary order reintroduces the problem of politics only at level potentially more powerful.

The Eclipse of Central Bank Independence as a Response to the Problem of Politics

The vision of European sovereignty poses questions in terms of central bank independence. If supreme political authority is needed in order to secure the conditions necessary for the stability of the monetary order, where does this leave central bank independence as a response to the problem of politics? One can, of course, only speculate on this, but while the idea of central bank independence has not been abandoned as a normative ideal, the constitutional transformation implied by European sovereignty would alter the institutional position of the ECB. In visions for the future governmental structure of the euro, including among the European central bankers themselves, the ECB is no longer 'lonely.' It is no longer a sovereign representative on a par with the Member States, but an independent governmental institution within a general governmental apparatus. Its constitutive relationship would no longer be that between itself and the peoples, but that with the European government. Whether its independence would become more akin to the Fed's or the Bundesbank's is an open question, but if it is legal and governmental flexibility that the ECB is after, it would presumably resemble the Fed more than the Bundesbank. Like the American monetary order, then, the European monetary would become one backed not by (constitutional) law alone but by sovereign authority.

The turn to sovereignty displaces the importance of the traditional notion of central bank independence as the single-minded pursuit of price stability as a response to the problem of politics in relation to the monetary order. This displacement is in many ways a logical consequence of changing socio-economic conditions. Unlike in the wake of the Stagflation Crisis, the preeminent problem of monetary policy is not, at present, inflation. Stability remains the defining concern, but it is a notion of stability that goes much beyond price stability.

This, however, does not necessarily entail that the importance of the central bank as an independent governmental power is reduced. And the ECB's powers have, indeed, been both formally and informally expanded and deepened in the context of the Crisis. With the Banking Union, for instance, the ECB's (secondary) mandate to promote and protect financial stability was given institutional expression. Motivated by the need to 'save the euro,' Member States transferred additional sovereign powers to the ECB within the sphere of banking policy. This entailed curtailing the power of Member States to develop their own approaches to banking supervision and regulation. This transformation of the European constitutional order (De Rynck 2016) reflects the same logic and 'imperative' of overcoming the reliance on Member States' voluntary efforts to secure convergence as the vision of creating a greater direct economic policy-making capacity at the European level. It reflects the necessity of actively employing centralised public authority for securing the conditions necessary for general monetary stability as well as the technocratic push into spheres considered relevant for the realisation of its *telos.*

The Banking Union can at the same time be seen as a step in the process towards 'European sovereignty': it introduces a European level capacity to intervene in the internal affairs of Member States in the name of the stability and interest of the whole. The decision on the euro in this as in other aspects of Eurozone governance trumps the possibility of expressing political will in ways that diverge from the demands of the euro. The central bank remains central to the stability of the monetary order, but its independence in the single-minded pursuit of price stability is no longer considered adequate. In terms of the normative basis of its governmental practice, the apprentice has distanced itself from its German *Meister*.

Because the primary concern is governability – and thus the generation, not constraint, of governmental capacity – central bank independence takes on a different meaning in relation to securing the stability of the monetary order. In the Eurozone, if not beyond, central bank independence no longer only refers to price stability and the ability to say 'no' to governments. It is now a notion that refers to the technocratic discretion and authority to evaluate and act on economic, financial and monetary conditions in a manner conducive to the general stability, the general *telos*, of the monetary territory (for invocations of central bank independence as 'broad discretion,' see ECB 2015a, 2017a; Draghi 2015b; Cœuré 2015; Praet 2015; Mersch 2016, 2017a; Gren 2018). Within the vision of European sovereignty, the independent central bank remains an important governmental power, perhaps even as one of the constitutional branches of government, but it is not considered sufficient for securing the stability of the monetary order. In line with the discussion of technocracy as needing an external impetus for grounding its *telos* in chapter 5, it reflects that political authority is necessary to secure cohesion but also to give orientation to the exercise of governmental power.

Conclusion

The notion of sacrificing political freedoms at the Member State level in the name securing the conditions necessary for the viability of the euro reflects the Hobbesian notion of sacrificing political freedoms in the name of security. As such, the vision of European sovereignty is in many ways a semantic reproduction of the original transfer of sovereign powers to the ECB in the Maastricht Treaty. What is to be constituted, however, is not a structure of limited sovereign representation but a structure of unitary sovereignty, something akin to a Euro-state (where this leaves Eurozone-outs is another matter). European sovereignty is, like the creation of the independent ECB in the first place, a vision of settling the problem of politics in a foundational moment, a moment of constituent power politics. In so far as the constituent decision on the euro remains the only meaningful democratic decision in terms of economic structures and policies, however, the danger of the Eurozone's governmental structure becoming (or remaining) a form of 'technocratic absolutism' in the name of the *telos* of stability is real. Through the 'need' to protect the whole against threats emerging from its parts or from abroad, the peoples of the Eurozone need to be, and have to a large extent already become, governed as if they were 'a people.' European, or at least Eurozone, sovereignty merely expresses this already existing but still incomplete governmental order in the language of political form.

This vision of a response and settlement of the problem of politics is not, of course, uncontested. A number of political movements at both the European and national levels have advanced critiques of the Eurozone's emergency politics and its infringements of national or European democracy in the name of stability. Whether from the perspective of reclaiming state sovereignty (on the right, e.g., Marine Le Pen, AfD, Lega; on the left, see e.g., Lapavitsas 2018; Mitchell and Fazi 2017) or from the perspective of democratising European sovereignty (e.g., DiEM25; T-DEM), such movements emerge from a sense of loss: a loss of political freedom, a loss of welfare, a loss of identity. In such discourses, sovereignty is not reduced to the question of governmental capacity but appears as a means of reclaiming and protecting a meaningful democratic politics. In relation to the monetary order, the stress is put on the primacy of politics. Democratic politics thereby becomes a means of breaking with the established order and asserting the right to control the exercise of governmental powers. In such perspectives, politics is, as discussed in relation to Keynes in chapter 1, not a problem to be overcome but a means of realising the values and opinions of the community in governmental practice. It is a continuous process for generating the power and authority to shape the collective expression of the community's existence. And it should inform the orientation of economic policy every step of the way. It is not only inescapable but desirable. As in Keynes, the monetary order ought not to determine the realm of economic policy possibilities but be placed in the service of political objectives.

Despite its technocratic bent, the EU elite's vision of European sovereignty does much the same. While framed in relation to technocratic necessities associated with preserving stability, it is inherently a vision for constituting a political authority more effective in achieving certain political objectives than a purely rules-based order. It reflects the recognition that laws alone do not govern, public authorities do. This is the notion informing Draghi's claim that two approaches to government have informed the

EMU construction, a rules-based and an institutions-based, and that the former failed.[8] It failed because without means of enforcing rules, decisions and principles, 'covenants without the sword are but words.' Sovereignty was fragmented within the rule-based approach, but not within the institutions-based. As a sovereign power, the ECB was able to pursue the political objective of the euro effectively because it had means of implementing and enforcing decisions. But only 'limitedly.' A wider reorientation of governmental practice in the Eurozone in the name of stability would demand sovereignty. The survival of the political project of the euro would demand sovereignty.

The turn to an institutions-based approach to government in the Eurozone reflects that the monetary order is inescapably a political order. Regardless of its constitutionalisation, 'depoliticisation,' or technocratisation, it is always in the service of some kind of politics. It encapsulates a vision and ideology of democracy and its limits, particularly as these relate to the possibilities and impossibilities of economic policy. The perceived (technocratic) necessity of reconfiguring sovereignty in the Eurozone for the purpose of protecting the monetary order only underlines this. The question of politics in relation to the monetary order, then, concerns only what form it takes.

[8] According to Draghi (2019a), fiscal and structural policies were originally "areas of economic policy ... considered too specific to the situation of individual countries to be entrusted to a common body. It was felt that the only possible form of governance was for countries to exercise national sovereignty, thereby respecting their own specific set of circumstances. A rules-based approach was seen to be the only solution that was consistent with this vision. But it is worthwhile to reflect on how successful this choice has been. For the cases where executive power has been invested with institutions, most would agree that the institutions have performed relatively well. Trade policy has been effective in opening up access to new markets ... Monetary policy has successfully fulfilled its mandate. But for the areas that use a rules-based approach, some shortcomings have been revealed. The fiscal rules have provided a framework for assessing fiscal policies but have at times proven difficult to enforce and hard to explain to the public. In the area of structural policies, the Country Specific Recommendations have had a limited impact, with less than 10% of recommendations being substantially implemented each year."

Conclusion

The monetary order is a political order. It is founded on political authority and it is governed according to political values and priorities. Politics, the process of formulating and expressing collective will, is the fundamental problem of the monetary order. Politics is a threat to its stability.

Central bank independence is an intellectual and institutional response to this threat. It is a *political* idea that presents an institutional means of overcoming the potentially destabilising effects of *politics*. The identification of the problem of politics as a threat not only to monetary values but to the stability of the political and economic order as a whole constitutes the basic premise that gives central bank independence its specific meaning and, for some, its normative appeal. By removing the question of the basic principles and objectives of monetary policy from the ordinary political process, it promises to render politics less dangerous to the economic order. Central bank independence is thereby an idea of moderate government. It constrains the exercise of political power in economic matters and moderates the economic effects of changing ideological outlooks on how to govern the economy. Both in its effects on thinking about monetary matters and in terms of its institutionalisation, it is a means of entrenching a consistent response to the question of the 'Good' of monetary policy by removing the question from the realm of political contestation. Central bank independence does not make the monetary order less political. It seeks, rather, to depoliticise the values and priorities according to which money is governed.

While the core normative underpinnings justifying central banks' right to say 'no' to political authorities (governments in particular) are relatively stable, the foundations of their authority to do so differ widely according to the institutional context. In analyses of the institutional positions of three major central banks – the Bundesbank, the Fed and the ECB – this thesis has highlighted that the nature of central banks' independence differs qualitatively depending on the political culture and constitutional structure of the community in question. Regardless of independence, a central bank is always inscribed in a system of government that expresses certain values about the limits and conditions of exercising public authority. As highlighted in chapter 1, furthermore, the question of the basic principles according to which monetary issues are governed is linked to the broader question of the role of government in the economy. The structure of the monetary order and how it is governed – on this Keynes, the ordoliberals and neoliberals agreed – has implications that go far beyond the realm of monetary policy alone. It expresses political values and ideas about what the just society is and how it is best approximated. In the German, American and European contexts of central bank independence, such values and ideas express themselves in different ways through, and in, the relationship between the central bank and the broader governmental apparatus of the political community.

In this thesis it has been argued that this relationship is one based on conflict. The question of conflict, in turn, manifests itself in different ways. As discussed in chapter 2, the German notion of central bank independence emerged – against prevailing political opinions at the time (see also chapter 1) – from a conflict over whether the central bank should be independent. In this conflict, central bank independence was justified on the basis of a political myth that grounded the meaning of central bank independence in a struggle to overcome a terrible past. Its meaning was grounded in something beyond its economic expediency. The myth of the hyperinflations presented the independence of the central bank and its ability to say 'no' to government as a precondition for a civilised societal life and a functioning democracy. The constraints on the expression of political values through the ordinary democratic process associated with an independent central bank were thereby justified with reference to preserving the very possibility of expressing values in this way. Price stability was not one economic objective among others, but the foundation on which the societal order rested. Central bank independence, in turn, was presented as the only viable means of securing it. The broad public acceptance of this narrative provided the foundation of the Bundesbank's authority to resist the government.

In the German conception, the legitimacy of central bank independence is based on the foundational will of the people for price stability. Its authority, then, is based on a foundational relationship of representation that is distinct from electoral representation. Electoral representation is an incomplete way of representing the people's will. In this dual structure of representation, in which neither representative can claim superiority over the other, the people, as the popular sovereign, is made present in the activity of governing by the central bank as well as by the government. While (informal) cooperation between equals may be the norm within this structure, conflicts can only be resolved through a manifestation of whose side public opinion stands (the people being present only through mediation).

A very different approach to the relationship between the people, the central bank and the government informs the institutionalisation of the Fed's independence. As discussed in chapter 4, this relationship is characterised by a dual mediation. On the one hand, the will of the people concerning monetary affairs is mediated by elected representatives. On the other, the elected representatives' control of monetary policy is mediated by the Fed as an independent government agency. This structure of mediation reflects an approach to moderating the exercise of political power concerning monetary policy that does not eliminate political influence on monetary matters. It makes it more difficult for any one party or ideological outlook to dominate monetary policy, but it does not abolish political control entirely. The ultimate authority of elected representatives remains the backdrop to any conflict between (a branch of) government and the central bank. The Fed may often prevail in conflicts with, say, the President, but its authority is derived from the constellation of (partisan) forces across the different branches of government, not, as the Bundesbank, from a direct political relation to the nation. The institutional inclusion of the opposition within the American framework of government is what gives the Fed the authority to say 'no' to government. The institutionalisation of central bank independence within the US system of government is thus a means of preventing the domination of monetary policy by one set of (partisan) interests in an effort to render it more stable over time.

In both Germany and America, the central bank is a product of ordinary legislation. In the American context, this is an essential aspect of the governmental structure. It is this that allows for the dual mediation of the exercise of sovereign powers with regard to monetary policy. In the German context, the ordinary legal foundation of the Bundesbank's independence and mandate meant that the central bank remained subject to the possibility of being changed by a simple majority in the Bundestag. As such, its foundation of authority to act against the government was informal and demanded a 'constant vigilance' in the effort to maintain the German *Stabilitätskultur*. Without this particular political culture, its independence could not be secured.

When the ECB was created by the Maastricht Treaty, neither of these models was chosen. The framers of the Treaty in the Delors Committee consciously rejected the notion of a European level equivalent to the federal governments of the US and

Germany and the German *Stabilitätskultur* could not be assumed to be entrenched on a European scale. As such, the constitutional structure and the political culture of the Eurozone-in-becoming demanded a different institutionalisation of central bank independence as a response to the problem of politics. As discussed in chapter 4, this led to the constitutionalisation of both price stability and central bank independence and the ECB was constituted as an independent sovereign representative of the peoples of the Eurozone.

The exercise of sovereign powers in the realm of monetary affairs was thereby transferred to a governmental level separate from the level at which other aspects of economic policy were conducted. This reflected an 'insight' from the theory of central bank independence that emerged in the 1970s and 1980s in response to the Stagflation Crisis (discussed in chapter 3). This literature highlighted that the conduct of monetary policy could be safely separated from the general conduct of economic policy without affecting the latter negatively. On the contrary, an independent central bank conducting a monetary policy geared towards price stability would, the literature suggested, lead to better outcomes in terms of inflation than a politically controlled central bank. And it would do so without requiring sacrifices in terms of other economic variables such as unemployment and growth. The monetary problem of politics, which in this perspective had led to the Stagflation Crisis, could be overcome through a limited institutional fix. 'Solving' it demanded no substantial sacrifices of economic governmental capacity. As the Stagflation Crisis had shown, governments were in any case not really able to control monetary policy effectively because rational market actors second-guessed their intentions and policies. By introducing an effective commitment device in terms of monetary policy, any government's economic policy would become more credible and thus effective. Introducing central bank independence was therefore not to be understood as a sacrifice but an enhancement of the political community's governmental capacity. It would allow the political community as a whole to bring inflation under control, thereby overcoming one aspect of the 'governability crisis' of the 1970s (see Crozier et al 1975).

Disregarding the question of whether central bank independence can be considered a relatively minor institutional fix within a unitary state, it was certainly not a minor change to the way the Member States of the Eurozone governed themselves. As highlighted in chapters 4 and 5, the creation of the ECB introduced a novel constitutional relation between the peoples, the Member States and the Union level. Based on a decision of the constituent power *attributed* to the Member State peoples, the ECB is, like the Bundesbank, conceptualised as a direct representative of the popular will for price stability. But because its foundation of authority is not derived from one people but from several, it is a shared representative of the 'peoples of the Eurozone.' Through the creation of the ECB, the peoples of the Eurozone thereby created an existential connection between themselves. The ECB would govern them on their own behalf as one. Unlike the Bundesbank, this direct representational relationship between the central bank and the foundational political subject(s) was formalised in the constitutional charter of the Eurozone. The ECB's authority was not to be based on a delegation of power from a constituted power (like the Fed) or from an organic link to public opinion (like the Bundesbank), but on a constitutional mandate. This formal foundation of authority, moreover, is even more difficult to alter than national constitutions. In the Eurozone, the monetary problem of politics was thereby addressed constitutionally through the creation of an independent central bank exercising sovereign powers without political control. This was a model that took the idea of central bank independence to its logical conclusion by separating it from the need for certain political cultures or traditions. The ECB could thereby be seen as central bank independence in its most 'pure' form.

The creation of the ECB as a sovereign representative of the peoples of the Eurozone at the same time transformed the representative nature of the Member States. Within its territory, the Member State was no longer the only body exercising sovereign powers. The ECB's governmental acts are directly effective within the Eurozone territory as a whole and cannot be vetoed by the Member State. At the same time, the Member State is not involved in the formulation of the ECB's policies. Through the creation of the ECB, the Member States were thus reconstituted as limited sovereign representatives, albeit less limited and functionally specialised than the ECB. The Member State peoples, in other words, were understood to have inscribed a supranational actor within the political relationship between itself and its governmental apparatus. The ECB and the Member State governmental apparatus govern the citizens subject to them with equal right, but in different governmental spheres. In terms of general macroeconomic policy, a Member State people is governed not by one sovereign representative but two.

The governmental order that this gives rise to, as discussed in chapter 5, is based on distinct governing logics. These are by no means specific to the Eurozone, but they take on a particular meaning within the Eurozone's specific structure of sovereignty. The governmental order is, first of all, based on relatively comprehensive legal ordering that concretises and gives expression to the constituent will of the peoples. In relation to the ECB, it serves to generate the ECB's authority, but also to limit it and give it direction. In the absence of an equivalent or superior political authority at the ECB's governmental level, it is law alone that governs the ECB's exercise of powers. The constitutional law of the Treaties is thereby both a protection of the ECB's from political interference and a protection of the peoples from the arbitrary exercise of powers by the ECB. Within the constitutional imaginary, a violation of the law is violation of the will of the peoples, and thus their continued existence as separate political subjects, because the law is a concretisation of their foundational political will and a product of their right of authorisation.

The law, however, cannot be complete. It has gaps and indeterminacies. It cannot predict all future developments and prescribe action accordingly. It therefore needs executive authority to complement it. In the ECB's case, this executive authority is exercised technocratically. Based on expert knowledge of the immanent laws governing the order of things, technocratic government is, according to its ideology, a rules-based approach to executive discretion. It fills the inevitable gaps of the law in a manner that does not sacrifice its spirit. However, while government according to technocratic expertise is conceived of as a way of complementing the rule of law, it also creates tensions. This is because technocracy is a form of governing based on a teleological rationality. It governs for and on the basis of a specified objective. If the letter of the law is seen as an obstacle to realising this objective, the technocratic authority will ignore it. Or rather, the situation in which fidelity to the law risks compromising fidelity to the *telos* (or vice versa) reveals the inherent ambiguity of the basic mandate. Similarly, while the ECB exercises sovereign powers within a limited policymaking sphere, it may consider developments in neighbouring spheres threatening its objective and therefore seek to intervene beyond its formal remit. The technocratic authority may, in other words, violate the will of the peoples expressed in law in the name of realising the will of the peoples expressed in the *telos*.

The inherent ambiguity of the ECB's mandate manifested itself as a contradiction in the context of the Eurozone Crisis, as discussed in chapter 6. The OMT programme was one such manifestation and the ECB's role in the Greek crisis was another. These cases at the same time emphasised the difficult relation between the Eurozone's governmental order and democracy. On the one hand, as highlighted in chapter 4 and 5, the legitimacy of the governmental order is based on a popular expression of will in a founding moment. On the other, democracy cannot remain too active a governmental or authorising force within the governmental order as this would reintroduce the problem of politics in relation to the monetary order. Democracy, in other words, is the only valid legitimation of governmental authority but its active expression must be avoided.

The OMT programme highlighted the ambiguity and tension inherent in the ECB's mandate. The legal limitation on the ECB's powers was considered an impediment to realising its *telos* and was, to all intents and purposes, suspended or substantively transformed by the ECB's acts. Transforming the meaning of the legal mandate in a structurally significant manner, however, raises the problem of political authorisation. It thereby reintroduces the problem of politics in relation to the principles governing the monetary order and the question of its democratic authorisation. The Greek crisis, on the other hand, highlighted a tension between the ECB being a representative of *the people* and *the peoples* at the same time. The expression of political will in Greece – through both the election of a particular government and through a referendum – was considered a threat to the monetary order and its embodied economic ideology. It was, therefore, understood by the ECB as a threat to the expressed will of the peoples as a whole.

In the OMT case, the ECB transgressed the expressed content of the constituent will of the peoples in the legal framework constituted in the past; in the Greek case it negated the expression of political will by a people in the present. In both cases, however, it challenged the continued existence of the peoples as separate political subjects and thus one of the basic aspects of the Eurozone's particular constitutional approach to overcoming the problem of politics in relation to money. In doing so, the ECB introduced the (technocratic) 'necessity' of a unified European constituent power, a 'European people,' to authorise changes to the basic governmental structure. 'Europe' would have to become sovereign in order to allow the Union level to act directly in and on the Member States in a more general manner to overcome problems associated with divergent expressions of political will. The Eurozone needed legal and political flexibility as well as a stronger governmental capacity to change itself and its constituent parts in response to urgent demands arising from changing socio-economic conditions.

The Eurozone Crisis saw a host of reforms and reform proposals intended to address the governmental shortcomings of the original EMU framework by strengthening the governmental capacity of the European centre. The vision of 'European sovereignty' presented by EU elites and political leaders (discussed in chapter 7) takes these efforts to their logical conclusion. The European level needs, according to this perspective, to be able to govern economic matters autonomously, without having to rely on the more or less voluntary cooperation of 19 separate sovereign representatives within the realm of economic policy. European sovereignty is thereby an approach to overcoming the problem of politics in relation to the stability of the monetary order. It is, however, a response that differs markedly from that associated with the notion of central bank independence. It does not seek its resolution in the fragmentation of political authority to control economic matters, but in the concentration of sovereign powers at a, supposedly, more powerful level. It seeks it, as it were, in a comprehensive Leviathan that is able to govern actively. As such, the notion of European sovereignty undermines the idea of overcoming the problem of politics through the transnationalisation of central bank independence as a means of constraining the exercise of governmental power.

Central bank independence has not been entirely eclipsed as a response to the monetary problem of politics in the Eurozone or elsewhere. However, in economic conditions where the importance of 'removing the punch bowl just when the party gets going' (McChesney Martin 1955: 12) is reduced, its specific meaning as a protection against inflation appears less relevant. It is not the excesses of politics when it comes to money that confronts contemporary economies but something else. In the Eurozone, the problem is understood as a problem of governmental capacity. The problem is not to constrain the exercise of governmental power, but to generate it. The question, then, is not whether monetary and economic issues should be governed politically, but what form that politics takes.

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