



**Department of Political and Social Sciences**

# **E Pluribus Europa? Assessing the Viability of the EU Compound Polity by Analogy with the Early US Republic**

**Andrew Glencross**

Thesis submitted for assessment with a view to obtaining the degree of  
Doctor of Political and Social Sciences of the European University Institute

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## ABSTRACT

As a novel and complex polity, also subject to endless proposals for institutional reform, the viability of the EU is an open but under-theorized question. This thesis conceptualizes EU viability from an internal perspective, that is, the viability of the process of integration rather than Europe as a viable actor in international politics. Adopting the concept of a compound polity to understand the tensions inherent in the EU, viability is defined in relation to the “rules of the game” of this compound system. This gambit has a twofold purpose. Firstly, it permits an analogy with another historical case of a compound system, the antebellum US republic. Secondly, it enables the specification of two scenarios of viability in a compound polity: dynamic equilibrium and voluntary centralization.

Four aspects of the rules of the game (institutions, expectations, competence allocation and representative functions) are analysed to determine which scenario the EU follows. The analogy with the early US and its own conflicts over these four elements of the rules of the game is then contrasted with the EU experience. Five differences in how these disputes arise and the means for trying to settle them are singled out to explain the differing problems of viability in both compound polities. The results of this analogical analysis are then used to explore the appropriateness of certain proposed changes to the rules of the game in the EU, notably in the area of political representation.

In a system accustomed to dynamic equilibrium, enhancing the representation of individuals is often seen as a condition for favouring more voluntary centralization. However, the analysis of conflicts over the rules of the game in two compound systems suggests a more cautious approach is required in the interests of viability. Hence this study presents itself as a significant, if incomplete, initial step in the process of identifying what makes the EU viable.



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## Chapter One

### The Problem of Viability in a Compound Polity

*“The most unambiguous signs are now being overlooked, or arbitrarily and lyingly misinterpreted, which declare that Europe wants to become one.”*

Nietzsche, *Beyond Good and Evil*, 256.

#### Introduction

The *sui generis* interpretation dominant in mainstream EU studies is often accompanied by a blithe assumption that the European Union has the political wherewithal and willpower to keep its show on the road.<sup>1</sup> Hailed as unique among international treaty organisations, it has even been described by one recent commentator as the embodiment of a ‘new European Dream’ that ‘dares to suggest a new history, with an attention to quality of life, sustainability, and peace and harmony.’<sup>2</sup> If deficiencies or deficits are identified in this polity, then it is usual to think there is an institutional solution: increasing the power of the EP, turning the Council into a second parliamentary chamber or some other novel form of bicameralism, having a directly elected Commission president etc.<sup>3</sup> But whereas textbooks on the “democratic deficit” contain these familiar, pious suggestions for improving the EU’s democratic credentials they shy away from discussing the likelihood of these changes occurring. What is not problematised is firstly, whether in the medium-term the EU political system is actually capable of resolving current crises and secondly, if so, whether it has any real potential for greater centralisation.

There are at least two very good reasons why the viability of the EU should be questioned. Most generally, federalism, of which the EU is a “species” as David McKay puts it, is not considered a ‘notably successful governmental form’.<sup>4</sup> In 1991, a study of political stability in federal systems emphasised the ‘glaring fact that twenty-seven of the forty-four federations

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<sup>1</sup> The EU itself likes to emphasise its uniqueness. In the famous ENEL case, the ECJ referred to the creation of “an independent legal order”. *Costa v ENEL* [1964] ECR 585.

<sup>2</sup> Rifkin (2004).

<sup>3</sup> Proposals such as these invariably can be found in works with suitably worthy titles and displays of federal European piety. For instance, Sidjanski (1992: 436-8); Dehousse (1997); van Gerven (2005: 375-384).

<sup>4</sup> Quoted in Filippov et al. (2004: 3).



formed in the past two hundred or so years have failed either by breaking apart or by becoming fully centralised, unitary states.’<sup>5</sup> In the specific case of the EU, moreover, there exist evident tensions between and within the member states over a multitude of European issues and policy debates: the Constitutional Treaty, budget negotiations, the transatlantic relationship, the question of Turkish accession. Lurching from one crisis to the next is a European speciality, complete with frantic, all-night negotiations and undecorous histrionics by heads of state. Despite the momentum of reconciliation, the constant economic impetus for integration and the vast amounts of goodwill amongst Europe’s political elite, the bundle of problems facing the contemporary EU is sufficient to call into question its capacity for self-sustainability as well as for transformative change.

Finally, the exploration of the question of Europe’s political viability can be justified for more than purely scholarly reasons. Beyond the academy, its self-congratulatory conferences and all too neat theoretical puzzles, it is worth remembering that viability can have an important impact on political practice. All sorts of different political behaviour (voting, party membership, protest) are influenced by perceptions of the extent to which a political society is decadent or vibrant. According to Albert Hirschman’s sociological theory of how actors respond to decline within organisations, one of the criteria for choosing voice over exit is ‘the extent to which customer-members are willing to trade off the certainty of exit against the uncertainties of an improvement in the deteriorated product’.<sup>6</sup> Clearly one significant factor influencing the understanding of likely improvement is the perceived viability – or not – of the organisation itself, meaning that the concept is hardly a neutral or insignificant label. It is a concept capable of playing a structuring role in political discourse and practice precisely because it can lead to a re-evaluation of the intrinsic merit of voicing dissatisfaction.<sup>7</sup> Moreover, the stakes associated with the perceived viability of a compound political society are very high indeed. Exit at the collective level signifies the disintegration of the union,<sup>8</sup> whilst at the individual level it can be far more dramatic than apathy or indifference – labels usually attached to the political malaise of European citizens – as complete exit corresponds

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<sup>5</sup> Lemco (1991:1).

<sup>6</sup> Hirschman (1970: 77).

<sup>7</sup> See Connolly (1983: ch. 5) for a discussion of how conceptual revision ‘is indispensable to significant political change’.

<sup>8</sup> Federations can withstand secession, as has been the case with Ethiopia following Eritrean independence in 1993. Yet the shock of withdrawal is likely to be much more brutal in a democratic compound polity given that membership, by definition, was originally voluntary. In this case secession represents the failure of a specific political project, thereby transforming the nature of the remaining union.

to emigration. The interest behind this research question is, therefore, more than academic in the pejorative sense.

### 1.1 Defining the Concept of Viability

Viability, in its most basic sense, means the ability to exist or more specifically to live in a particular place. As a theoretical concept it is more commonly used in economics, usually as a synonym for feasibility, than in political science. In the latter discipline its application is largely reserved to transition states and new political entities (like the Palestinian “state”) in the developing world, as well as for policy analyses of development projects. In these types of studies, the concept is ordinarily used in a common-sense way to refer to the analytical assessment of the object of study’s chances of being successful. Here viability is an assessment made on the basis of a consideration of the effectiveness, efficiency and legitimacy of the state or policy under review. A far more specialised use of the concept exists in rational-choice theory, when, for instance, it is applied to discover the putative conditions for a ‘viable constitution’. According to this model, as David McKay explains, it is assumed that viability ‘depends on the ways in which particular constitutional and institutional arrangements provide elites with incentives to stick to the rules of the game.’<sup>9</sup> Finally, there exists a much grander approach that considers societal or civilisation survival itself. This is the theme of Jared Diamond’s work,<sup>10</sup> which interprets the fate of disappeared civilisations as tragedies stemming from weaknesses of perception, action or responsibility. In this sense, viability is something that can be learnt by studying mistakes, like the demise of Easter Island’s inhabitants for failure to conserve natural resources.

Not wanting to pursue a universalising strategy, one that ‘aims to establish that every instance of a phenomenon follows essentially the same rule’,<sup>11</sup> I do not seek to match Diamond’s ambition of identifying the requirements for a viable society *per se*, valid throughout time. However, a common-sense and unspecified understanding of viability – the blunt tool of what Sartori calls the “unconscious thinker” – is not appropriate for this study either. In this study, the concept of viability is used as a Weberian ideal-type, that is, not a description of historical reality but ‘a limiting concept with which the real situation or action is *compared* and

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<sup>9</sup> McKay (2004). See also Baaklini (1997).

<sup>10</sup> Diamond (2004).

<sup>11</sup> The expression is from Tilly (1984: 82).

surveyed for the explanation of certain of its significant components'.<sup>12</sup> Thus I will use a comparative perspective to evaluate the question of viability by comparing the US experience of a compound political system prior to the civil war with the contemporary EU. Following James Davis, I believe that the heuristic interest of the ideal-typical approach is to explain 'why a particular historical instance was *so* and not *otherwise*'.<sup>13</sup> This means I am interested in how the US compound system tried to manage its endogenous political tensions and why, ultimately, it failed. The viability of the EU will be discussed in the light of this answer, namely, if and how the EU faces different problems or has alternative means of resolving them. First, however, a preliminary definition of the concept of viability itself is in order.

I define the concept of viability as the ability of a polity to subsist in a certain context. The context political societies find themselves in is generally conceptualised as twofold: internal and external,<sup>14</sup> albeit with fuzzy boundaries between them. This study argues that the early US republic and the contemporary EU exist in very similar contexts both internally and externally.<sup>15</sup> Within the political system itself, they have to maintain a democratic union free from coercive centralisation and avoid disintegration. They are "holding together" as much as "coming together" to reprise the theoretical language of federalism.<sup>16</sup> Furthermore, with the exception of their founding periods, they have both had to achieve this feat in the absence of a direct external security threat, which is generally considered the most effective and persuasive stimulus of centralisation in federal systems.<sup>17</sup> The continental isolation of the US republic from Europe's great game of dynastic and state rivalry was one of the factors Tocqueville called "accidental or providential causes" contributing to the maintenance of the peculiar American union. Likewise, today's EU faces no discernible threat to its sovereignty or

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<sup>12</sup> Weber, quoted in Davis (2005: 79).

<sup>13</sup> *Ibid.*, p. 80. Emphasis in original.

<sup>14</sup> This does not mean that I subscribe to the Manichean account that domestic politics is ordered while international politics is anarchic.

<sup>15</sup> The reason this study does not extend the comparison to the Swiss example of a compound system is down to geographic and demographic smallness and, more importantly, the absence of the politics of territorial expansion. I concur with Dahl and Tufte's (1973: 40) argument that 'among countries with representative democratic institutions, the larger the country, the more complex its policy-making processes will be.' But as this study will demonstrate, the problem of expansion has also been crucial in the crises of both the American and European compound polities.

<sup>16</sup> Stepan (1999).

<sup>17</sup> Federalism as a response to threat was Riker's (1964) original explanatory theory; cf. Forsyth's (1981) notion of confederation as an alternative to hegemony and balance of power as a form of interstate guarantee.

territorial integrity,<sup>18</sup> both of which are in any case protected by the transatlantic alliance via NATO.

This is not to say that either polity is entirely disentangled from security issues. The United States had both European states and Native American tribes as potentially hostile neighbours and even became a peripheral zone of hostilities (1812-1814) within the European conflagration engendered by the French revolution. Washington's farewell address contained the famous and perspicacious admonition to 'remain aloof from the quarrels of Europe'.<sup>19</sup> The founding fathers were greatly preoccupied with America's place in the international system. One of the principal reasons for embarking upon "a more perfect union" was precisely to strengthen America's role in international politics so as to hold more sway in matters of trade and avoid the machinations of European monarchies (see below 3.2). By the time of Tocqueville's visit, however, thanks to the success of the union as well as other reasons, the US was unhindered by safety considerations.

Modern Europe has also experienced the menace of a neighbouring hostile power and during the cold war member states had to position themselves *vis à vis* the two superpowers when the conflict became "hot" in the so-called proxy wars. Whilst at the outset of post-war integration mutual defence against the Soviet Union was a permanent headache it quickly abated as this responsibility was transferred to NATO. Imminent security dilemmas have, therefore, not played a permanent or even telling part in the politics of both these compound unions. This is because in both cases – and unlike in the examples of union in Switzerland or the Netherlands – neither faced direct threats to political independence or territorial predations. Hence in this usage of the concept, the factors explaining viability are endogenous<sup>20</sup> and thus viability is somewhat akin to the notion of political stability popular in democratic theory.<sup>21</sup>

Stability is a concept of causal, hypothesis-testing political science where economic growth, effectiveness and legitimacy are operationalised and measured to discover the preconditions for a stable polity. Following the political sociologist Edward Lehman, I favour viability over

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<sup>18</sup> I discount the threat of terrorism since the majority of EU states have refused to accept the American interpretation that international terrorism constitutes an external security threat equivalent to a rival or hostile power.

<sup>19</sup> Marks, Frederick (1993) even suggests that external threats contributed greatly to the impetus for replacing the American confederation with a more national government.

<sup>20</sup> For an illuminating study of EU viability as a function of survival in the international arena see Haldén (2006).

<sup>21</sup> A classic example of this literature is Linz and Stepan (1978). For a systematic attempt to devise a theory of stability in democracies see Eckstein (1992: ch. 5).

stability ‘because it is less burdened by connotations of rigidity and resistance to change.’<sup>22</sup> More importantly, viability is also suggestive of a move away from *a priori* causal claims to the analysis of concrete political and historical context. For, as Lehman defines it, ‘a viable political system is one that can adapt and transform itself and the entire society in the face of potentially contradictory constraints.’<sup>23</sup> To explore the constitution and mutability of viable compound polities requires situating viability in political and historical context. In order to accomplish this, I intend to relate viability to disputes over the rules of the game of politics, as explained in the next section.

### 1. 2 Viability as Defined in Relation to the “Rules of the Game” of Politics

In political science it is conventional to define the state analytically in terms of territory, institutions and the monopoly of legitimate violence.<sup>24</sup> These three facets are then used to explain the sovereign quality that is specific to the modern state: in the final analysis sovereignty equates to coercive power. But this is perhaps one of the least interesting ways of understanding the business of government for the use of coercion is so slight in actual political practice.<sup>25</sup> Obviously this is far truer of democracies than absolutist regimes, however, as Montesquieu realised, despotism relies on the principle of fear to govern and it can be sufficient to use only infrequent yet symbolic brutal coercion.<sup>26</sup>

The fact then that political authority, as the French nineteenth-century liberal François Guizot recognised,<sup>27</sup> is not constituted by coercion alone means that we must look elsewhere to appreciate both why states manage to govern with minimal coercion and why sometimes this arrangement no longer becomes viable. Essentially, this means understanding why the modern democratic state is not Hobbesian. The “beast of Malmesbury” considered the existence of a

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<sup>22</sup> Lehman (1988: 814).

<sup>23</sup> *Ibid.*

<sup>24</sup> This canonical interpretation is Weber’s. For him the state is ‘a compulsory organisation with a territorial base. Furthermore...the use of force is regarded as legitimate only so far as it is either permitted by the state or prescribed by it’. Weber (1983: 56).

<sup>25</sup> In sheer numerical terms, if the evacuation of 8500 Israeli settlers from the Gaza strip in 2005 required the mobilisation of 50000 troops it is obvious that no state can govern simply by employing its agents of coercion every time legislation provokes resistance.

<sup>26</sup> Machiavelli’s favourite, Cesare Borgia, was hailed for his decision to turn against the man he had appointed to render the Romagna ‘obedient to the sovereign authority’ when his lieutenant grew over-zealous. ‘Remirro [de Orco]’s body,’ as Machiavelli delights in describing, ‘was found cut in two pieces on the piazza at Cesena, with a block of wood and a bloody knife beside it. The brutality of this spectacle kept the people of the Romagna at once appeased and stupefied.’ Machiavelli (1961: 24).

<sup>27</sup> ‘*La coaction ne les constitue pas [les gouvernements] ; toutes les fois qu’ils peuvent s’en passer ils s’en passent*’, Guizot (1985: 137).

supremely powerful sovereign ‘to be logically necessary in order to structure individual expectations so that contracts would be kept.’<sup>28</sup> Thus Hobbes clearly realised the structuring power of expectations, which enables the symbolic and well-chosen use of force to generate prudential obedience. But his model of political order as something that stems from prudential compliance generated by legal sanctions is inadequate for two reasons. Firstly, because law itself cannot be equated simply to a sanction that follows a command. ‘Emphasis on the “legitimate” use of force, even on the part of convinced “command theorists”,’ as Kratochwil explains, ‘demonstrates that the instrumentalities of coercion cannot serve as the sole criterion of law.’<sup>29</sup> Secondly, and this is David Hume’s argument, Hobbes overlooks the fact that there are other proxies for generating the expectation that contracts will be kept. As Kratochwil sums up the point, ‘conventions arising out of interactions that prove mutually beneficial can structure expectations and thus allow participants to overcome the posed dilemma.’<sup>30</sup>

Discovering more about how expectations are generated without coercion is made much easier if the fetishism of sovereignty, which suggests that a limpid vertical organisation of power is a pre-condition for successful politics, is abandoned (see below pp. 60-5). In modern legal philosophy the notion of sovereignty may no longer be related to brute force but it nevertheless perpetuates the fetishistic character of the concept of sovereignty itself. The sovereign quality of the state, as Neil MacCormick defines it, can be understood as ‘whoever has the competence to determine the limits (if any) on their own competence’.<sup>31</sup> This is perhaps an accurate description of what it *means* to be sovereign but, as Stephen Sedley points out, such a definition is meaningless for understanding how political decisions are made and executed ‘because there can be no limits to the competence of anyone who is that potent.’<sup>32</sup>

To avoid making viability dependent on the concept of a sovereign state, therefore, in this thesis the notion of the “rules of the game” provides the parameters for understanding viability. This theoretical move accomplishes two objectives. Firstly, it sunders the assumption that polities are only viable if they have contain a fixed locus for the monopoly of coercion and, secondly, it establishes that the issue of “competency over competences” is

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<sup>28</sup> Kratochwil (1978: 50).

<sup>29</sup> *Ibid.*, p. 17.

<sup>30</sup> *Ibid.*

<sup>31</sup> MacCormick (1999: 100).

<sup>32</sup> Sedley (2001).

meaningful only in relation to the broader game of politics and thus not by itself the efficient and necessary “cause” of viability.

First, however, it is necessary to improve on Lehman’s definition of viability for he fails to specify what constraints polities face in the arena of domestic politics. I argue that functioning democracies face at least three types of political conflict that they have to manage or surmount in order to be considered viable. The first conflict concerns the agreement over “the rules of the game” according to which politics is conducted: without this there is no political interaction. The second arena of contestation is the debate over the role of the state, the scope of public intervention in economic freedom and personal liberty.<sup>33</sup> Finally, although this is a less precise category, conflicts arise for practical and personal reasons over such things as perceived government effectiveness, confidence in leaders, judgments about personalities etc.

There is clearly no reason, however, to think this categorisation reflects discretely bounded types of conflict that cannot influence or interact with one another. Thus rather than highlighting boundaries, this categorisation serves primarily to suggest that different sources of conflict require different types of strategies to defuse or overcome them. For instance, conflict over the rules of the game can be resolved by creating new decision-making institutions or redistributing competences. On the other hand, a dispute over the legitimate role of the state is likely to require a compromise welfare policy agreeable to different parties and the collapse of public confidence in a singularly feckless statesman is a crisis that can be addressed through the internal mechanism of party organization.

This study will focus exclusively on the first type of conflict because the problem of agreeing to the “rules of the game” is the problem *par excellence* of the compound republic; indeed, it is its defining characteristic as will be shown below. Hence viability, in the US and EU examples discussed in this thesis, does not refer directly to government effectiveness in solving policy problems. Although effectiveness can be part of the justificatory arguments for seeking an alteration of the rules of the game, what matters for viability in a compound system is principally whether the rules of the game can be agreed to and whether this can continue over time.<sup>34</sup> Effectiveness – such as the success of unemployment policies – is

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<sup>33</sup> For a neat summary of these two “value dimensions” see Hix (1999).

<sup>34</sup> Indeed, there is, as Fabbrini (2005d) points out, a trade-off between effectiveness and the maintenance of a compound polity.

considered in this study to be a derivative of the rules of the game, notably competences and government resources, rather than vice versa. Thus I differ from Loukas Tsoukalis' theory that European integration progresses due to 'a series of dynamic disequilibria, which create the conditions and the pressure for further extension and deepening'.<sup>35</sup> This kind of spillover argument may sometimes be correct for explaining features of the construction of the single market, especially under the promptings of the ECJ,<sup>36</sup> but at the same time it ignores the extent to which struggles over the rules of the game dominates the agenda of ongoing treaty renegotiation. As I will show in chapter four, it is far too simple to interpret European construction as driven by the logic of solving problems of effectiveness inherent in successive compromises.

Scholars such as Simon Hix have recently tried to place the left/right cleavage at the centre of the analysis of the European Union.<sup>37</sup> This kind of argument suggests that in today's more consolidated EU viability largely depends on how policy choice and outcome correspond with where public opinion stands on the established left/right divide. Yet the major political shocks and crises facing the EU still unequivocally cluster first and foremost around the problem of defining and agreeing to the rules of the game of European politics. Take the four issues listed in the above introduction as contemporary challenges to the European polity. They can all be expressed in terms that indicate more clearly how they all relate to the struggle to determine how politics is to be conducted: who is a member? (the question of Turkish accession); how are decisions made and who is competent for what? (the constitution); is the political society wholly independent (the relationship with NATO); who contributes what? (the budget). These questions do not fit the left/right cleavage well at all.

A proper definition of the "rules of the game" and the conflicts associated with them is a logical priority before specifying how and why certain disputes over the rules can or cannot be managed in a compound system. This game metaphor is popular among constructivist scholars in international relations because it reflects rather well the extent to which concepts do not correspond directly with "observational facts" but are mutually constituted by reference to other concepts within the game-structure. In addition, this approach allows for a more nuanced understanding of rules in general than is possible if rules are taken to be

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<sup>35</sup> Tsoukalis (1997: 261)

<sup>36</sup> Stone Sweet (2005: 53) points out that ECJ rulings were the driving force behind the liberalisation of European aviation and telecommunications.

<sup>37</sup> See e.g. Hix (1999); cf. Hooghe et al. (2002).



synonymous only with commands or imperatives. What the game metaphor reveals then are the “institutional facts”: the other concepts used within the practice of the game to give meaning to action and which help make it explicable. ‘Threatening the king in a chess game by announcing “check”’, the game Kratochwil uses to illustrate this point, ‘means something only with reference to the underlying rules of the game. Thus, the meaning of the move and its explanation crucially depend upon the knowledge of the rule-structure.’<sup>38</sup>

The importance of recognising institutional facts is equally necessary in domestic politics. This is borne out in Lehman’s specification – adapted from Lipset’s account of the conditions for a well-ordered democratic system – of the three elements taken to constitute the rules of political conduct: ‘(1) the actors who are the appropriate players in the political game, (2) the prerogatives of and limitations of officeholders, and (3) the rights “of one or more set of recognized leaders attempting to gain office.”’<sup>39</sup> None is directly observable or autonomously defined: the “appropriateness” of actors reflects existing political shibboleths subject to flux; prerogatives will depend on constitutional interpretation and precedent; gaining office is clearly a singular practice with obvious written rules like secret ballot provisions, voting eligibility, balloting times but also a myriad unspoken norms such as what candidates can promise during campaigns or which public servants they can remove once in office. The conditions constituting democracy, therefore, can only be understood intersubjectively with reference to other concepts making up the practice that is democracy.

For the purposes of this study it is preferable to use a more inclusive definition of the rules of the political game because of the weak institutionalisation characteristic of the EU and the early American republic, which sets them apart from most mature nation-states. More so than in its member states, politics at the EU level is constituted by institutional facts of a less visible, less sedimented nature that are most evident only in the practice of politics itself. The same is true of the early US political system, for as James Bryce observed ‘the national government touches the direct interests of the citizen less than does the state government, it touches his sentiment more. Hence the strength of his attachment to the former and his interest in it must not be measured by the frequency of his dealings with it.’<sup>40</sup>

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<sup>38</sup> Kratochwil (1991: 26).

<sup>39</sup> Lehman (1992: 141).

<sup>40</sup> Bryce (1995, vol. 1: 378).

The absence of many conventional attributes of nation-statehood like a fixed territory or national identity discomfits many political scientists trying to study the EU. The result is a tendency to exaggerate the difference and novelty of EU politics in comparison with national politics, an interpretation that comes close to mimicking the domestic order/international anarchy theory of international relations. Indeed, the supposed discontinuity between national and European politics is often viewed as the EU's most valuable asset because novelty and difference are thought to constitute a *Sonderweg* allowing Europe to find innovative ways of overcoming crises and avoiding the traditional disputes dominant in its member states. The viability of the European polity is explained by virtue of this *Sonderweg*. Joseph Weiler argues that the principle of “constitutional tolerance” characterises Europe’s unique political identity so different from a “normal” democracy – as practiced in nation-states – where

[a] majority demanding obedience from a minority which does not regard itself as belonging to the same people is usually regarded as subjection. And yet, in the [European] Community, we subject the European peoples to constitutional discipline even though the European polity is composed of distinct peoples. It is a remarkable instance of civic tolerance to accept to be bound by precepts articulated not by “my people” but by a community composed of distinct political communities: a people, if you wish, of others. I compromise my self-determination in this fashion as an expression of this kind of internal – towards myself – and external – towards others – tolerance.<sup>41</sup>

By defining the central problem of European politics as one of finding an agreement for the rules of the game and by understanding how this is affected by the compound structure of the political system it is possible to analyse viability and set aside these Panglossian assumptions. To do this, the rules of the game will, in this study, be taken in a broad sense to refer to an agreement to be bound by certain decision-making institutions as well as less tangible norms that cannot be readily institutionalised. These latter norms include: the common understanding over where lies competency over competences, “expectations about expectations”, that is, expectations about who can participate, what procedures will be followed as well as what can and cannot be discussed, and finally, the structuring assumption that political representation of individuals reflects some kind of shared political identity. Hence norms such as expectations and the representation of a shared identity may well remain tacit in run-of-the-mill European or early-American politics and yet frame the discourse of political contestation in more fraught moments. The game metaphor thus takes seriously the problem of arguments and identities in political life, especially the self-description of polities,

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<sup>41</sup> Weiler (2001: 67-8).

rather than reducing politics to a technical question of distributing scarce resources or managing the conflict between rational yet divergent interests. This conceptual gambit opens up new avenues of research into the conditions in which political conflict is engendered and settled.

Conflict arises when one of the above four elements (decision-making rules, competence over competences, expectations about the purposes of integration, and representing states as well as citizens) constituting the rules of the game is in dispute. I relate these disputes to the Italian political theorist Norberto Bobbio's definition of democracy as 'characterised by a set of rules which establish *who* is authorised to take collective decisions and which *procedures* are to be applied.'<sup>42</sup> In a compound system democratic rules of the game are further complicated because identities – like layers of representation – are by definition multiple and competences and other rule changes mould and affect expectations about who is authorised to take decisions. A few examples will suffice to show how these conflicts arise and the form they take.

The US sovereignty debate that preceded the civil war was a classic example of the struggle to identify who had the authority to determine ultimately competency over competences: was the union indissoluble or was it a compact? If only a compact, who had the right to judge whether its terms had been broken? An instructive example of how an institutional crisis can create new expectations is the infamous "empty chair crisis". This took the form of an institutional conflict – France's refusal to participate in Council meetings and the wrangle over farm subsidies – but was largely a debate over norms and expectations as de Gaulle refused to accept E.E.C. competency except through unanimity. The solution was not to redesign institutions or put in place a new policy but the establishment of a new norm, which became known as the Luxemburg compromise: "when very important issues are at stake, discussions must be continued until unanimous agreement is reached." This cannot be found in the parchment of the treaties and yet it is still a rule that guides the way actors play the game, notably by creating new expectations about the process of future decision-making.

Finally, the best example of the norm that democracy is tied to some type of common identity – with obvious implications for sovereignty – can be found in the German Constitutional

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<sup>42</sup> Bobbio (1987: 24). Emphasis in original.

Court's 1993 opinion on the Maastricht Treaty. According to this ruling, the notable absence of a single European people means that 'the Constitutional Court would have the power to uphold the fundamentals of German constitutional law, and reciprocally to determine the limits of competence over Germany of the European organs.'<sup>43</sup>

Returning to the analysis of viability in a compound system, this study claims that to gauge viability demands the identification firstly of what frustrates the establishment and maintenance of the rules for the conduct of politics and, secondly, which factors make it possible to either manage or else overcome them. The first is the easier of the two tasks; the second is the goal of the thesis itself. For in the US and EU comparison, the shared constraint that makes for a fragile understanding and acceptance of the rules of the game is the split loyalties and competing identities between member states and the union. This is a problem for individual citizens as much as for the governments of the member states, for as Bryce described the lot of the American citizen, 'he lives under two governments and two sets of laws; he is animated by two patriotisms and owes two allegiances.'<sup>44</sup> The result is an instinctive querying by citizens and states alike of the merits of recalibrating relations between the units and the union. In addition to the absence of an external threat (*privata periculis*) previously mentioned, it is this dual loyalty and the cleavages it produces that makes the comparison between the two polities worthwhile. Following Tocqueville's interpretation of the American republic, which will be outlined in chapter three, I see this as a permanent tension that no constitutional settlement can eradicate because there is always the potential for a clash between a necessarily dynamic centre seeking to expand its power – in Publius' apposite words an *incomplete national government* – and its often reluctant or hesitant units.

If it is not to disintegrate, therefore, a political system faced with this tension has to respond in one of several ways: *coercive centralisation*, non-coercive or *voluntary centralisation* through the explicit or implicit transfer of competences to the union and/or the redefinition of the objectives of the union and the centralisation of political life or else a *dynamic equilibrium* that tries to reinvent norms and expectations in a way that will re-establish a consensus over how to conduct politics without transforming the powers of the union and by keeping certain questions off the table. The major supposition of this thesis is that each different response is

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<sup>43</sup> MacCormick (1995: 260).

<sup>44</sup> Bryce (1995, vol. 1: 378).

conditioned by certain contextual factors. In this study viability is thus analysed not from the perspective of whether certain universal preconditions of stability are fulfilled but of whether a particular polity has the ability to manage or overcome the actual constraints it faces.<sup>45</sup>

Perhaps the most important task of political science, if it is to live up to its claims to make sense of politics and offer potential solutions to vexatious problems, is to identify the nature of a specific political problem. Situating the issue properly means that irrelevant ways of addressing the problem can be discounted; more promising avenues can then be identified and explored. This is what universalistic approaches cannot offer, which explains why they often combine philosophical sophistication with sterile political reflection.<sup>46</sup>

Instantiation is in itself a form of explanation because the classification of an object has a constitutive effect that determines how this object can be understood. By using a theoretical framework that describes compound political systems as following one of three scenarios of viability I hope to be able to explain features of self-sustainability and mutability in these compound systems. This approach departs from the causal model of explanation that predominates in EU studies, especially when it comes to evaluating the strengths and weaknesses of the European polity.

For the last twenty years, the fundamental political problem of European integration has been understood in terms of a “democratic deficit”. The EU is said to lack a meaningful element of democratic participation by citizens, poor accountability given the feebleness of the parliament and the absence of a pan-European public sphere. Hence the basic argument is that the EU will survive or fail according to how it tackles this deficit because legitimacy – and thus viability – depends on democratic credentials. The three most widespread answers to the problem of how the EU can exist in the light of its democratic deficit are: (a) the “no-demos” position, which suggests the political bond is derived from a cultural-linguistic bond that by definition cannot be pan-European, (b) the “post-national” tradition, suggesting an abstract “constitutional patriotism” can replace shared nationality in the creation of a political community, which in this case will span national boundaries, (c) the theory of “output

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<sup>45</sup> For an example of a classic hypothesis-testing approach to the question of stability in federations see Lemco (1991).

<sup>46</sup> The paradigm example is John Rawls’ *Theory of Justice*, which, however well it may serve as a moral justification of the welfare state, cannot be considered a serious blueprint for any such concrete political project.

legitimacy”, which argues that a European polity can be constituted by the positive results of its governance.

The debate over the prospects of European political integration, therefore, now revolves around whether democratic politics can transcend the boundaries of existing nation-states, with various arguments for and against this proposition. All these arguments, however, are rooted in a causal framework, which claims that deeper integration is or is not possible given a certain number of efficient and necessary causes. Yet all three responses to the anxiety created by the so-called democratic deficit presuppose a particular description of what the EU is – with profound implications for the analysis of what it can become. Both the no-demos and constitutional patriotism claims are based on the assumption that the EU is a full-fledged state in gestation, whereas output legitimacy relates to a prior conceptual categorisation of the EU as a regulatory state. Thus the first two contesting perspectives are obliged to reconstruct the history of the democratic nation-state to discover its alleged preconditions, whilst the theorists of output legitimacy are busy trying to show that the effects of regulation and non-majoritarian institutions are sufficient to create loyalty to a polity. In this way conceptualisation frames the way problems of political praxis can be understood.<sup>47</sup>

Meanwhile integration remains squarely on the agenda of European politics, with existing theories for solving the deficit not proving a tremendously fruitful way of understanding the success or otherwise of negotiations for deepening the project. Shifting away from the argument that integration is viable according to whether or not the EU can overcome its democratic deficit, I propose to take seriously the notion of pooled sovereignty and question whether in the particular European context this is a viable form of polity. Thus I conceptualise the EU as a compound system where – using the game metaphor of politics – the rules of the game are contested and reinterpreted according to a scenario of dynamic equilibrium or voluntary centralisation. The hope is that this conceptual gambit will prove more useful for making sense of what the EU is and thus what it can be, too. Ultimately, therefore, this study aims to satisfy the conditions Kratochwil specifies for studying a problem of political science in a manner ‘that relies on the satisfaction of conceptual clarification as well as historical

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<sup>47</sup> Moravcsik (2002: 605) makes a related point about the relationship between a lament over the EU’s democratic failings and the a priori conceptualisation of democracy. By adopting a somewhat different yardstick of democracy, one that gives a certain precedence to horizontal separation of powers ‘then the widespread criticism of the EU as democratically illegitimate is unsupported by the existing empirical evidence.’

contextual criteria rather than the collection of further “confirming” evidence or instances of refutation.’<sup>48</sup>

### 1.3 Three Scenarios of Viability in a Compound Polity: How Context Shapes Viability

Until recently, comparisons with the US or other mature federal systems were not considered particularly apposite in EU studies. This initial reluctance has now rescinded because the EU is now taken to be a sufficiently consolidated political system, leading to comparative studies of the development of both polities. Unlike these approaches, the analogy my dissertation uses is not a description of common properties or shared policy predicaments, rather it is based on the similarity in the relation of the parts to the whole in these two different cases. To describe a polity organised in this way I draw on the political theory concept of a compound republic. The theoretical baggage behind this concept and a discussion of historical examples of how this type of political system functions differently from the nation-state forms the basis of chapter three. However, at this point a preliminary definition of the term is useful for the present purpose of understanding how this type of polity is viable.

It is instructive to compare a compound polity to another form of union between sovereign states bearing a solid history, namely, a legislative union like that between England and Scotland in 1707. Whereas in the Anglo-Scottish union the central question of sovereignty had been settled by the voluntary disbanding (albeit oiled by the deep purse of the English court)<sup>49</sup> of the Edinburgh parliament, in a compound union this issue (amongst others) is left unresolved. Scottish political representation was incorporated into the Westminster parliament by the addition of forty-five new Scottish members. The arrangement only began to be called into question following the dismemberment of the empire – a common project, in which Scottish participation was voluntary and fundamental to its success – in the 1960s. Thus although the British political union may have had *noncentralising features* allowing for the preservation of distinct legal systems and different organised religion these are not the same as *the absence of permanently settled rules for the conduct of politics* that exists in a compound system. By this I mean that a common understanding over where lies competency over competences, expectations about the purposes of political integration, what decision-

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<sup>48</sup> Kratochwil (forthcoming).

<sup>49</sup> George Lockhart of Carnwath wrote in his memoirs that twenty thousand pounds had been allocated by Queen Anne to bribe a sufficient number of Scottish parliamentarians into accepting the union with England. Davies (1999: 691).

making procedures will be followed and the balance between the representation of states and individuals can never be taken for granted. The existence of multiple political identities (membership of a unit as well as of the union) complicates this absence of fixed rules even further as these identities can create conflicting loyalties and a struggle between levels of political representation as the union tries to avoid the twin perils of disunion and coercive centralisation.

Comparative federalism typically frames the problem and solution of political viability in institutional terms. The problem of federalism is posed as ‘first, what prevents the central government from destroying federalism by overwhelming the lower governments? Second, what prevents the constituent units from undermining federalism by free-riding and otherwise failing to co-operate?’<sup>50</sup> Constitutional design, multiple examples of which offer a convenient independent variable, is then taken to be the answer to both these problems because there are undoubtedly better and worse ways of creating bulwarks against the centre and creating incentives against free-riding. But institutions are not clockwork objects that provided they have the right mechanism only need to be wound up to run by themselves.

Missing in this treatment of viability – which is reminiscent of the balance of power theory of stability in international politics – is historical and political context. This is a fundamental lacuna because *compound political systems are founded as explicit political projects*: institutional design is a means towards achieving the objectives of the union.<sup>51</sup> Hence the evolution of political institutions depends to a great extent on how these objectives – and their consequences for relations between the parts and the whole – are debated and understood rather than on simple institutional performance. A purely institutional analysis such as comparison of the merits and demerits of different federal arrangements treated as variables detached from context provides little scope for exploring change in a compound system, or what the British historian Niall Ferguson calls “possible futures”.<sup>52</sup> As I will show below, this study aims to incorporate both institutional and non-institutional factors in the analysis of viability, which explains the choice of a detailed contextual examination of two similar cases. Moreover, this kind of approach also requires an *ex ante* outline of how and why scenarios of

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<sup>50</sup> Filippov *et al.* (2004: 26).

<sup>51</sup> Indeed, theorists of federalism note that federation also is ordinarily ‘conceived as a means to an end’. De Vree (1972: 28)

<sup>52</sup> Ferguson (2001: 2).



viability for compound systems differ. This is a precondition for the analysis of why certain factors become conditions determining which type of viability is most likely.

A brief sketch and explanation of these differences is now necessary; the analysis of the factors that result in a compound polity following one scenario of viability and not another is undertaken in chapter five. This initial sketch is far from subtle because a properly nuanced understanding of the relationship between context and scenarios of viability can only emerge properly after making a fully-fledged comparison between the US and the EU. Some of the conditions are institutional (the organisation of representation, distribution of competences) whilst others are historically contingent. The latter are political or cultural factors (expectations about the purposes of integration and shared understandings of what is off the political agenda) that affect attempts to redefine the compound relationship between the union and its constituent units. Although this preliminary survey can hypothesise some of the necessary factors for viability in each scenario, only the analysis of the contextual practice of politics in a compound system will reveal more about why under certain conditions dynamic equilibrium is possible rather than voluntary centralisation and vice versa.

The easiest case to describe is that involving the use of coercion. Indicators for this are: the explicit threat or actual use of force against a member state to enforce the primacy of the union and/or to prevent secession; the use of economic or political sanctions to do likewise. Resources necessary for the coercive option obviously include the ability of the union to command an independent military force, to pay for it, and a constitutional mechanism for sanctioning obstreperous units. A clear benchmark for this is the American civil war. The scenario for non-coercive centralisation is somewhat harder to identify convincingly. Increasing centralisation is most visible in the realm of constitutional politics, where it is the product of three factors: constitutional interpretation by legal as well as political actors, statute law and a certain discretionary element in the form of the conventional understanding of competences and procedures or, in Bryce's pithier terms, amendment, interpretation and usage. Beyond constitutional politics, centralisation may also take place through the establishment of new political institutions, such as political parties or voting procedures, which favour the representation of individuals at the expense of the representation of the constituent units.

Measuring or quantifying centralisation in both a compound or federal system is eminently possible.<sup>53</sup> Various options include measuring the proportion of the budget spent by different levels of government,<sup>54</sup> legal resistance amongst the units to competences exercised by the centre or evolution in the allocation of competences.<sup>55</sup> What this kind of approach does not reveal, however, is the nature of the political debate that surrounds this change in the relationship between units and union: how they were justified and interpreted and what consequences this had for expectations about the future. Thus Leslie Goldstein's study of legal resistance to central authority in the antebellum US and in the European integration process discovered that both in number and in the repetition of defiance against established competences resistance was stronger in the US than in the six founding EEC states.<sup>56</sup> But the weakness of this so-called "member state resistance paradox" argument is that it fails to include the alternative methods whereby member states constrict and discipline integrationist ambitions; as the analysis in chapter four of disputes over the rules of the game shows, overt resistance by constitutional courts is a very minor part of the *rapport de force* between pro- and anti-integrationists.

Similarly, a constitution by itself is not a straightforward list of rules to govern, a moral textbook setting out how decisions ought to be made or a compilation of objectives to pursue. Not only is it difficult to measure what constitutions "do" even their political objectives are not self-evident because sometimes they are framed not simply to achieve some goal but to prevent something happening or being discussed.<sup>57</sup> In the latter instance this is only meaningful in context. Historical experience suggests that constitutions are a *genre* of political writing or speech acts that are often intended to function negatively (to prevent something happening) as much as positively. Thus the American constitution was obsessed with finding a way of neutralising conflict over the slave issue as well as avoiding all mention of who or what is to be sovereign – it is implicitly the constitution itself that is sovereign – to deny any one actor the right to make a claim against this settlement. More recently, the German *Grundgesetz* ('Basic Law') was framed to avoid any possible return to fascism whilst the French Fifth Republic sought to put an end to political instability by reinforcing the office of president.

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<sup>53</sup> The most impressive recent use of this comparative approach applied to the EU is McKay (2001).

<sup>54</sup> On the expansion of the EU's spending policies see Pollack (1994).

<sup>55</sup> For a neat and well argued discussion of Europe's increasing competences see Donahue and Pollack (2001).

<sup>56</sup> Goldstein (2001).

<sup>57</sup> On the latter point see Holmes (1988).

To circumvent these problems, voluntary centralisation will be understood in this study as changes to the rules of the game – either through amendment, convention, usage or institutional innovation – that allow the union to expand the major policy areas in which it has the final say whether by taking away prerogatives from the units, creating new competences for itself or simply taking dominant control of the agenda of political life.<sup>58</sup> These changes will be considered voluntary to the extent that the democratic constituent units have in some way acquiesced – or at least not objected to them – through their participation in constitutional politics. This acquiescence may take different forms and stem from different causes though.

In most cases voluntary centralisation – an example would be the US after the civil war – is only possible after overcoming in-built institutional constraints. This is most true in the procedure for amendment as there are always safeguards to prevent centralisation occurring at the whim of a simple, slim majority. Having a supramajoritarian system of amendment rather than relying on unanimity is undoubtedly an important resource for voluntary centralisation. But the purpose of this study is not to specify how to achieve the optimal balance between safeguard and blocking potential. There are two sound reasons for this. Amendment is but one means for centralising power and, secondly, the fetishism of institutions obscures the role of non-institutional factors in enabling the transfer of power in a compound system from the units to the centre.

A more detailed discussion about changes in the rules of the game will help clarify this point. Firstly, when it comes to the question of competency over competences, the compound centre needs to have a convincing argument for why it is competent in this way. Making a convincing case for defending or expanding competences is only possible by referring to the origins and objectives of the union. Secondly, in order to justify increasing competences, the union will find this easier to achieve if it is able both to act upon as well as to represent its citizens directly, that is to link them with a shared identity rather than represent an aggregation of member states. This is what Hamilton meant when he declared that the ‘characteristic difference between a league and a government’ is that the latter has authority

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<sup>58</sup> In theory at least, this process of voluntary centralisation could ultimately result in a unitary state, meaning that a compound polity contains the potential for self-abolition.

over the ‘persons of the citizens – the only proper objects of government.’<sup>59</sup> Several attributes contribute to the faculty of representing citizens directly, notably the ability of the union to establish new loyalties among its citizens whether through policy achievements or changes in the nature and practice of political representation. Thirdly, the voluntary transfer of power to the centre is also dependent on the expectations about how the political system functions with regards to legality and legitimacy. The whole process of centralisation is framed by established principles of legality, and the key element in legality is that the limits of government are not indefinite but are known through constitutional principles or political consensus about the objectives to be pursued by the compound polity. Voluntary centralisation, therefore, must respect the existing boundaries of what the union government is for; if not, it must invoke the notion of legitimacy in order to mobilise cross-unit opinion to justify aggregating more power to the union.

Finally, the most difficult to define with accuracy at this stage is the scenario of sustaining a dynamic equilibrium between the union and its units. This is a process of “muddling on” where acute contestation over the rules of the game leads to a redefinition of the relationship between units and centre with only a minimalist transference to or creation of power at the compound centre. It is a dynamic process precisely because it does not sanctify and seek to preserve the *status quo* favouring instead a recalibration of the rules of the game. Redefining or reinventing the equilibrium as opposed to centralising is less the case of the union being unable to create new competences *per se*. Rather, it is taken to mean primarily a process whereby the compound union can only grant itself new competences or take over the prerogatives of its members by appeasing the constituent units. This is achieved either by granting new safeguards to frustrate action of the centre (veto power), by allowing exemptions from certain areas of legislation (opt-outs, opt-ins, abstentions) or else by keeping intractable problems off the reform agenda.<sup>60</sup>

The obvious difference when comparing dynamic equilibrium with voluntary centralisation is that the union has a very awkward task of claiming or seeking competency over competences. A dynamic equilibrium is also a much more likely form of viability for a compound system when the union finds itself in the impossibility of representing a shared identity convincingly.

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<sup>59</sup> Hamilton et al. (1926: 71).

<sup>60</sup> The latter corresponds to Bacharach and Baratz’s (1962: 948) definition of power as not simply the ability to make decisions that affect others but also ‘limit[ing] the scope of the political process to public consideration of only those issues that are relatively innocuous’ to one actor.

For the moment, it is sufficient to say that to be viable in this way will depend on the likelihood of making compromises, which paradoxically may be facilitated greatly by the existence of multiple and cross-cutting cleavages between units rather than a single cleavage. This is the governing principle behind Federalist 10: ‘extend the sphere and you take in a greater variety of parties and interests; and you make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens’.<sup>61</sup> The second crucial difference is that the reliance on legitimacy will be an impediment to centralisation since political mobilisation of the single units will be stronger than cross-unit togetherness. As a result, in disputes over the rules of the game sometimes legal competences may be ditched when they are considered illegitimate by a member state, as happened in the Luxemburg compromise and, more recently, over the non-application of the sanctioning mechanism of the Stability and Growth Pact. In the absence of a consensus over what the union is for and what the limits of its governmental power are, viability will depend on privileging the search for political compromises amongst the units over the recourse to judicial adjudication by the union’s courts – especially in disputes affecting the interests and identity of the units. In fact, the recourse to legitimacy rather than legality will be one of the principal expectations actors have for how politics is to be conducted. Preventing the erosion of this expectation is likely to be one of the key elements for maintaining a viable, dynamic equilibrium.

The very purpose of founding a compound system in the early US and the EU is to prevent coercive centralisation. This means the definition of viability in a compound system needs further refinement: it is conditional on having the ability to overcome, or manage, without recourse to coercion, its inevitable tensions. In this study, the coercive resources that would allow the union to prevail over recalcitrant units are not considered an indicator of viability since they are antithetical to the founding principles of the polity. Alexander Hamilton began the *Federalist* by asking whether mankind was ‘forever destined to depend for [its] political constitutions on accident and force.’<sup>62</sup> In the same vein, this study wants to analyse the EU’s viability in terms of the possibilities for sustaining itself or centralising through compromise and consensus rather than the largely unknowable variables of accident (external shocks) and force (coercive centralisation). For as the great nineteenth-century British liberal Walter Bagehot remarked, ‘in politics we must not trouble ourselves with exceedingly exceptional accidents; it is quite difficult enough to count on and provide for the regular and plain

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<sup>61</sup> *Ibid.*, no. 10, p. 47.

<sup>62</sup> *Ibid.*, no. 1, p. 1.

possibilities.<sup>63</sup> Moreover, in the history of European integration significant steps in the process, such as the creation of monetary union or a common foreign policy, have not been the product of extreme catastrophes; there is no place here for an apocalyptic vision of conditions necessary for a viable European polity.

Significantly, the American example reveals a singular failure to adhere to the principle of a peaceful and voluntary union. It is important, therefore, to find a convincing answer as to why the EU will not follow this precedent rather than take it for granted. Analysing and comparing viability contextually, that is, in relation to the tensions and the resources for overcoming or managing these tensions is, I argue, a productive – and hitherto untried – way of doing so. After conducting a rigorous statistical analysis of existing theories of the conditions necessary for the maintenance of a federation, Lemco was only able to formulate the underwhelming conclusion that ‘political will [‘a common self-interest and identity’] is basic to the resolution of conflict and national unity.’<sup>64</sup> This is hardly a satisfactory position even for political scientists favourable to the most parsimonious of explanations. By discovering why the US was unable to maintain its original political system for more than seventy years the ambition is to assess the extent to which Europe, overshadowed by various acute political problems, is likely to face a similar dilemma between disintegration and coercion to save the union; and if not, whether the EU has the wherewithal to continue as a process of dynamic equilibrium or else transform itself into a more centralised political society.

#### 1.4 Conclusion: The Structure of the Thesis

This chapter has laid the groundwork for explaining the *problématique* of EU viability and why it merits a thesis-length study. I claimed that viability is a particularly vexing question in a compound polity like the EU, which is characterised by multiple question marks over its competences, membership, legitimacy and ability to represent citizens democratically. I referred to this nexus of unsolved issues as a contest over the rules of the game of European politics on which the fate of EU viability rests. Hence the claim about exploring the conditions for a viable EU does not relate to what it means for the EU to be effective as a policy-maker. Rather, viability refers to the ability either to sustain a dynamic equilibrium, which manages but does not transcend the contest over the rules of the game, or else viability

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<sup>63</sup> Walter Bagehot (1963: 285).

<sup>64</sup> Lemco (1991: 167).

entails voluntary centralisation, whereby contestation over the rules of the game recedes as member states acquiesce to pool more powers of decision and execution at the centre.

Chapter two reviews the existing literature that engages with the problem of EU viability, and situates the argument and methodology of this thesis in relation to trends in EU scholarship. It is claimed that EU studies has so far done a poor job of trying to understand what makes the EU viable as an unusual type of polity and what this implies about its future. To overcome this oversight, an indirect analogical comparison, which compares how the rules of the game were contested and managed in the early American republic and the EU is offered as a productive way of generating insights into the viability of compound polities. Chapter three unfolds the conceptual and theoretical analysis of the EU and US as compound polities before discussing in general terms how the rules of the game of politics have been contested in both. The chapter ends with a presentation of five crucial differences between the EU and US compound systems, which forms the basis for the analogy concerning how the rules of the game were contested in both.

In chapter four I produce a detailed analysis of how exactly the struggle over the rules of the game has taken place in the course of European integration. This reveals how the EU has adhered strictly to a model of dynamic equilibrium whereby the acute tensions over what the EU should do and how it should work have been left unresolved – the logic of spillover has not prompted steady voluntary centralisation. The fifth chapter carries out a comprehensive comparison of the five differences in the contests over the rules of the game in the US and EU and what this means for the viability of the respective compound polities. This analysis reveals that whilst Jacksonian democratisation led to a voluntary centralisation of political life, the antebellum US had great difficulties maintaining a dynamic equilibrium over slavery, an issue that could not be dismissed as territorial expansion kept it at the forefront of federal politics.

In the sixth and final analytical chapter, I return to the problem of viability but with a focus on managing changes in the nature of political representation in a polity characterised by a dual representation of both states as units and individual citizens. In this case the US experience suggests that enhancing representation of individual citizens at the expense of states is no means of solving acute cleavages concerning the objectives of political union and the amount of competences it should be granted. Indeed the prospect of greater majoritarianism in the US

led to calls for the establishment of new state controls over the conduct of federal politics, a move that can also be expected in the EU context. By showing, in addition, how difficult it is to change dramatically the goals of European integration I conclude that it is difficult to hold a sanguine expectation of voluntary centralisation in Europe. The thesis finishes with a brief concluding chapter, which reviews the political and theoretical implications of this study.





## Chapter Two

### Finding a Satisfactory Methodology: An Analogical Comparison with the American Compound Republic

*“Give me another theory that would fit the facts.”*

Inspector Lestrade’s plea to Sherlock Holmes in the tale of *The Norwood Builder*

#### Introduction

This chapter lays out and justifies the methodology used in this thesis. The first section gives an overview of certain methodological trends in the political science analysis of the EU. Traditional theories of state-building balk at explaining recent progress in European integration, as a consequence, more innovative scholars adopt a *tabula rasa* attitude, devising new concepts or metaphors that emphasise the uniqueness of this polity. These new concepts are intended to cast light on what the EU is or why it is different from nation-states. I review briefly these additions to our political vocabulary and argue that unfortunately these do not live up to their claims for providing new insights on a difficult object of study.

In addition, the epistemological soundness of theorising in EU studies is open to question. The tendency to link truth-finding to the analysis of hard, observational facts ignores the problem of how meaning is constituted through usage and the absence of a direct reference between concepts and the cases they refer to. Problematic as well is the general theory-building ambition in political science’s encounter with the EU, which is mostly limited to exploring *why* and *how* integration in Europe has proceeded. Prolix when explaining the reasons for integration, academic studies are diffident when it comes to debating whether the EU is resilient enough to emerge unscathed from its recurring crises. This should strike both the specialist and the non-specialist alike as an odd state of affairs. After all, most media coverage of the EU is devoted to its latest crisis and the agonies of negotiation or reform. Even if this portrayal of limping through one crisis after another can be somewhat caricatural, it does seem surprising that concerns about how much integration is possible do not play a more significant role in political science’s encounter with the EU.

This chapter is less a full-blown literature review, therefore, than an exercise in situating my argument in the broader context of EU scholarship. I highlight the absence of a well-developed viability *problématique* in the field and discuss why this is an omission that needs to be tackled. Tocqueville is used as an exemplar of an approach to the study of politics driven by issues arising from actual praxis. I argue that the generation of interesting research questions does not come from the search for universal answers but from the consideration of concrete, practical political disputes. The notion of viability is put forward as a problem of *praxis* with plenty of both analytical and normative implications.

Finally, analogical reasoning is discussed as a way of probing the question of the viability of the EU. The analogy involves the case of the early American republic, which is considered to be comparable to the EU because they are both instances of compound political systems. Withholding the explanation of how this conceptual category is defined in theory and understood in practice until the next chapter, I conclude by distinguishing the analogical method from other types of comparative study. The purpose of this exposition is to demonstrate the shortcomings of other comparative methods, notably the search for preconditions of federalism and supposed “lessons from history” presented as path-dependency. Such attempts to discover the generalisable causal effects of historical context are rejected in favour of an indirect analogy that incorporates political and historical context by examining how the rules of the game were contested and re-negotiated in two compound polities.

## 2.1 Political Science and the EU: Awkward Bedfellows

Contemporary political science has a hard time making sense of the process of European integration and the nascent European polity. Whereas the previous great transformation in the boundaries and political nature of European societies is conventionally sketched as the transition from absolutism to liberal-democracy – albeit with certain fascist and communist hiatuses – the demise of empire and the rise of nationalism,<sup>65</sup> no similar theoretical framework exists to explain the process of post-war integration. In many ways this stems from the fact

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<sup>65</sup> A more sophisticated historical perspective would link this process to the struggle between revolution and counter-revolution, as well as a struggle between France and Germany for control of Western Europe, and the struggle between Germany, Austria and Russia over central and Eastern Europe. See Pocock (1999).

that the idea of European unity has been formulated in irenic terms – putting an end to war – that do not transpose easily into other political objectives. Furthermore, both modern historical experience and the concepts of political thought are deeply anchored in the assumption that the nation-state is the basic unit of our political world.<sup>66</sup>

This does not mean that the nation-state has been a perennial feature of human history, far from it, for as Niall Ferguson points out ‘they are a novelty compared with empires’.<sup>67</sup> The conceptual entrenchment of the nation-state, however, makes the understanding of alternative forms of polity problematic from the outset. The European Union is a peculiar and uncanny object of study for the discipline of political science precisely because the democratic nation-state was once widely considered the *non plus ultra* or *telos* of political modernity. In many domains, sometimes quite unexpectedly, the EU is altering the political landscape of Europe by increasing the size of the political unit beyond the nation-state, thereby challenging the fundamentally *national* character of European democracies. At the same time, the European polity often functions through bargaining (states and interest groups) or expertise rather than by argument conducted through parties, politicians and a public sphere, which puts it at odds with the democratic practices of the nation-state.

Thus the existence of the EU runs counter to the founding assumptions and theories of modern political development. These classical theories were devised to explain the rise of the nation-state as the definitive form of modern political organisation. But the historical origins of European states are rooted in absolutism, war-mongering, and nationalism whilst European integration rests on an avowed rejection of all these traditions, and is supposed to be a means for overcoming their pernicious legacies. At best, classical theories of modern political development can advance reasons why the EU will not become a nation-state in any discernible future. Or else they indicate what mechanisms typify the establishment of state sovereignty over a particular physical space without really saying anything about whether this is possible in the European case. What they cannot explain is how the EU can cope without settled territorial boundaries, the tension between national identity and European harmonisation or cleavages between states with different foreign policy preferences.

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<sup>66</sup> Even communism, originally a theory of world or at least European revolution, came to be reconciled with the principle of the nation, albeit out of political necessity rather than intellectual conviction for the merits of “socialism is one country”. Indeed, the discipline of social science itself is often considered bounded by “national traditions” Wagner (2004).

<sup>67</sup> Ferguson (2001: 169).

The most widely accepted thesis concerning the origins of the modern territorial state points to coercion (civil and external wars) and capital as the fundamental causes for the transformation of Europe's feudal political museum into princely or imperial territorial units and then nation-states. Charles Tilly's survey of the rise of the modern state concludes that war and the concomitant need to finance armies, navies and fortifications have been the engines of state-building, from the French and English kingdoms of the late Middle Ages to the transformation of the US Federal government into world hegemon in the modern era.<sup>68</sup> However, this thesis needs to be prefaced with Hendrik Spruyt's point that size and population are not straightforward predictors of military muscle and that 'the ability to wage war [is] a function of institutional arrangements.'<sup>69</sup> In this crucial respect the territorial, sovereign state's competitors proved much 'less effective and less efficient in mobilizing resources'.<sup>70</sup> Eventually, Tilly argues, the nation-state was left as the only form of political organisation in Europe as coercion proved much less efficient in raising standing armies than identity mobilisation, which spelt the death of empires, and cities were unable to compete with the financial resources of territorial states.<sup>71</sup>

Following the logic of Tilly's analysis, European state-building could occur were Europe's nation-states no longer individually competent to defend themselves (or their interests) in the face of more powerful rivals. This would be analogous to the transformation, absorption or combination of cities into nation-states. But in today's geopolitics it is practically impossible to isolate an imminent threat of a magnitude sufficient to provoke such a collective epiphany. A concept and enemy as vague as terror may promote enhanced police and intelligence co-operation but it cannot stimulate state-building because it doesn't imply the same total obsolescence of existing capacities as when, say, the thousand year-old republic of Venice was confronted with Napoleon's war-machine.<sup>72</sup> In any case, it is NATO not the EU that is obliged to respond to external threats from foreign states. Moreover, it is the US that, for the most part, defrays the cost of making the Atlantic alliance a credible military power so that

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<sup>68</sup> Tilly (1992).

<sup>69</sup> Spruyt (1994: 178).

<sup>70</sup> *Ibid.*

<sup>71</sup> Tilly (1992: 15).

<sup>72</sup> Terrorism does not present states with a threat in comparison to which all previous threats pale into insignificance – it cannot even come close to equalling the insanity of mutually assured destruction – rather it is the threat itself that cannot really be evaluated. As Runciman (2004) explains, 'terrorism confronts us with risks that cannot be measured on any reliable scale, because the evidence is always so uncertain.'

even in the absence of a discernible threat the EU has been spared the usual state-building incentive of financing its self-defence. The continued acceptance of American-financed NATO as Europe's defence shield, therefore, removes one of the most important causes of consensual state-building.

Twenty-first century Europe, therefore, does not face the classic external stimuli for state-building. Indeed, the EU has followed a very different logic, where consolidation has been a political and economic mechanism to prevent war rather than a means for pursuing it more successfully. Tilly's state-building model has only a negative value when applied in this context: it strongly suggests that the EU's member states are not confronted by the overwhelming need to build a European state.

An alternative analytical framework for understanding the process of state formation in Western Europe is Stein Rokkan's work on "system building". According to Rokkan, the emergence of contiguous territorial political units controlling and distributing economic, cultural and political resources is the result of a series of boundary-building measures combined with internal integration. Usually pursued by a central internal hierarchy, these strategies are designed to tackle the problem of how political organisation can sustain itself in the face of the exit-voice-loyalty dilemma faced by all types of organisation.<sup>73</sup>

However, with the EU suffering from boundary ambiguity as it tries to define itself more as a space of values and rights than as a territorial entity, a system-building strategy is an unlikely prospect. More fundamentally, the EU is a regime hitherto dedicated towards boundary-removing. For the purposes of creating the single market, barriers to the free movement of goods, services, capital and persons have been removed in a process also known in the literature as "negative integration". In other words, integration in Europe has undermined many of the boundaries the nation-state established for preventing exit, whether of capital or highly-qualified workers, for instance. Thus, as Bartolini explains '*la presente situazione è quindi caratterizzata da un livello debolissimo di strutturazione politica dell'Unione e, allo*

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<sup>73</sup> As Ferrera (2003: 615) reconstructs Rokkan's argument: 'Historically, state formation implied a gradual foreclosure of exit options of actors and resources in a given space, the establishment of "system maintenance" institutions capable of eliciting domestic loyalty and the provision of channels for internal voice (i.e. claims addressed to national centres from social and geographical peripheries).'

*stesso tempo, da fenomeni di potenziale de-strutturazione politica dello stato-nazionale.*<sup>74</sup> Nation-states have typically been the “containers” for membership rights, political participation and immigration policies but even these quintessential features of statehood are no longer fully controlled by the member states. More importantly, the boundary-removing effectiveness of the European Union has not been accompanied by the recreation of internal structures for promoting voice and building loyalty. Even the creation of a quasi-federal institution like the European Central Bank, a clear re-creation of state sovereignty writ at the European level, has not been accompanied by either strict mechanisms for national compliance or overall political control from Brussels.<sup>75</sup>

Thus the existence of the EU questions previously-held assumptions about the nature of the modern political unit. As a result, the conceptual toolkit of the political development literature is mostly suitable only for answering basic questions about the EU such as what it is or how it functions by isolating the many differences between European integration and state-formation.<sup>76</sup> Given the limitations of the existing conceptual vocabulary, the response from within the discipline was to reappraise how political concepts and theories could be applied to this novel regional integration.

In spite of the widely acknowledged need to re-evaluate concepts, the response to this challenge to the orthodoxy of nation-state centred political science has, in terms of theoretical construction, been quite underwhelming. The tendency is to use modish metaphors that by themselves say little of substance: “multi-perspectival polity”,<sup>77</sup> “demoi-crazy”,<sup>78</sup> “post-modern polity”,<sup>79</sup> “new Middle Ages”,<sup>80</sup> or even “metrosexual superpower”<sup>81</sup>. Some descriptions even spatchcock together the entire gamut of neologisms. Philippe Schmitter does so magnificently when he calls the EU ‘a postsovereign, polycentric, incongruent, neo-

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<sup>74</sup> Bartolini (2004: 193).

<sup>75</sup> This gap between what has been removed at the national level without putting anything in its place is glaring, so much so that the EU is constantly preoccupied with finding new strategies for legitimising its policy functions. But devoid of the coercive or identity-promoting methods associated with state-formation, it seeks proxies for achieving similar results of loyalty and democratic participation. Emanating from the Brussels centre is a strategy of ‘*l’istituzionalizzazione dall’alto di canali e forme per ora alquanto artificiali di rappresentanza elettorale (il parlamento ed i partiti europei), territoriale (le regioni ed i governi locali), e degli interessi (la “commitologia”, i networks, le comunità epistemologiche).*’ *Ibid.*

<sup>76</sup> The major exception is Bartolini (2005).

<sup>77</sup> Ruggie (1998).

<sup>78</sup> Nicolaidis (2004).

<sup>79</sup> Caporaso (1996).

<sup>80</sup> Wæver (1996).

<sup>81</sup> Khanna (2004).

medieval arrangement of authority.’<sup>82</sup> Needless to say, the emptiness and vagueness of these labels – is post-modernism a cultural or political phenomenon? Is *demoi-cracy* an oxymoron? is the analogy with the Middle Ages meant to be positive or negative? – greatly weakens their analytical value, which also means they are an inadequate basis for analytical and normative reflection alike.<sup>83</sup>

Political science has also borrowed the *de rigueur* metaphor used to characterise the European project of integration in legal discourse: the idea of a “non-state”. This interpretation considers Europe as an ambiguous entity that creates obligations well beyond the normal reach of international law but which is not akin to historical, sovereign nation-states.<sup>84</sup> The description is drawn by making a negative contrast with the history of the nation-state. Normally this takes the form of a check-list of how European integration, unlike the nation-state, is not characterised by state-building, imperialism, nationalism etc. Marc Plattner offers a nice summary of this interpretation, when he explains that the EU ‘has become a federal *nonstate* whose decisions are accepted voluntarily by its constituent units rather than backed up by the modes of hierarchical coercion classically employed by the modern state’.<sup>85</sup>

The gospel of uniqueness, whereby the EU is said to create new conditions for the conduct of politics, suggests the EU is apt to find new ways of solving old challenges of modern government. Disappointingly, this comes at the expense of bothering with the detail of how or why this will continue to be so – Joseph’s Weiler’s theory of constitutional tolerance neither explains what sustains this nor where the limits of toleration lie.<sup>86</sup> This *a contrario* definition of the EU is essentially retrospective and forbears from thinking about the future of this polity. Just as the EU cannot be dismissed as a viable polity because it is simply unlike the nation-state neither can its difference be used uncritically to explain its adaptability and resilience. Some scholars have nevertheless succumbed to this temptation, most recently,

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<sup>82</sup> Schmitter (1996: 132).

<sup>83</sup> Hence there is something very dissatisfying about comparing the EU to the VISA credit card organisation just because ‘it is already closer to VISA than it is to a state. It is a decentralized network that is owned by its member states.’ Although there may be evident structural similarities (a small, regulatory centre promoting collaboration in a non-hierarchical fashion), these superficialities only obscure the fact that whereas VISA has a crystalline objective, the maximisation of profit, the EU has no such fixed and common goal. See Leonard (2005: 21-3).

<sup>84</sup> The EU’s institutional identity is largely defined in opposition to that of the nation-state. According to the guide book produced by the Delegation of the European Commission to the US, “the EU is a unique, treaty-based, institutional framework that decides and manages economic and political cooperation among its member countries”.

<sup>85</sup> Plattner (2003: 53).

<sup>86</sup> Weiler (2001).



Mark Leonard, who explains that ‘to this day, Europe is a journey with no final destination, a political system that shies away from the grand plans and concrete certainties that define American politics. Its lack of vision is the key to its strength.’<sup>87</sup> Logically speaking, this is a classic instance of question begging as the argument relies on its own proposition, the EU is unique, to support the premise that the EU will find novel ways out of its political impasses. Thus whilst the notion of a non-state may highlight the novelty of the European polity as a form of modern political organisation this is not the same as constructing a sophisticated conceptual model of exactly how and why the EU polity is different from nation-states and the implications this has for its political future.

These examples illustrate how developments in theory have not matched the speed of the integration process. As I argued in the first chapter, since political conflict in the EU takes the form of a dispute over the rules of the game of politics, this makes it very different from what happens in the historically well-established member states, where the rules of the game have sedimented. The natural implication of this interpretation is that it has become necessary to replace the focus on how the EU fails to conform to what is expected of a nation-state with a theoretical approach and conceptual vocabulary that allows for an understanding of the strengths and weaknesses of this new political object. Political scientists cannot dispense with an analysis of this curious, alien object in the same way that Aristotle dismissed the Persian monarchy as unworthy of study because he considered it the regime of a barbarous people. The cumbersome baggage of language and theories grounded in the experience of the nation-state, however, is not the only problem for understanding the EU. Another hurdle is the nature of the questions asked about integration in contemporary EU studies and what this reveals about the scientific objectives of theory-building in this field.

## 2.2 The Preoccupation with Explaining the How and Why of Integration vs The Problem of Praxis and the Formulation of Interesting Research Questions

Theoretical approaches to the EU have traditionally focused on answering one of either two basic questions: why integrate and how does the EU function? In answering these questions the dominant methodological approach is essentially a meta-theory that can be and is applied to non-EU contexts. Neo-functionalism has been applied to other instances of regional

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<sup>87</sup> Leonard (2005: 10).

integration,<sup>88</sup> inter-governmentalism has been extended to the analysis of other international organisations,<sup>89</sup> liberal institutionalism is used to explain interstate cooperation in general,<sup>90</sup> while constructivism has been used to chart how developments in international politics stem from changes in norms and practices.<sup>91</sup> Referring to the specificity or uniqueness of the EU is, perhaps unsurprisingly therefore, the standard way of impugning any one of these methods. But calling the EU *sui generis*, a unique kind of international organisation, or pointing to areas of integration devoid of any ostensible “spillover” obscures the more profound limitations of the whole approach associated with answering why integrate and how the process works or not.

The ambition behind the questions themselves is the construction of an explanatory model through which the true nature of the EU will be revealed. ‘Political science theory,’ as the American historian of the EU John Gillingham argues, ‘claims to explain the alpha and omega of European integration’<sup>92</sup> thereby trying to uncover the gamut of interests and motives of the various identifiable actors and how these may or may not change through interaction. By adopting the same question while pointing out the shortcomings of previous answers, it is assumed that in explaining each additional nuance or deviant case one is approaching the correct theoretical model that eventually will accurately describe in its entirety the object of study. Good theory is thus supposed to supersede bad theory.<sup>93</sup> Disputes between advocates of different theoretical positions focus on what other theories cannot explain – this being especially true of the old debate between neo-functionalists and intergovernmentalists. This is quite probably a legacy of IR, the discipline that spawned EU studies and which has a tradition of great debates between different explanatory methodologies.<sup>94</sup>

This building-block understanding of progress in theory building relies on a positivist belief in the exact correspondence between concepts and the phenomena they refer to. But this

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<sup>88</sup> Lindberg and Scheingold (1971).

<sup>89</sup> Cronin (2002).

<sup>90</sup> Keohane and Martin (1995).

<sup>91</sup> For instance, Koslowski and Kratochwil (1994).

<sup>92</sup> Gillingham (2003: 487).

<sup>93</sup> This notion of cumulative knowledge based on falsifiability is of course that of Karl Popper. See Davis (2005:92-131) for a critique of deductive logical positivism when applied to the social science.

<sup>94</sup> The actual number of these debates is contested but the paradigm case is the “second debate” between the historical school and the proponents of a positivist approach. Unsurprisingly, now that the methods of comparative politics are being used to study the EU doubts have been raised over the usefulness of studying the EU from an IR perspective. One of the leading comparativists, McKay (2005: 530) claims the ‘concepts and approaches borrowed from international relations and its sub-disciplines look less and less appropriate’.

correspondence is problematic in several ways. Only two of these need be mentioned here: firstly, concerning description for the most part, the assumption that scientific endeavour is a demystifying process of truth-finding by discerning the “natural kinds” that constitute our world has been largely debunked. Where once the social sciences tried to adopt the scientific method of the “hard” sciences to legitimate their use of the science moniker, the scientific method itself is no longer considered an adequate explanation of scientific research. The notion that scientific inquiry is an incremental process where a single method is used to conduct confirmatory research that gradually leads to an abstract vantage point where the truth can be perceived has largely been abandoned. Moreover, theories and concepts are now clearly understood to have interaction effects, or “looping” mechanisms, because, as Charles Taylor explains, ‘social theories do not bear upon an independent object. The objects they bear upon are not resistant to the alterations in self-understanding which these theories bring’.<sup>95</sup> Hence the traditional disanalogy between the natural and human sciences has been reformulated to suggest that the conceptual classifications used in natural science are “indifferent kinds” whilst those of the social sciences are “interactive kinds”.<sup>96</sup>

Secondly, and more germane to explanation and prediction, in the social sciences the meaning of concepts does not refer directly to an object or phenomenon; more often than not the meaning is constituted and explained by using other concepts. Take the example of the state: it can be described as a territorial form of authority, which means it is linked to the notions of territory and border as well as authority; or it can be explained as the organisation that regulates the public sphere, which depends on understanding the distinction between public and private; or as the instrument of the bourgeoisie’s class rule; and so on. Meaning is also derived from use in actual political practice. Thus our understanding of a state is informed by the practice whereby a state is or is not recognised in the international community.

This problem of categorisation makes it very difficult to identify mutually exclusive, neatly-bounded concepts and variables without which the search for definitive causal mechanisms – involving dependent and independent variables – is virtually impossible. As mentioned in the previous chapter, the democratic deficit debate has not yielded a definitive causal account of what constitutes a good or bad democracy at the European level. This is precisely because contributors in this debate have conceptualised the EU – and democracy itself – differently

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<sup>95</sup> Taylor (1983: 85).

<sup>96</sup> Hacking (1999: 106).

leading to sharply contrasting evaluations of whether and what kind of EU democracy is feasible.<sup>97</sup>

In the light of these reproaches aimed at the traditional method of theory-building in EU studies, this thesis will take a different approach. It will try to explore questions of more immediate political concern that fall by the wayside given today's research priorities in the discipline. The exploration of the question *how viable the EU is as a polity* seems more pressing than the development of a theoretical model that explains the process of European integration. Yet it is curious to note that most energy has been expended to sparring matches between competing models challenging for the coveted prize of "which can explain the most". This contrasts starkly with the pusillanimity with which different integration theories have entered into debates over the likelihood and benefits of a much greater pooling of sovereignty.

Hence the weakness of theory-building for making sense of the EU is partly a consequence of method. Making truth claims and testing theories against "observational facts", the hard data, to discover what the EU is glosses over the problem of the epistemological foundations of this supposed scientific method. But it is also a problem stemming from the selection of research questions. Sherlock Holmes, who thought "it is a capital mistake to theorize in advance of the facts" and who believed one should "always look for a possible alternative and provide against it", was certainly a partisan of a positivist scientific method. Yet the cases he investigated were clearly interesting ones that required a useful answer as guilt and innocence were at stake. Unfortunately, the same cannot be said for the research questions that dominate the field in EU studies.

The paradox of the EU is that in spite of its evident success compared with other attempts at regional integration it is still beset by an awesome multitude of problems: interest cleavages, the widening versus deepening debate, the wrangle over the constitution, the prospect of Turkish membership, foreign policy stances. By contrast, the domestic politics of all but the most turbulent member states can seem stolid. It was stated above (p. 35) that this disparity was due to the fact that, at the European level, it is the rules of the game of politics that are still being disputed, whereas in the member states this is a much rarer form of political conflict. Rather than assume that a compelling reason for more integration (another

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<sup>97</sup> See the debate between Hix and Follesdal (2005) and Majone (2006).

compromise or bargain, an event that changes perceptions, etc) will render these problems evanescent, it seems more appropriate to consider whether the EU is well-equipped to survive in the face of recurring tensions over how to define the rules of political interaction and decision-making. The advantage here is that more specific questions can be generated in response to the initial *problématique* of viability, such as what kind of political society the EU can be, given these constraints. Does it need to overcome these cleavages or does it have to learn how to manage them? What factors will help or hinder either course of action?

It is precisely this type of questioning, with its potentially controversial answers and its policy implications, that is absent, or better impossible, when theory obsesses over the why and how of integration<sup>98</sup> – an obsession that continues despite the current trend in favour of explaining certain dynamics of integration (so-called “middle-range” theories) only and not the whole picture. Indeed, the reformulation and tweaking of existing theories to explain these two aspects of integration is symptomatic of how EU studies remains aloof from politically sensitive questions. What is privileged instead is a problem-solving approach limited to a scholarly search for gaps in the existing theoretical explanation of why and how integration has or has not succeeded. EU political science has almost come to resemble contemporary history. Making sense of the gaps – one could almost say the historiography – thus becomes the central pre-occupation of the discipline.

The earnest attempt, however, to find an explanation to the paradigmatic question: ‘how are the various choices of governments to delegate and pool sovereignty to be explained?’<sup>99</sup> creates an abundance of “gap-filling” studies. Each one adds another turn of the screw to Stanley Hoffmann’s complaint that despite being ‘one of the few really inspiring political innovations of the last half-century’ the literature devoted to the European Union is ‘so often soporific’.<sup>100</sup>

Yet the reduced ambition of the circumscribed, or middle-range, approach does little to improve its value: it is still wedded to the notion of theory-building as the progressive

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<sup>98</sup> Typical of this research agenda are principal-agent studies, which, as Pollack (2001: 229) explains, ‘generally begin by asking why and under what conditions a group of (member states) principals might delegate powers to (supranational) agents, and they go on to examine the central question of principal-agent analysis: what if an agent – such as the European Commission, the Court of Justice, or the European Central Bank – behaves in ways that diverge from the preferences of the principals?’.

<sup>99</sup> Moravcsik (1998: 8).

<sup>100</sup> Hoffmann (2005: 189).

improvement of the fit between description/explanation and fact.<sup>101</sup> Filling in the missing explanatory gaps is thus no substitute for trying to reconsider the usefulness of the questions that are asked about the EU. Pertinence comes from asking important questions, but no matter how exhaustive the explanation or description of the why and how of integration may become, the answer to these questions will never have much of note to say about issues like the viability of the EU. Unless, that is, a surreptitious philosophy of history – hinted at in expressions such as ‘the integrative process contains its own inexorable logic’<sup>102</sup> – which posits the eventual and ineluctable obsolescence of the European nation-state, is implied. In that case, the question of viability is answered *a priori* and is thus of no value, however brilliantly justified the *a priori* position may be.

Following Tocqueville, I argue that the first step in the understanding of politics is the selection of appropriate questions to explore. Political analysis in this sense is comparable with historical analysis, for even the most pedestrian historian can only function by asking questions of the past. Deprived of the ability to ask questions there can be, by definition, no historical *inquiry* just a chronicle of unplotted events from amongst what Hayden White calls the “unprocessed historical record”.<sup>103</sup> Not surprisingly, the chronicle is now an obsolete form of historical writing because its purpose is not to illustrate how the present is conditional on the past but merely to record it.

Knowing which questions to ask, however, is not synonymous with asking the *right* questions. The canon of political philosophy was devoted to grasping the ideal: finding an answer to the question how the body politic is best organised. But modern political science has abandoned the notion of a classical catechism of inquiry into the ideal, such as Aristotle’s “which constitution is best?” (although he was also interested in the best possible), as part of a move away from asking the proper questions in favour of trying to devise *useful* ones.<sup>104</sup>

If not quite the first to signal this turn towards the useful, Alexis de Tocqueville was certainly the most explicit proponent of this approach, which he boldly termed a “new science of

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<sup>101</sup> Indeed, often these middle-range studies rely purely on single-case studies. Moravcsik (1997).

<sup>102</sup> Tindemans (1998: 141).

<sup>103</sup> A chronicle cannot fall into the “Whig” trap since, as White (1975: 7) explains, it contains no “inauguration” nor any ‘culmination or resolution; [it] can go on indefinitely’.

<sup>104</sup> Strauss (1987: 300) believed that modern political philosophy was post-Machiavellian as it had abandoned the task of finding out how man ought to live. He remarked somewhat bitterly that ‘by lowering the standards of political excellence one guarantees the actualisation of the only kind of political order that in principle is possible’.

politics”. In the introduction to the first volume of his magisterial study of American democratic society, he explained that ‘it is not, then, merely to satisfy a curiosity, however legitimate, that I have examined America; my wish has been to find there instruction by which we may ourselves profit’. By this he meant more than the relatively simple claim that the study of American democracy could not yield a model of the perfect commonwealth.<sup>105</sup> Tocqueville’s insight, writing as a French noble perhaps envious of American political stability yet shrewdly aware of the various causes of France’s tumultuous recent history, was that to profit from the analysis of politics, one should not expect to find institutional templates with universal applicability. ‘Let us look there’, he wrote with his gaze fixed on America, ‘less to find examples than instruction; let us borrow from her the principles, rather than the details of her laws.’<sup>106</sup>

In other words, useful questions are those that forsake universal answers and limit themselves instead to producing knowledge helpful to our understanding of the current situation or predicament that motivated the process of questioning in the first place. In Tocqueville’s case the situation was that of a country in political turmoil, in which the gains of the revolution were still threatened by counter-revolution and the liberty promised by the revolutionaries of 1789 had been curtailed by a centralised and authoritarian state apparatus that each post-revolutionary regime had made its own. What he wanted to know, therefore, was whether the principles of democratic individualism, the “equality of conditions” and the sovereignty of the people, which had swept away the fabric of the Old Regime without leaving anything solid in its place, were compatible with stability, prosperity, property etc. To find this out, he turned to America where these principles had extended furthest: ‘I have selected the nation, among those which have undergone it [the “social revolution” of democracy], in which its development has been the most peaceful and the most complete’.<sup>107</sup> Tocqueville explored American society as a result of the questions he asked of contemporary French politics. This is evinced more clearly in the rough draft of his introduction, where he explained his original motivation: ‘*je n’ai pas dit tout ce que j’ai vu, mais j’ai dit tout ce que je croyais en même temps vrai et utile à faire connaître, et sans vouloir écrire un traité sur l’Amérique, je n’ai*

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<sup>105</sup> ‘I am’, he wrote, ‘of the opinion that absolute perfection is rarely to be found in any system of laws.’ Tocqueville (1994: 14).

<sup>106</sup> *Ibid.*, p. lxv.

<sup>107</sup> *Ibid.*, p. 14.

*songé qu'à aider mes concitoyens à résoudre une question qui doit nous intéresser plus vivement.*<sup>108</sup>

The case of Tocqueville illustrates rather well the problem of *praxis* in intellectual inquiry. For Aristotle, the two necessary elements for leading a truly human and free existence were *theoria* and *praxis*. But whereas contemplation is the pursuit of knowledge for its own sake – with a passive result although it is not a passive activity in itself – *praxis* is the pursuit of knowledge for some end, that is to say, performing or accomplishing something in a certain way.<sup>109</sup> In politics, however, *praxis* does not mean the ability to determine all the possible consequences of trying to alter the world through action and it certainly does not equate to technical knowledge about which policies to apply under the circumstances. Michael Oakeshott put this latter point most bluntly: ‘rationalism is the politics of the politically inexperienced’.<sup>110</sup> His metaphor for politics, which illustrates and illuminates the notion of *praxis*, was the floating ship: ‘in political activity, men sail a boundless and bottomless sea; there is neither harbour for shelter nor floor for anchorage, neither starting place nor appointed destination. The enterprise is to keep afloat on an even keel’.<sup>111</sup> Yet problems of political *praxis* can be perceived or interpreted in different ways – sticking with Oakeshott’s metaphor, there will always be different proposals for keeping afloat and plenty of gainsaying regarding the evenness of the keel. Had Tocqueville, for instance, not considered the democratic revolution the providential condition of modernity, he would have been less frightened by the authoritarian distortions and monarchical reactions it gave rise to in France.

The starting point of this thesis, posing the question of the viability of the EU as a polity, is taken to be a useful question only because I believe a certain fragility and tension, not present in European nation-states,<sup>112</sup> can be observed. If these were not interpreted as tensions – a possibility I do not discount – viability would be a much less interesting problem. But because the rules of the game of European politics continue to be negotiated and renegotiated – a type of political conflict mostly in desuetude in the member states – it is important to discover

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<sup>108</sup> Tocqueville (1990, vol. 1: 3).

<sup>109</sup> Philosophy, in the Aristotelian sense, is the highest form of *theoria* and is the striving to interpret the world through reason, which is why Marx pointed out that philosophers before him had never changed the world they observed.

<sup>110</sup> Oakeshott (1977: 23).

<sup>111</sup> *Ibid.*

<sup>112</sup> Of course, this does not mean that the member states of the EU do not suffer serious political crises and indeed credible attacks on both their effectiveness and legitimacy. For an insightful round up of the challenges to the capacities of nation-states see Dunn (1996).



more about this process and the implications it has for the EU as a functioning polity. One way to do this is to explore other examples of such conflict over the rules of the game of politics. The next section will set out more clearly the reasons why the use of an analogy with the early American republic, understood to be a compound republic like the EU, will be instructive for understanding the nature of viability in this type of polity.

### 2.3 How to Address the Question of EU Viability: Comparison via Analogy with the American Compound Republic, 1787-1861

Merely asking questions of political praxis rather than poring over gaps in the theoretical literature is no guarantee of a useful answer: methodology matters. A common method for studying questions of praxis is the comparative approach. I argue in this section that one type of comparison is singularly well-equipped for studying EU viability. This method is the use of an analogy between the EU, conceptualised – taking a cue from Sergio Fabbrini – as a “compound polity”,<sup>113</sup> and the early American republic, which was designed and understood by James Madison to function as a compound republic. When contrasted with more conventional comparative studies, the analogy between the historical experience of the contest over the rules of the game in two compound polities seems to yield more insights into the viability *problématique*.

The incorporation of historical context in a comparative study of politics is nothing novel. When this has been done, however, there is good reason to believe that the use of context has not improved the chances of discerning what factors make a polity viable. “Path dependency” has become popular in social science analysis as shorthand for explaining the influence of historical context, which can be revealed through comparison. Robert Putnam’s work on regional variation in Italian institutional performance is considered one of the trailblazers of this interpretive method. Putnam’s approach attempted to conduct a historical comparison of differences in the nature of government, civic engagement and economic development from Renaissance Italy to modern times. The purpose is to explain why Italy suffers from great regional variation in the quality of democratic government by linking it to the development of “civic community”.

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<sup>113</sup> Fabbrini (2005d; 2001).

Unfortunately, Putnam's study concludes with the platitude that 'social context and history profoundly condition the effectiveness of institutions.'<sup>114</sup> By measuring and comparing the same supposed variables over time, Putnam's argument turns the Whig interpretation of history on its head: it glorifies the past and ratifies the failures of the present by suggesting they were constrained by a historical straightjacket. In other words, this use of comparison to establish the causal significance of context neglects to highlight the means used to sustain existing practices as well as the possibilities for mutation present at different critical junctures privileging instead a certain logic of inevitability. A clear parallel can be drawn with the historians' debate on the inevitability of the American civil war given certain deep-rooted structural differences between the economies and societies of the North and South.<sup>115</sup> With the use of hindsight, these interpretations focus on the *inexorable causes* of war, thereby marginalising the extent to which US politics tried to prevent this tension becoming an open conflict at the same time as they neglect the successful and often innovative means (party organisation, state admission, expansion, electoral rules etc) used for preserving the union prior to secession.<sup>116</sup> Thus a commitment to finding the causal significance of context may prove that context matters but without demonstrating the actual mechanisms for why it matters so much. Path dependency, which assumes certain critical junctures within the historical context, must thus be used with care as it is only useful when it seeks to explain why a polity developed in one way rather than another.<sup>117</sup>

A similar flaw about the fetter of historical constraint runs through Larry Siedentop's recent contribution to the debate, started by Joschka Fischer's speech on the missing "finality" of integration,<sup>118</sup> on the benefits of deepening the European Union. *Democracy in Europe* (2000) seeks to establish the preconditions for a successful European federation by drawing a parallel with the America union. In the jargon of political science, this approach could be described as an incomplete parallel demonstration of theory.<sup>119</sup> Incomplete because one part of the parallel, Europe, does not yet exist, yet the assumption is that what holds true of the US will be equally valid for Europe as they are both instances of the same project of federal political union. Siedentop thus develops a theory of the factors that "determined" the stability of the USA,

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<sup>114</sup> Putnam (1994: 182).

<sup>115</sup> For a lucid and lively review of this historiographical problem see Geyl (1951).

<sup>116</sup> *Ibid.*

<sup>117</sup> An impressive and indeed paradigmatic use of path dependency can be found in Parsons (2003), who uses this model to explain the construction of French politicians' policy preferences regarding European integration.

<sup>118</sup> Speech at the Humboldt University, Berlin, 12 May 2000.

<sup>119</sup> On parallel demonstration of theory see Skocpol and Somers (1994).

and drawing on this parallel story argues that the viability of European federation depends on replicating three cultural preconditions,<sup>120</sup> a recipe for federal success in other words. According to this cookbook of federal politics, a stable United States of Europe would depend on three common cultural traits: Christianity, English as its official language, and (more obscurely) a legally-trained, pan-European political class. This causal analysis of the preconditions of statehood, however, rests on a misreading of history for, as Bartolini has explained, *‘gli elementi dello stato-nazionale che mancano alla nuova entità europea, non erano “datei” come precondizioni degli stati europei, ma furono piuttosto “costruiti” da essi’*.<sup>121</sup> Siedentop’s comparative hypothesis, like Putnam’s, is thus an exercise in reverse Whiggism.

It is the peremptory nature of Putnam’s path dependency model and Siedentop’s idea of “preconditions”, which concentrate on establishing causation, that make them weak tools for appreciating problems of praxis and the mutual constitution of concepts. The study of causation demands a limpid distinction between independent and dependent variables, yet such conceptually separate objects are difficult to find in the social sciences precisely because concepts are often inter-subjectively defined and mutually constituted. Furthermore, the search for the holy grail of universal causation does not always constitute a good explanatory tool.

Naturally, causation only explains in the presence of causes, but this means that in the absence of such causes the theory can only say something negative, i.e. X cannot occur because the necessary causes, R and G, are missing. More importantly, these causes can only serve to explain in one direction so that, according to Siedentop’s model, Christianity is a source of stability. Religion, however, is a good example of a slippery concept to which it is very difficult to assign any causal significance as manifold examples can be produced to testify that it causes both one thing and its opposite. For instance, most commentators on American politics of the last two decades, and especially the last two US Presidential elections, have lingered (particularly the liberals) on the role politically hyper-organised Christian confessional groups have had in polarising the electorate over issues such as abortion and gay marriage. Indeed, the language used to describe this phenomenon, “culture wars” or the “two

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<sup>120</sup> The actual wording is the: ‘informal pre-conditions of the success of American federalism’. Siedentop (2000: 11).

<sup>121</sup> Bartolini (2004: 169).

Americas”<sup>122</sup> of red and blue (in reference to the colours used by psephologists to represent the republican and democratic parties on the electoral map) suggests religion causes something other than political stability. In fact Tocqueville, from whom Siedentop claims to have derived the preconditions of American stability<sup>123</sup> recognised that the spirit of religion need not be a necessary ally of liberty. For whilst he recognised their mutual compatibility in the US, he also explained ‘that the relation of religion and liberty in France [was] the exact opposite of what it [was] in the United States.’<sup>124</sup> In other words, Tocqueville was deeply sensitive to the way that historical context sundered the ideal dependence between free government and religion.

What these examples show is that the determinism of causal approaches built on retrospective “lessons from history”, such as Putnam’s path dependency or Siedentop’s pre-conditions for federalism, does not permit a proper appreciation of how the nuances of historical context will affect the struggle to define the rules of the game of politics. Thus the notion of pre-conditions can only answer yes or no to the question of is the EU viable; even then this answer is uninteresting as it is tied to a problematic explanation in terms of necessary and sufficient causes. Amitai Etzioni’s conclusion that the EU’s “halfway supranationality” is such that it ‘cannot be sustained and that the EU will have to move to a high level of supranationality or fall back to a lower one’<sup>125</sup> is the quintessence of this fruitless reasoning.

Etzioni reaches this conclusion because the EU does not meet the three supposed “capabilities” required for a supranational union: ‘legitimate control of the means of violence, which must exceed that of the member units; allocation of resources among the member units; and command of political loyalties that exceed those accorded to member states.’<sup>126</sup> According to Etzioni, therefore, the current equilibrium is condemned to be unsustainable. In fact, precisely the same proposition of a *tertium non datur* was touted forty years ago. Stanley Hoffmann was certain that ‘a federation that succeeds becomes a nation; one that fails leads to secession; half-way attempts like supranational functionalism must either snowball or roll

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<sup>122</sup> Hunter (1992); Greenberg (2004) but for a sceptical view see Fiorina et al. (2004).

<sup>123</sup> ‘Preconditions which were identified and explored by Tocqueville’, Siedentop (2000: 11).

<sup>124</sup> Aron, (1991, vol. 1: 199).

<sup>125</sup> Etzioni (2001: xxxi). Etzioni is not an altogether reliable guide on the EU. He claims that ‘the Commission is composed of national representatives’ (Ibid., xxix) yet before exercising their functions commissioners must take an oath which commands that they are “neither to seek nor to take instruction from any government or body”.

<sup>126</sup> *Ibid.*, p. xxii.

back.’<sup>127</sup> What this “either, or” interpretation overlooks is the very possibility that certain opportunities exist for recasting the equilibrium in a union in permanent tension so that the halfway status – what the CIA world factbook calls a “hybrid intergovernmental and supranational organisation”<sup>128</sup> – can be maintained.

When the question of EU viability is studied through the lens of comparative federalism, therefore, the result is a Manichean picture of a world in which federal political systems can be labelled as those likely to survive and those that are not. Yet the reasons advanced for this categorisation are once again question begging because the criteria for survival are given as the largely superficial resemblance to those already successfully in existence. Perhaps the inadequacy of this approach to the question of the EU’s viability ought not to be surprising. The comparative study of federal systems has revealed little about what makes these regimes survive or thrive, as one telling snapshot should suffice to reveal. Writing in 1991, Daniel Elazar, one of the foremost authorities on the study of federal governments was able to adopt a sanguine view on the incipient breakdown of the Yugoslav state because ‘in all the history of federalism, no federal system that has survived for at least fifteen years has abandoned federalism of its own volition...While federal arrangements may look fragile, once rooted they become "habits of the heart," as well as constitutional devices and very difficult to uproot.’<sup>129</sup>

By focusing on the universal causes of stability, centralisation or disunion over the widest possible sample these studies have climbed the ladder of abstraction at the expense of being able to explain much about how these systems function and why. Conclusions such as that of Thomas Franck are typical in their glib generality:

The principal cause for failure, or partial failure of each of the federations studied cannot, it thus seems, be found in an analysis of economic statistics or in an inventory of social, cultural or institutional

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<sup>127</sup> Hoffmann (1966: 909-10).

<sup>128</sup> The EU is the only non-state to be included in the world factbook. The explanation for why its inclusion is warranted is that ‘in the future, many of [its] nation-like characteristics are likely to be expanded.’ <http://www.cia.gov/cia/publications/factbook/geos/ee.html>

<sup>129</sup> Elazar (1991). The Jerusalem Center for Public Affairs holds an online database of Elazar papers, there the title has been changed from ‘federalism will preserve Yugoslavia’ to one a little less presumptive: ‘Will Federalism Preserve Yugoslavia?’. See <http://www.jcpa.org/dje/articles2/yugoslavia.htm>

diversity. It can only be found in the absence of a sufficient political-ideological commitment to the PRIMARY concept or value of federation itself.<sup>130</sup>

Traditionally, scholars of the EU, as one recent commentator observed, ‘have eschewed comparative analysis’<sup>131</sup> because it was thought that no productive comparisons were possible. As I argued above, however, the use of comparison *per se* is not necessarily an advantage for tackling the question of viability. Further, following Fabbrini, I claim that comparative federalism<sup>132</sup> is less useful than a historical contrast with the US<sup>133</sup>, which is a welcome recent development in EU studies because it emphasises the *political*, which is to say contingent, dimension of the European project.

Most comparative studies choose the language of federalism, emphasising the similarity of institutions and policy programmes and their ability to deal with common problems of government. The use of comparison in EU studies presumes that Europe is now sufficiently consolidated with a stable political equilibrium, which makes it suitable to compare it with how other states have struggled with governance problems of a similar ilk: environmental protection, citizenship, welfare or regional policy. Thus, as a sub-discipline of political science, comparative federalism takes a largely instrumentalist approach to politics, namely, that it is possible to discover the best institutions or policy arrangements to meet a certain objective or to solve a particular cleavage or policy dilemma. If not a blueprint for the best commonwealth, these studies hope to outline a best solution for recurrent problems of territorial or ethnic politics and policy – usually presented in the manner of “lessons of history”.<sup>134</sup>

The value of a comparison with German, Belgian or Austrian federalism for understanding the EU’s viability is somewhat limited, however, because as Fabbrini and Sicurelli explain ‘there is no European equivalent of a political system defined by this multiple separation of

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<sup>130</sup> Franck (1968: 177); cf. Lemco’s argument (1991: 167) that ‘political will [‘a common self-interest and identity’] is basic to the resolution of conflict and national unity’.

<sup>131</sup> Kelemen (2003: 184).

<sup>132</sup> Sbragia (1992); cf. McKay (2001). Rosanvallon (2006: 228-9) disputes the existence of ‘a single “model” of federalism’, insisting instead on the particularism of every federal experience as federalism ‘indicates the existence of a problem to which no one yet possesses the solution’, implying the inherent limitations of comparative federalism.

<sup>133</sup> Fabbrini (2003).

<sup>134</sup> See for instance Riker (1996).

powers, at once vertical and horizontal.’<sup>135</sup> Moreover, in Austria and Germany it has been shown that a common linguistic and cultural community results in a nation-wide demos that discusses politics from a centralised rather than fragmented perspective.<sup>136</sup> As a result, there is reason to doubt that the comparison between the EU and European nation-states organised in a federal way will generate knowledge about what makes the EU viable. Finally, neither the canon of comparative federalism nor that of consociational theory<sup>137</sup> incorporates an analysis of polities as political projects with certain objectives as well as ambiguities and silences when discussing viability. These approaches assume, respectively, an immutable goal of security or *modus vivendi* between communities, thereby leaving aside the whole problem of how the contested understanding of the purposes of political union affects the evolution of the rules of the game.

Fabbrini distances himself subtly from comparative federalism’s blunter instrumental approach. He argues for a stringent comparison with the US that ‘show[s] the opportunities and constraints of a compound republic in the conditions of a continental size democracy’<sup>138</sup> rather than serving as a model for reform or policy effectiveness. For Fabbrini, “the puzzle of the compound republic” resides in analysing through rigorous comparison how similar and divergent opportunities and constraints will shape the process of European integration. For example, in the American case, a constitution provided a means of preserving limited government whilst also enabling ‘the system to achieve effective and accountable answers’<sup>139</sup> to problems of government. Whereas, Fabbrini crucially notes, in the European case it is not at all clear whether a Constitution would have a symbolically powerful signification, engendering more loyalty to constitutional values or else whether it would ‘freeze an ongoing dynamic process’.<sup>140</sup> This uncertainty – revealed by comparison of context rather than institutions – goes to show the value of moving away from the straightforward contrast of federal institutions. The next step is to harness the method of comparison in order to determine the factors that condition the EU’s opportunities for viability and whether this fits in with the scenario of a dynamic equilibrium, voluntary centralisation or some combination of the two.

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<sup>135</sup> Fabbrini and Sicurelli (2004: 232). They exclude Switzerland for reasons of demography and geographic size; cf. n. 15.

<sup>136</sup> Erk (2003; 2004).

<sup>137</sup> Lijphart (1977).

<sup>138</sup> Fabbrini (2001: 62).

<sup>139</sup> *Ibid.*, p. 63.

<sup>140</sup> *Ibid.*, p. 63.

Convinced of the merits of investigating the puzzle Fabbrini posed, therefore, the basis of this study is to focus on the viability of continued integration via a comparative approach rather different from comparative federalism. The gambit of this thesis is to explore the problem through the use of an analogy of how the rules of the game of politics were contested in two different compound polities. Analogy is most often used as a term for describing the common properties of two or more objects.<sup>141</sup> The sense in which it will be used in this study, however, refers not to properties held in common but to a ‘similarity in the relation of the parts to the whole’<sup>142</sup> in two different cases. This meaning goes back to Aristotle, who explained in his *Poetics* that ‘metaphor by analogy means this: when B is to A as D is to C, then instead of B the poet will say D and B instead of D.’ To make this clearer, he added an example of this use of analogy: ‘old age is to life as evening is to day; so [the poet] will call the evening “day’s old-age”’.<sup>143</sup>

Tocqueville’s great study of American democracy was based on this logic of analogy through relation. He did not make a straightforward comparison between France and America, of the sort F is like A. Instead, as explained above, he was interested in discovering how American society had accommodated itself to the principles of democratic equality and popular sovereignty, for he knew that this was the great struggle within French society. The comparison was meaningful, therefore, only in so far that both societies could relate to the same problem. America was no template or crystal ball in which France’s future could be seen. But in case the analogy was misunderstood, and despite his careful use of language, Tocqueville thought it necessary to remind his readers that instruction not example was the purpose of his book. The present study adheres to the same logic.

The analogous relation present in the US and EU cases was hinted at in the first chapter (pp. 6-7) but needs reiterating. In both cases the relationship between the union and the constituent units is unsettled and subject to conflict because the different dimensions constituting the rules of the game of politics are open to debate. Without a fixed understanding underscoring how the game is to be played, there is plenty of scope for dispute and innovation. Also, in

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<sup>141</sup> Of course, a line can always be drawn between two points thus the realm of the comparable is infinite. One recent study has even attempted an analogy between American secessionism and the problem of the *mezzogiorno* in Italy. See Doyle (2002).

<sup>142</sup> Hesse (1964: 330).

<sup>143</sup> Aristotle (1982: 81).



both cases the union stands in a similar position *vis-à-vis* the outside world, namely, a lack of external threats to security. The analogical reasoning that will be used is thus centred on seeking instruction about how the early American republic managed conflict over the rules of the game and comparing this with the EU's experience in this domain.

Conceptually, I will argue that both cases are examples of a “compound republic”, a concept that will be defined and developed in the next chapter. The concept itself will be developed by referring to the works of the Federalist, Tocqueville and Bryce and their interpretation of the American republic. The transcendental claim underlying the choice of this concept, which makes the analogy plausible, is that a compound system is a response to having to manage in the absence of fixed and uncontested rules for the conduct of politics. Precisely this problem of the absence of fixed rules of the game is overlooked in most comparative studies of federalism as they pursue a direct analogy between the EU and other federal states. A direct analogy allows for a comparison of various institutional designs for managing cleavages. However, such a focus neglects the more fundamental issue of how contestation over the rules of the game (of which institutional design is a part) is – or is not – managed; institutional design itself is greatly affected by exactly this contestation.

This juxtaposition of two contexts of a compound republic is not intended to test a causal hypothesis about a comparative explanatory problem, such as, for instance, why the US eventually was able to develop a centralised state despite its compound origins and why the EU has not. The American historian William Sewell made the classic comparativist argument that ‘the comparative method is an adaptation of experimental logic to investigations in which actual experimentation is impossible ... [L]ike the experimental method, [it] is a means of systematically gathering evidence to test the validity of our explanations.’<sup>144</sup> The methodological limitations of this type of hypothesis-testing or problem-solving inquiry, which I further argued did not adequately deal with the praxis element of understanding politics, have already been outlined. Rather than validate causal statements, therefore, the historical comparison is supposed to identify the enabling and constraining conditions (political problems and resources) that did or did not allow the antebellum American republic to manage or overcome the political cleavages for which a compound form of political organisation was designed.

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<sup>144</sup> Sewell (1967: 209).

The argument here is that to appreciate the viability of the EU and the possibility that the contest over the rules of the game might lead to a more centralised polity it will be useful to understand more about how the US republic managed this process. This approach resembles what Sewell has called “historical perspective”,<sup>145</sup> meaning the generation of insights rather than the application of rules to solve historical problems of causation. Developing a comparative perspective is very different from hypothesis-testing, as Stretton has pointed out, because its value is heuristic:

Rather than imitating experimental control, a more promising use of comparative study is to extend the investigator’s experience, to make him aware of more possibilities and social capacities, and thus to help his imagination of question-prompting, cause-seeking and effect-measuring alternatives, rational models, ideal-types, utopias and other useful functions. The function of comparison is less to stimulate experiment than to stimulate imagination...Comparison is strongest as a choosing and provoking, not a proving, device: a system for questioning, not for answering.<sup>146</sup>

The methodology of this perspectival approach can be likened to what Skocpol and Somers have called “contrast-oriented comparative history”.<sup>147</sup> Though whereas Skocpol and Somers suggest that contrast is used to emphasise difference and uniqueness, with a view towards placing ‘historical limits on overly generalised theories’,<sup>148</sup> the use of contrast in this thesis will tend towards Reinhard Bendix’s sense of asking ‘similar questions of divergent materials’.<sup>149</sup>

On the other hand, Skocpol and Somers are right to insist that the contrast approach tends to ‘smuggle implicit theoretical explanations into their case accounts’.<sup>150</sup> This happens precisely as a result of trying to ask similar questions in different contexts since without any framework to link the cases together this would be an impossible task. For the purposes of this thesis, the overarching theory linking the two contexts, Europe and the early US republic, is that both are instances of compound republics and as such are subject to similar structural political crisis because the rules of the game of politics are subject to permanent dispute. The analogy in both cases works, therefore, not because I claim they have similar institutions intended to solve

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<sup>145</sup> *Ibid.*, p. 218.

<sup>146</sup> Quoted in Lijphart (1975: 159-60).

<sup>147</sup> Skocpol and Somers (1994).

<sup>148</sup> *Ibid.*, p. 78.

<sup>149</sup> Quoted in *ibid.*, p. 77.

<sup>150</sup> *Ibid.*, p. 88.

shared problems – it is in this sense that the “materials” are divergent – but because both share a characteristic tension over maintaining a consensus over the rules of the game of politics. The root cause of this tensions was different political identities: what is analogous between Europe and the early US is the fraught relationship between the abstract political bond of pooled sovereignty and the historically emplotted identity and autonomy of the constituent units. The way the US managed this *process*, in the absence of external threats, is thus of primary importance. Linking the cases through analogy is what allows similar questions to be asked of both before proceeding with a comparison of the answers available to explain how each compound polity has or has not managed to contain or transcend conflict over the rules of the game.

## **2.4 Conclusion**

Making an analogy with the early American republic is not, therefore, supposed to yield a template theory of the EU’s likely development. Instead, its function is firstly to provide a guide for determining the political tensions and constraints specific to this type of polity. Furthermore, if it is true that a compound republic is characterised by a disputed understanding of the rules for the conduct of politics, something largely resolved in nation-states, then, secondly, it will be instructive to learn how the American union was shaped by and responded to this challenge. This means identifying the complex manner in which the rules of the game were contested and how and why these were resolved or not. A comparison with Europe will then be made to ascertain the differences in how the rules of the game are contested and renegotiated in both polities and what this implies for their respective viability as compound systems. Through analogical analysis it should be possible to show not only that context matters but also some of the actual mechanisms for why it matters. This should also provide the interpretive tools necessary for making reasoned arguments about the likely compatibility between transformative change in European integration and the viability of this project.

## Chapter Three

### The Concept of the Compound Republic: How to Conduct the Analogical Analysis

*“The generation which grew up with the century, witnessed during a period of fifty years the immense, uninterrupted material development of the young Republic...there seems to be little room for surprise that it should have implanted a kind of superstitious faith in the grandeur of the country, its duration, its immunity from the usual troubles of earthly empires...From this conception of the American future the sense of its having problems to solve was blissfully absent; there were no difficulties in the programme, no looming complication, no rocks ahead.”*

Henry James

#### Introduction

The task of this chapter is to give flesh to the concept of the compound polity, already referred to several times, and how it will be used in the thesis. I will discuss the concept firstly by referring to the works of the Federalist and Tocqueville.<sup>151</sup> Since both these works are based on interpretations of the American republic, however, it will become clear that the meaning of the concept is derived in great part from the actual practice of politics, especially constitutional politics. My reliance on this concept also requires a caveat. In using the concept of a compound polity I am less interested in describing the nature of the EU system for its own sake than for the analogical analysis that the use of the concept permits.

It is important to note from the outset that the predicament of the compound polity is not merely the vexation of a badly settled arrangement for dividing sovereignty. As I argue (above pp. 9-10), the classical model of state sovereignty as a precondition for a viable polity ill-fits the problem of finding a consensus over the rules of the game in a voluntary union of states. These states may share a political project but often differ and bicker over what this

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<sup>151</sup> On this point I differ from Ostrom (1987), whose study relied exclusively on Publius’ theory of federal government.

entails; their expectations about what the union is for and what powers it may legitimately wield can be very divergent. The sovereignty or competency debate is thus only one component of a broader disagreement over both democratic representation – who can best represent citizens, the individual units or the whole? – and the persuasiveness of the reasons put forward for greater integration.

The second part of this chapter will draw briefly on the historical record of political and legal arguments over the rules of the game to illustrate how the American republic in its pre-civil war incarnation was an exemplary case of a compound political system. What was under dispute in these moments was the shared understanding structuring the rules of American politics: competency over competences, expectations about the future, the functioning of institutions and the nature of representation. At stake was the future of the union, which depended on the ability to renegotiate a compromise or find a way of overcoming the states' protests. Ultimately, no such agreement was found and the union was held together by force of arms; following the war, a new understanding over what the game of politics presupposes had to be found in order to buttress the victorious Union.

In the penultimate section, I refer to the European example to point out how this too follows the logic of a compound system whose viability depends on maintaining a shared understanding over the rules for political life. This preliminary sketch of both polities is intended to illustrate how the analogical method of comparison can generate new tools for understanding the EU and in particular its viability as a compound system. In the final section, I trace five key differences between both compound polities why these suggest that the EU faces a scenario of viability unlike that of the early American republic.

### 3. 1 The Theory of the Compound Republic

In the history of political thought, the term “compound republic” was first used by James Madison to describe the novel political structure that was intended to replace the grossly deficient Articles of Confederation, which had hitherto bound the thirteen former British colonies in America. According to Madison, the new constitution established a compound republic because it alloyed “national” (i.e. central) government with “federal” (i.e. state)

government.<sup>152</sup> The Union was also a compound of two different forms of political representation as both the states and the union had a claim to represent citizens; in addition, the bicameral legislature of the federal government combined both representation of the states and of the aggregate people. Thus the double vertical and horizontal system of separation of powers was precisely a product of establishing political institutions on the basis of a dual system of representation, a point not stressed in Fabbrini's work.<sup>153</sup> The new admixture, however, was not fancied to be naturally harmonious, as Madison clearly saw that the states would often have a key political advantage that could frustrate the wishes of the national government:

The State government will have the advantage of the Federal government, whether we compare them in respect to the immediate dependence of the one on the other; to the weight of personal influence which each side will possess; to the powers respectively vested in them; to the predilection and probable support of the people; to the disposition and faculty of resisting and frustrating the measures of each other. The State governments may be regarded as constituent and essential parts of the federal government; whilst the latter is nowise essential to the operation or organization of the former.<sup>154</sup>

His fellow Federalist author, Alexander Hamilton, expressed even graver misgivings during the debates on the constitution at the Philadelphia convention. At the conclusion of the convention, he conjectured that in the absence of a strong and visionary administration, which could 'triumph over the state governments and reduce them to an entire subordination...in the course of a few years it is probable that the contests about the boundaries of power between the particular governments and the general government and the momentum of the larger states in such contests will produce a dissolution of the Union.'<sup>155</sup> These fears were a testimony to the fact that the compound mixture was not the product of the search for a perfect system but born of a skilful compromise designed to reconcile the more extreme proponents of national government with the intransigent advocates of states' rights: *mater artium necessitas*.

Even before the Constitutional Convention had met, in a letter to his friend Edmund Randolph dated 8 April 1787, Madison had explained the inevitability of such a compromise:

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<sup>152</sup> James Madison explained in Federalist 39 that 'the proposed constitution therefore is in strictness neither a national nor a federal constitution; but a composition of both.' Hamilton *et al.* (1926: 196).

<sup>153</sup> The original US model thus exhibited features of a "mixed polity", something that is also true of the EU. For a discussion of the EU as a mixed system of government rather than a classical separation of powers, see Majone (2005: 46-51).

<sup>154</sup> Hamilton *et al.* (1926: 225).

<sup>155</sup> Hamilton (1993: 11).

I hold it for a fundamental point that an individual independence of the States is utterly irreconcilable with the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into one simple republic is not less unattainable than it would be inexpedient. Let it be tried then, whether any middle ground can be taken, which will at once support a due supremacy of the national authority, and leave in force the local authorities so far as they can be subordinately useful.<sup>156</sup>

Yet Tocqueville realised that in such a middle ground system there was a radical difficulty as to what could be easily misconstrued as a constitutionally simple matter of settling the boundaries between the union and the states. The divergent pull of competing identities, the protracted arguments over the locus of sovereignty and the expectations about the taboo areas beyond the pale of union authority explained why the early republic was convulsed by vivacious and permanent political dispute. This perspicacity came from Tocqueville's observance of the actual workings of the system of government for which Hamilton, Jay and Madison had provided a blueprint.

Tocqueville insisted that it was necessary to think of the American union as founded on an *abstract idea*.<sup>157</sup> In a sentence from the original manuscript for *Democracy in America* that was omitted from publication, he declared that '*l'Union est un être presque parfait qui ne tombe pas aisément sous les sens*'.<sup>158</sup> He sensed that even if the US constitution had effectively side-stepped the thorny issue of settling the boundaries of a divided sovereignty and spelling out the highest authority by introducing constitutional ambiguity – what Bruce Ackerman calls the 'grand abstractions and cryptic formulae',<sup>159</sup> – over which branch of government could do what, there remained a serious tension within the unified body politic.

The tension he identified was the result of the difficulty citizens of the union faced in understanding and accepting a more distant, formal and abstract political bond – the idea of rights, justice and freedom enshrined in the constitution – that lay beyond the traditional sources of civic life, and hence also identification, located at the state or township level. According to Tocqueville, the latter two were more instinctive or even natural forms of political association as they were based on the historical experience of community. In the manuscript version of the first *Democracy*, Tocqueville went so far as to place an explanatory

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<sup>156</sup> Madison (1840, vol. 2: 631-2).

<sup>157</sup> For a detailed exposition of this point see Maletz (1998).

<sup>158</sup> Tocqueville (1990, vol. 1: 279).

<sup>159</sup> Ackerman (2005b).

footnote stating that ‘*l’Union a une souveraineté artificielle, les Etats une souveraineté naturelle, cause de différence dans la force réelle*’.<sup>160</sup> Artificial sovereignty was a rational abstraction that formed a juridical reality for the citizens and the states but was devoid of the constitutive political identity that is part of a community’s self-understanding. The new project of coming and holding together invented at Philadelphia could not yet generate much passion, either positive or negative, for ‘one fears or loves only that which exists for a long time’.<sup>161</sup>

It is now a commonplace in history and political science to refer to the nation as a fiction, that is, as an “imagined community” whose cherished myths, eternal symbols and sense of self all disappear into the ether when subjected to rigorous, non-hagiographical analysis. But for Tocqueville the idea of a fiction was the defining characteristic of the Union and its government precisely because it had no trans-generational historical narrative behind it:

The government of the Union rests almost entirely on legal fictions; the Union is an ideal nation, which exists, so to say, only in the minds of men and whose limits and extent can only be discerned by the understanding.<sup>162</sup>

In its infancy, the American Union was largely a constitutional agreement on individual rights – a guarantee against infringement by the states – and the limits of central government that offered a much more distant sense of belonging than membership of a township or a state. These freedoms were revered as the established rights of Englishmen, which the British Crown had tried to abrogate. The compound republic of 1789 was thus designed to offer the preservation of personal liberty that had been impossible when under the tutelage of the transatlantic Empire. The articles of faith of this regime were political ideals, liberty and self-government, expressing a ‘narrowly and peculiarly constitutional’ identity, which one historian has likened to ‘a roof without walls’.<sup>163</sup> The deliberately ambiguous constitutional allocation of powers, however, gave rise to a protracted political struggle over the balance between state and national government.

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<sup>160</sup> Tocqueville (1990, vol. 1: 91).

<sup>161</sup> Tocqueville (1994: 124).

<sup>162</sup> *Ibid.* pp. 166-7.

<sup>163</sup> Muririn (1987: 346-7).



Tocqueville took this to be symptomatic of ‘the great struggle which is going on in America between the states and the central power, between the spirit of democratic independence and that of a proper distribution and subordination of power.’<sup>164</sup> The antagonism between the two fundamental principles for allocating powers – the states’ retention of all non-enumerated powers (the tenth amendment)<sup>165</sup> and the federal government’s supremacy (article six)<sup>166</sup> and right to make all laws necessary for the preservation of the union<sup>167</sup> – was at the heart of the Union’s politics until the North’s victory in the civil war. As David McKay has put it, ‘this tension between nationalism and state sovereignty dominated political discourse.’<sup>168</sup>

But it would be misleading to interpret the political cleavage in a compound republic as simply that of competing sovereignties – the *imperium in imperio* the anti-federalists had railed against – because this model of competition suggests the possibility of a simple legal or constitutional settlement to the question of who is sovereign. If powers were properly enumerated and comprehensively defined for a range of policy fields this would in theory be possible. Indeed, some general principle can theoretically be used to allocate the existing powers of government, as well as those likely to be necessary in the future, between two distinct branches. Yet the comprehensive failure of “subsidiarity”, introduced in the Maastricht Treaty (1992), to serve as such a demarcating principle suggests that in practice matters are less simple. According to the treaty’s subsidiarity clause, efficiency is defined as the deciding principle for the level at which power will be exercised.<sup>169</sup> The introduction of this principle has done nothing to temper the clashes over what policy-making authority the EU has. In a compound polity, therefore, tensions over competences cannot be defused at a stroke; these tensions are constitutive of the compound system itself. As a mechanical or neutral test for determining competency, subsidiarity thus confirms Bagehot’s point that ‘no important practical question in real life can be uniformly settled by a fixed and formal rule’.<sup>170</sup>

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<sup>164</sup> Tocqueville (1994: 410).

<sup>165</sup> ‘The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.’

<sup>166</sup> ‘This Constitution, and the Laws of the United States which shall be made in Pursuance thereof...shall be the supreme Law of the Land...any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.’

<sup>167</sup> The federal government has the right to ‘make all laws necessary and proper for carrying into execution’. Publius called this the need for a “vigorous” national government.

<sup>168</sup> McKay (2001: 27).

<sup>169</sup> Article 3b: ‘In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.’ A full discussion of subsidiarity occurs at 4.3.1.

<sup>170</sup> Bagehot (1963: 280).

Sovereignty is a problem of who has the right to decide, so that if it is not one agent then it must be another; either way, it is assumed that eventually a political superior needs to be found. But this presents politics as a static object where disputes can be resolved by discovering the true locus of sovereignty or, perhaps more accurately, it presupposes that disputes can be settled only if there is always a sovereign to defer to. If this were the case, then nothing short of a Hobbesian regime could make politics workable, or as the Bible says “no man can serve two masters”. Jean-Jacques Rousseau was tormented (this was the case for his body and mind generally, “*je suis né mourant*” he lamented in his confessions) by trying to find an alternative to Hobbes’ proposition that the state must be personified by a physical and fallible sovereign. For the Genevan philosopher, liberty consisted of making the law sovereign – law being general and impersonal and thus devoid of the flaws of human will – and so he wanted to discover what institutions and practices are necessary for rendering this possible. His conclusion about the chances of establishing ‘*une forme de Gouvernement qui mette la Loi au-dessus de l’homme*’ was despondent:

Si malheureusement cette forme n'est pas trouvable, et j'avoue ingénument que je crois qu'elle ne l'est pas, mon avis est qu'il faut passer à l'autre extrémité, et mettre tout d'un coup l'homme autant au-dessus de la Loi qu'il peut l'être; par conséquent, établir le despotisme arbitraire, et le plus arbitraire qu'il est possible : je voudrais que le despote pût être Dieu. En un mot, je ne vois point de milieu supportable entre la plus austère démocratie et le hobbisme le plus parfait : car le conflit des hommes et des lois qui met dans l'État une guerre intestine continuelle, est le pire de tous les états politiques.<sup>171</sup>

In extraordinary moments, when political societies are on the verge of collapse, these fears may warrant such pessimism but in the ordinary course of political life liberal democracies manage to avoid either extreme of pure hobbsonianism or austere democracy. This suggests that the practice of politics is not as dependent on an ultimate and indivisible sovereignty as some of the classics of political thought posit. Likewise, Hobbes’s and Rousseau’s assumption that parties can only destroy political stability seems alien to contemporary experience. What this classical model of sovereignty cannot take account of is the way in which an abstract and remote centre, representing an incomplete centralised government based on voluntary union, can have a dynamic relationship with its constituent units based on contesting and re-evaluating the rules of the game. In a compound system what is at stake in these conflicts between the union and its member states is nothing less than the rules for the

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<sup>171</sup> Rousseau (1915: 161).

continuation of politics. These disputes often result in blockages to the political process whereby the ability to continue with ordinary politics, and hence the viability of the regime, is dependent on resolving, redefining or re-evaluating one of the four basic components of the rules of the game: institutions, expectations, competence allocation and representative functions.

The concept of a compound political system used in this thesis is thus rather different from how it is sometimes used in political science. Although it rarely leaves the political scientist's conceptual toolbox, when it is invoked, the notion of a compound polity is taken to refer to a specific set of *institutional* features that mark it out from other forms of state. A classic example of this purely institutional usage would be Leslie's description of compound polities: 'they are entities that are relatively highly institutionalised; significant decisions of authoritative character are made at different levels, by central and non-central governments; and boundaries – internal and external – are clearly demarcated.'<sup>172</sup> Another institutional definition is that of Ostrom, who describes a compound polity as 'characterised by equilibrating structures that enable people to search out resolution in commonly defined realms of choice bounded by the limits of multiple veto points.'<sup>173</sup>

This conceptualisation as a particular institutional form of regime overlooks two essential facets. Firstly, that these institutional characteristics are a derivative of the pre-existing tension between political identities and, secondly, that the polity is a *project* intended to find a middle path between disunion and coercive centralisation. Thus the compound polity, whatever its exact institutional design, is characterised by both a set of political objectives and a certain disharmony since the rules of the game of politics, including the very goals of the union, are subject to repeated negotiation and contestation.

Voluntary acceptance of rule by the disembodied centre, in a compound system, is thus a dynamic process not evident if the focus of analysis falls solely upon institutions and the evolving boundaries between the units and the centre. What matters as far as understanding viability is concerned is to discover how the rules of the game are contested and how they are settled or not. Hence a tabularisation of the transfer of competences in the course of European integration only indicates a change in one aspect of integration but not whether this reflects an

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<sup>172</sup> Leslie (2000: 217).

<sup>173</sup> Ostrom (1987: 23).

evolution in the nature of the project or whether it generated new expectations.<sup>174</sup> A linear narrative of transferred competences, therefore, is not by itself sufficient for understanding the potential there is for a further conferral of power – and says even less about the possibility of transformative change.

The absence of either a classical hierarchy of coercion enjoyed by a unitary state or sedimented rules of the game as exist in “nationalised” federal states, is undoubtedly a fundamental peculiarity of a compound system. This missing feature of statehood also explains why experts and citizens alike sometimes find it so puzzling or even discomfiting. But it is what lies behind the novelty of this arrangement that constitutes a more fascinating problem if one is concerned about the viability of polities. Fabbrini and Sicurelli themselves hint at the significance of the non-institutional, purposive element of a compound system when they point out that such a regime is:

*a pluralistic institutional order: a pluralism which is the expression of the political and cultural complexity of the polity, of its vast geographical and demographic size, and of the multiplicity of social, functional and territorial interests that it must accommodate ... A pluralistic order is intrinsically anti-majoritarian, in the sense that it is intended to integrate more than to aggregate.*<sup>175</sup>

This remark needs to be glossed. Integration in this context refers to devising common rules and achieving cooperation between different political units. The integrative potential inherent in a compound system indicates the projective nature of such a regime, whose success depends on the continuing agreement of the units to participate in the project. This agreement does not depend on majoritarian principles – its purpose is not to aggregate supporters for the project wherever they may be – since these violate the autonomy of the units. Fabbrini and Sicurelli are thus right to insist upon the importance of the anti-majoritarian design of a compound republic – something that Deudney’s description of the antebellum US as a “negarchy”, trying to avoid hierarchy and anarchy, does not dwell upon.<sup>176</sup>

Yet focusing simply on the rules governing relations between institutions reveals little about how the political project that is a compound polity functions both as a process and as an

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<sup>174</sup> For one such table see Donahue and Pollack (2001: 107).

<sup>175</sup> Fabbrini and Sicurelli (2004: 234). Emphasis in original.

<sup>176</sup> ‘Negarchy is the arrangement of institutions to prevent simultaneously the emergence of hierarchy and anarchy.’ Deudney (1995: 208).

objective. The travails of this process of attempted integration and the constant scrutiny of the direction in which it is heading are neither captured nor explained by reference to the institutional or constitutional rules for government. For instance, examining how institutional disputes over allocated powers or jurisdiction are adjudicated (i.e. who determines *Kompetenz Kompetenz*) offers a far from comprehensive statement about where the union stands in a spectrum of voluntary centralisation, dynamic equilibrium or disunion. Kratochwil explains why this is the case, for even in more hierarchical systems:

Many disputes fail to be resolved by adjudication, despite the law's central role in structuring adversary arguments. For example, the United States Supreme Court recognizes such evasive legal principles as "case and controversy," "no standing right to sue," or the flat refusal to grant *certiorati*, as well as elaborate doctrines like the "political questions" doctrine, whose expressed purpose is to avoid adjudication when serious conflicts within the coordinated branches of government are likely to arise. In such "horizontal disputes" accommodation rather than adjudication is usually sought.<sup>177</sup>

Likewise, as an indicator of viability, the preoccupation with locating sovereignty by looking at the adjudication of institutional conflict is flawed since a settlement of competence does not necessarily imply consensus over the rules of the game. After all, in these situations, which arise frequently in compound political systems, the emphasis may be on 'conflict settlement, not the vindication of rights.'<sup>178</sup> One scholar, who recently devoted an entire study to the antebellum contestation of federal sovereignty in the US and similar struggles against the ECJ in Europe failed to appreciate the significance of this point. Based on this comparative analysis, Leslie Goldstein claims there is an "evident paradox":

that the nominally sovereign government of the United States of America experienced several decades of overt and even violent official defiance of its authority by the member states of the American union, while the nominally sovereign member states of the European Union virtually from the start obeyed as a legitimate higher authority the dictates of their federal union.<sup>179</sup>

Unfortunately, Goldstein fails to investigate whether compliance with the EU legal regime is achieved by virtue of how specific issues of sovereignty (such as the budget, enlargement, treaty reform) are deliberately withheld from resolution through judicial arbitration and dealt

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<sup>177</sup> Kratochwil (1978: 47). For a comprehensive and insightful discussion of the Supreme Court's instruments for evading judgments see Barsotti (1999).

<sup>178</sup> Gideon Gottlieb, quoted in Kratochwil (1978: 47).

<sup>179</sup> Goldstein (2001: 15).

with by other means. Indeed sometimes, as in the case of the Stability and Growth Pact, the legal procedures for compliance are more or less ignored.<sup>180</sup> Her tepid conclusion about viability in polities of contested sovereignty is that there ‘appears to be a direct correlation between the degree to which a society has internalized the rule of law, or the degree to which it has experienced the routinization of obedience to lawfully constituted authority, and the acceptance by state-level authorities of the rule over them by duly constituted federal-level authorities.’<sup>181</sup>

Thus a purely constitutional approach is blind to other dimensions of political life that have a crucial bearing on contestation and (re-)construction of the rules of the game in a compound polity. Here there is an obvious parallel with the American political process, whose functioning cannot be resumed to the provisions of the Constitution and subsequent legislation. As Nichols observes, ‘American democracy ... was never completely planned nor projected, and even in the laws and constitutions which have been its charters, it was never fully described. Certain of its chief elements were neither designed nor authorised, while some of its most effective instruments of operation have been unspecified improvisations.’<sup>182</sup> Nichols is referring here, amongst other things, to the populist innovations of Jacksonian democracy and the rise of nationally-organised parties. These extra-constitutional innovations condition the way in which political arguments arise and how they can be settled and it is myopic to neglect them. This kind of oversight can, I argue, be avoided by paying attention to the context in which compound politics takes place.

A compound system – on this point I will draw on recent IR scholarship on the early American republic that focuses on the political objectives behind this novel project of political union – bears the stigma of the recent and deliberate invention of those rules but this makes them somewhat easier to discern. As will be shown in the next section by drawing on the American historical record, when competency is challenged or redefined by political and legal actors, when circumstances change or when institutions evolve, expectations are altered and the basis of pre-existing compromises are called into question. This leads to a political struggle in which the units and the union compete over what they stand for, who best represents the interests of the citizens and the expectations each side holds about what it

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<sup>180</sup> This occurred after the publication of Goldstein’s study.

<sup>181</sup> Goldstein (2001: 158).

<sup>182</sup> Nichols (1972: xi).

means to be bound together by common rules. Reconciliation, on which viability – allowing for either the reworking and re-legitimation of the existing compromises or else further centralisation – depends, is possible to the extent that these visions do not prove mutually incompatible.

Admittedly, the compound interpretation rests largely on a “compact theory” reading of the early American political system, which is by no means the only and uncontested interpretation that exists. Others argue that ‘the historical evidence indicates that a national government was in operation before the formation of the states’<sup>183</sup> as it was the Second Continental Congress that summoned the states to draft new post-colonial constitutions. From this “national perspective” the subsequent political history of the US is read in terms of overcoming obstacles to inexorable national consolidation rather than taking seriously the fact that these hurdles reflected radical disagreement over the nature of the American polity. Similar to the absence of consensus over the original intent of the founders, there is also no universally accepted explanation either about what kept the American union together for seventy years or why it ultimately failed; as one recent study stated, ‘no consensus exists about the sources of antebellum American political stability and its breakdown.’<sup>184</sup>

By highlighting these historiographical points, I seek to avoid the curse of misrepresenting historical interpretation by fabricating a comprehensive consensus when no such thing exists. This is the risk, which, as Lustick has pointed out, lurks whenever political science encounters historical study because scholars of politics rely primarily on secondary sources as they cannot pretend to do the historian’s job and delve into the primary material.<sup>185</sup> Furthermore, on top of the difficulty of “getting the history right”, which has been likened to ‘nailing jelly to a wall’,<sup>186</sup> I am also conscious of the pitfalls of misusing sources by citing evidence that ‘could be interpreted at least as convincingly in a different way’<sup>187</sup> in order to sustain a tendentious argument.

Nevertheless, I do take the compact interpretation to be the most persuasive because, as I will try to demonstrate, in practice the struggle over the rules of the game of American politics

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<sup>183</sup> Morris (1974: 1068).

<sup>184</sup> Weingast (1998: 148).

<sup>185</sup> Lustick (1996).

<sup>186</sup> Novick (1988).

<sup>187</sup> This was precisely the charge levelled at Andrew Moravcsik’s *The Choice for Europe*. See Lieshout et al., (2004: 95).

was open-ended and not consistent with the assumption that American citizens and politicians shared a common understanding of what the Union was for or what competences it should have.<sup>188</sup> Moreover the principal weapon in the argumentative arsenal used in the various struggles between the union and the states in this period was precisely that the Union was a compact between sovereign states, which gave its members the right to interpret the constitutionality of its legislation and even contemplate secession. Thus instead of being driven by a steady logic of national consolidation, the US, as a compound polity, had to find a way of maintaining a consensus over the procedures governing who had the authority to decide, what they could decide and what procedures were to be followed. Above all this was true of the slavery issue, which, despite the lack of a uniform causal explanation of the civil war, is always the basis of every credible historical explanation.

### 3. 2 Viability and the Conflict Over the Rules of the Game of Politics in the Antebellum Era

The historiography of nineteenth-century America is overshadowed by the seemingly endless sport of reinterpreting the founding intentions of the republic. Consensus, pluralist and progressive interpretations represent the three most prominent attempts to capture the way in which institutional design and political ideology reflected the struggle to preserve individual liberty and republican government.<sup>189</sup> Most germane to the present study, however, is one recent addition to this historiography, namely the explosion of interest in the early American union amongst IR scholars. Whereas the realist canon treated the birth of this new nation as just an additional unit in the competitive world of states, scholars such as Daniel Deudney, Nicholas and Peter Onuf, as well as David Hendrickson, have brought to light the security dilemma that the federal union was tasked to solve, notably that ‘once independent, the American states found their precarious position in the European system a source of constitutional crisis.’<sup>190</sup>

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<sup>188</sup> This explains why my secondary sources are predominantly volumes of political history with unfolding political narratives of sectional interests, parties, elections, leaders and ideologies. I have largely eschewed works of cultural history emphasising the symbolic or ritualistic function of political life, as I find too facile the claim that politics inevitably serves a cultural agenda.

<sup>189</sup> For a subtle and synoptic overview of the protean understanding of the constitution over the last two centuries see Hendrickson (2003: 281-97). Intellectual historians share this inability to furnish a settled analysis of the intellectual heritage that inspired the politics of revolutionary America. For some the hero of the story is Locke, while according to J.G.A Pocock (1975: 462) this event ought to be thought of as ‘the last great act of the renaissance’ due to the influence of the ideology of civic humanism.

<sup>190</sup> Onuf and Onuf (1993: 5).



Using this “security analysis” perspective, these authors argue that the United States was a novel security community whose very independence owed much to the European balance of power – France’s contribution had proved vital. Yet the desire to profit from this international order through international trade meant that ‘to exploit the balance of power the United States would have to become a real power.’<sup>191</sup> At the same time, these ambitions were jeopardised by disharmony amongst the former colonies. Under the articles of confederation it was obvious that ‘the balance of power among the American states was neither stable nor self-perfecting.’<sup>192</sup> Thus the American founders’ “more perfect union” sought to boost the new country’s credibility amongst the European states, establish peace and cooperation amidst potentially fractious and secessionary units as well as guarantee self-government both individually and collectively. Domestically, the twin obsessions of this republican security project were, as Daniel Deudney explains, ‘avoiding the extremes of anarchy and hierarchy’.<sup>193</sup>

Besides highlighting the way republican theory came to be applied to rethink America’s role in the international system, this approach has also had the merit of revealing the importance that fears of sectionalism and cleavages played in shaping the debates over replacing the Articles of Confederation. Indeed, these apprehensions lasted well beyond the Convention and ratification debates precisely because ‘the states’ republican constitutions did not guarantee their harmonious union.’<sup>194</sup> The lineage of this scholarship, characterised as it is by careful attention to political culture and ideology, can be traced back to Bernard Bailyn’s work on redefining the American revolution as an “ideological transformation” and the insights generated are worthy of this intellectual heritage. In this sense Peter Onuf’s comment that Bailyn and his school ‘made the Revolution seem revolutionary again’<sup>195</sup> is equally applicable *mutatis mutandis* to the current literature on the early American union.

The convenient notion that America, free of security considerations, was providentially blessed and a straightforward state in waiting is contradicted by the vivid concerns for preserving peace within the (expanding) union displayed by many of the republic’s foremost leaders and thinkers. Tocqueville is probably the authority most responsible for the longevity

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<sup>191</sup> *Ibid.*, p. 94.

<sup>192</sup> *Ibid.*, p. 102.

<sup>193</sup> Deudney (2004: 342).

<sup>194</sup> Onuf and Onuf (1993: 130).

<sup>195</sup> Onuf (1989: 346-7).

of this received wisdom. ‘The Americans have no neighbours and consequently no great wars, financial crisis, ravages, or conquest to fear’ he announced to his French readers, a fact that he called the principal ‘providential cause contributing to the maintenance of a democratic republic in the United States’<sup>196</sup>. Yet the aforementioned IR scholars have done their best to slaughter this holy cow of historiography, so that this sense of divinely favoured exceptionalism now appears as misplaced as Henry James’ description of the blithe expectation that the American future was free of “looming complication”. The providential spirit played a fundamental part in the young republic’s political ideology and official self-representation from the outset. Charles Thomson’s 1782 design for the reverse side of the Great Seal of the United States (also found on the modern dollar bill) has the eye of providence surmounting an unfinished pyramid and bears the inscription *Annuit Coeptis* [*providence favours our endeavours*]. But, as a closer attention to the uncertainties and insecurities that loomed over the founding period suggests, this official symbol was less a triumphant reminder of the obviousness of God’s favours than a device for re-assurance in the face of self-doubt.<sup>197</sup>

My interest in these recent IR debates, however, is focused primarily on what it reveals about the American union *as a project with certain explicit political objectives* rather than as ‘a structural alternative to the European state system’.<sup>198</sup> This is a fundamental insight into the theory and practice of early American politics and one that serves to counterbalance the tendency not to engage with the complexity of the compound project devised at Philadelphia. Hans Morgenthau, for instance, was unconcerned with the trepidations and theoretical speculations present at the constitutional convention. ‘What the Convention of Philadelphia did’, he writes, ‘was to replace one constitution, one sovereignty, one state with another one, both resting upon the same pre-existing community...the United States was founded upon a moral and political community the Constitution did not create but found already in existence.’<sup>199</sup> In Morgenthau’s reading then, the Union of thirteen states represents primarily a transfer of sovereignty to increase unit power in a competitive international state system rather than a scheme for re-organising security in a manner compatible with limited

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<sup>196</sup> Tocqueville (1994: 265).

<sup>197</sup> This interpretation is confirmed by the presence, in the US Capitol’s Prayer Room, of a stained-glass reproduction of this very image, atop Washington kneeling in prayer, erected in 1955, just after the feverish McCarthy period of the Cold War. Clearly, the purpose of such a motto is to inspire and mobilise the resources of the Union in times of adversity.

<sup>198</sup> Deudney (1995: 193).

<sup>199</sup> Morgenthau (1985: 391).

government. Even anecdotally there is plenty with which to dispute this claim, starting with the point that ‘as late as 1892, the United States had no ambassadors, abroad and only a handful of ministers, most in the important capitals of Europe.’<sup>200</sup>

Perhaps it should come as no surprise that a realist scholar cannot understand the American Union as a project of ends. Power, the fixation of realist analysis, is after all a fixed preference quite unlike the contingency of a compound polity, whose ends and means of achieving them are subject to contestation and re-evaluation. That the early American republic was such a union becomes obvious when the detail of and debate over territorial expansion is pored over. Before the Philadelphian struggle between determined Federalists and adamant opponents of a consolidated national government even took place the problem of what to do with the land northwest of the Ohio river raised questions about the relations between the former colonies. After Virginia had renounced its claim to “waste and unappropriated” lands in this area, Congress was mandated to develop a plan for (white) settlement and political union. Plans for the frontier immediately provoked a vigorous discussion of what good this would bring and how it should be achieved. The issues at stake ranged from the economic benefits of settlement, the worry that this would depopulate the Atlantic states, the recognition of the potential for containing the European powers’ presence in North America and, of course, the status of slavery in the new territory. Crucially, advocates of expansion maintained that ‘it would produce a harmony of interlocking interests without which union itself was inconceivable’.<sup>201</sup> Ultimately, this last vision proved most persuasive to American legislators. Congress enacted the Northwest Ordinance in 1787, thereby setting the conditions for as well as creating the expectation of future statehood. This represented, in Peter Onuf’s words, ‘a vote of confidence – an act of faith – in the face of pervasive doubts and misgivings about the future of the union.’<sup>202</sup>

One of the most distinguished American historians, Arthur Schlesinger, has identified a recurrent and unresolved tension in American thought as the republic of the new world is interpreted as either the product of destiny or the triumph of a unique, ongoing experiment.<sup>203</sup> In the nineteenth century this was more than a sterile intellectual argument. Eventually this tension was played out as historical drama on the battlefields of the civil war as the

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<sup>200</sup> Robin (1992: 18).

<sup>201</sup> Onuf (1987: 3).

<sup>202</sup> *Ibid.*, p. 19

<sup>203</sup> ‘Their competition will doubtless continue for the rest of the life of the nation.’ Schlesinger (1977: 506).

experiment of union proved incapable of fulfilling a peaceful destiny due to the slavery issue. In Herman Melville's wonderful words, this benighted moment was when 'The tempest bursting from the waste of Time/ On the world's fairest hope linked with man's foulest crime.'<sup>204</sup> Over the next few pages I will try to set out how this tension between destiny and experiment translated itself into a struggle over the rules of the game in the American compound system. There were four elements to this conflict: institutional rules, competences, expectations and political representation. I return in more detail to these struggles in chapter five, which contains the bulk of the analogical analysis.

American political culture prior to the civil war was dominated by debates over the meaning and application of the constitution in a period when the US grew tremendously in territory, population and wealth. After the revolution the Declaration of Independence was immediately revered as a foundational document but the constitution had a more contentious role in public since it elicited different interpretations and sustained vigorous party conflict. Indeed, only with the impending centennial of the constitution was the original copy of the text exhumed from its resting place in a tattered tin box and properly mounted for exhibition in the library of the State Department, whereas the Declaration held pride of place on the wall of the main reading room.<sup>205</sup>

The first decade of the new republic proved a tumultuous time that in many respects set the pattern for the next sixty years of political strife. What became known as the Republican and Federalist factions first clashed during Washington's presidency over the proper extent of federal power when Hamilton proposed the establishment of a national bank. Here it was institutional innovation and the proper remit of federal government that proved controversial whereas after the Supreme Court's 1793 decision in *Chisolm v Georgia*, which confirmed the right of US citizens to bring suits against states of which they were not citizens, the argument shifted to competency. In fact, this decision provoked a swift backlash that led to the passing of the eleventh amendment<sup>206</sup> – one of only two enacted between the bill of rights and the civil war.

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<sup>204</sup> Melville (1991).

<sup>205</sup> One user remarked of this curious fact that 'it was evident that the former document was an object of interest to very few visitors of Washington.' J. Franklin Jameson, quoted in Kammen (1986: 127).

<sup>206</sup> It reads: 'The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another State, or by Citizens or Subjects of any Foreign State.' This means the states are liable to a suit by the United States or from other states

Partisanship within the administration between those seeking to extend the national government and those who wanted it circumscribed continued as the situation in mid-1790s Europe deteriorated, bringing with it the threat of war with France. The so-called Alien and Sedition Acts (1798) forbade defamation of the President and were viewed as a crude and anti-constitutional instrument for silencing those with Republican sympathies. In response to these measures, Madison and Jefferson drafted the Virginia and Kentucky resolutions respectively, both of which set out a compact reading of the constitution that allowed the states to claim that ‘the government created by this compact was not made the exclusive or final judge of the extent of the powers delegated to itself’.<sup>207</sup> According to this interpretation, the states were apt to judge the constitutionality of federal laws for themselves and refuse to execute them if they failed to pass this scrutiny. Ultimately, state sovereignty was invoked by Madison and Jefferson as the best means of protecting individual liberty.<sup>208</sup> What had begun as a dispute over the threat to individual freedom posed by federal law had thus evolved into another conflict about where competency over competences lay as well as which branch of government could best represent citizens’ interests and hence rights.

National politicians were not consistent in their opinions as to the limits of federal authority. It has often been remarked how both Federalists and Republicans held different positions according to whether or not they were in power. In a remarkable role reversal, Jefferson was prepared to exploit the grey area of the constitution to seal the Louisiana Purchase whilst his Federalist opponents – usually the standard bearers of a national vision of the republic – cried foul. But even the intoxicating power of office cannot be used as an explanation for privileging the scope of the national government because Jackson vetoed the re-chartering of the national bank and refused to uphold a decision of the Supreme Court during his presidency.<sup>209</sup> Likewise, the state actors ought not to be considered straightforward antagonists to the federal union nor even consistent in their stance towards the union. For instance, the Kentucky and Virginia resolutions stimulated declarations of loyalty from several New England states who later, during the war with Britain (1812-14),<sup>210</sup> met at the

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but not citizens of other states, the precedent being the English system where no writ could be brought against the sovereign.

<sup>207</sup> Kentucky Resolution, 16 November 1798, in Rabun (1956: 51).

<sup>208</sup> Tipton (1969: 24).

<sup>209</sup> Remini (1998: vol. 2, 331-73; vol. 3, 293-314).

<sup>210</sup> Andrew Jackson’s victory in the battle of New Orleans, January 1815, came *after* peace terms (the Treaty of Ghent) had been agreed, which makes this war particularly tricky to date.

Hartford Convention that called for the nullification of a conscription bill then under review in Congress.

In other words, the union also saw its institutional rules called into question – nullification was not a power attributed by the constitution. Indeed, the actual right of the Supreme Court to consider itself the final arbiter over the boundaries between state and federal government as well as the right to strike down state law remained contested throughout this period.<sup>211</sup> Sometimes the Court was viewed solely as a mechanism for reviewing the constitutionality of Federal law. Thus in 1809 the Pennsylvania Legislature called for an amendment to the constitution because ‘no provision is made in the Constitution for determining disputes between the general and the state governments by an impartial tribunal’.<sup>212</sup>

The justices of the Supreme Court were mostly steadfast in their preferences: under the initial impetus of the first chief-justice, John Marshall, they interpreted the constitution in a way that expanded the competences of the union. Marshall’s opinion in the *McCulloch v Maryland* decision (1819), which used a Hamiltonian reading of the constitution to describe the “implied powers” conferred on the Federal government, is the classic demonstration of this tendency. In a case that indirectly called into question the constitutionality of the Bank of the United States, an instrument which the constitution had not mentioned, Marshall wrote: ‘Let the ends be legitimate, let it be within the scope of the Constitution, and all means which are appropriate, which are plainly adapted to that end, which are not prohibited, but consistent with the letter and spirit of the Constitution, are constitutional’.<sup>213</sup>

From this crude sketch of political conflict in the nascent republic it should be clear already that the struggle to define the rules of the game was more than a search for a revised and definitive settlement over *Kompetenz Kompetenz*. Viability in this compound context did not mean discovering a philosophically sound locus of sovereignty or reasoned principle for dividing up the tasks of government between different levels. The Union also had its work cut out managing expectations, primarily the South’s founding expectation that membership of the United States and the protection of slavery were compatible.

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<sup>211</sup> See Goldstein (2001); Warren (1913); Miller and Howell (1956).

<sup>212</sup> Resolution of the Legislature of Pennsylvania, 3 April, 1809 in Rabun (1956: 59).

<sup>213</sup> Quoted in Baker (1974: 600).

In fact, it was the attempt to alter this original compromise over slavery that provoked the first tremors in the compound polity; each time the conflict was linked to the admission of new states, which threatened to upset the balance of power in the Senate. The proposed amendment to the entry of Missouri (1819), which would have prohibited the introduction of new slaves in addition to providing for gradual emancipation, caused an upheaval that led to the so-called Missouri Compromise (1820). Under the terms of this deal, new states would enter, like the animals in the Ark, two at a time, one slave state and one free state. Following further territorial expansion, by mid-century the Missouri deal began to unravel, thereby altering expectations. To re-establish northern expectations of containing slavery a new piece of legislation in Congress sought to outlaw human bondage in lands acquired from Mexico. However, only a new, more complex, settlement (commonly known as “Clay’s Compromise”) managed to quell the ire of southern leaders but this unravelled completely with the passing of the Kansas-Nebraska Act in 1854.<sup>214</sup>

This act tried to maintain the expectations of southerners that slavery’s status in the union was secure but only by rewriting the existing settlement over competences. Kansas-Nebraska declared Congress, which hitherto had exercised the power to regulate slavery in territories acceding to statehood, unfit to decide the status of slavery in unorganised territories and repealed the geographical limitations imposed by the Missouri Compromise. Decision-making power over slavery was transferred instead to popular sovereignty as exercised by the local population, so-called “squatter’s sovereignty”. However much the notion of popular sovereignty was in keeping with the spirit of American democracy and political experience it was not sufficient to re-establish consensus over the rules of the game. By calling into question the existing compromises over the containment of slavery, the Act was unable to re-establish on a firm foundation both the North’s expectation that slavery would be prevented from spreading and the South’s condition that the Union not interfere with the “peculiar institution” in its heartland.

Without a delicate balance between these two sentiments the future of the Union was murky. Northerners feared their concerted efforts to limit the expansion of slavery would now prove useless and that effective national government was impossible in the absence of a new settlement that southern politicians had done their best to scupper. On the other hand, in

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<sup>214</sup> See 5.5.

reaction to the creation of the anti-slavery Republican Party in the wake of Kansas-Nebraska, southerners began to abjure the Union. These southerners felt they could not participate in a polity where one party threatened to destroy the economic and social institution on which its distinctive “way of life” depended; this was a prelude to the extreme forms of resistance to the Union that followed.

Thus political representation, which through state equality in the Senate and the unforeseen development of national, non-sectional parties (a process explained in depth in chapter five), contributed both to the preservation and, ultimately, the destruction of the compound polity. It was the emergence of the Republicans and their overt hostility to the extension of slavery – previously parties had done their best to keep the question of chattel slavery off the political agenda – that created the conditions for a schism leading to violent confrontation. If consensus over the rules of the game was difficult to re-invent after popular political mobilisation on the slave problem it became even more so after an ill-judged judicial attempt to preserve southerners’ faith in the Union.

When the court, under Chief Justice Roger Taney, came to its decision in the egregious Dred Scott case (1857), where the court had to rule on the status of a slave whose master had brought him to a free state, the survival of the union was by this time clearly under threat. The violent clashes between pro- and anti-slavery supporters in the Kansas territory was the context in which the Court decided to consider Scott as property rather than as a citizen. With this judgment, the Court was performing an active role in the political life of the republic by making a symbolic point that slave-owners mistrustful of the Union could nevertheless count on the protection of its property laws. But in doing so the Court had simply created a new political maelstrom as this ruling appeared both to make slavery legal throughout the Union and declared Congress constitutionally powerless to determine the status of slavery in any territory, thereby nullifying earlier compromises aimed at halting the spread of this brutal practice. Within a few years the Union ceased to be a viable compound polity as unity could only be maintained by coercion.

The period immediately after the civil war, however, is also illuminating for grasping the compound nature of the early republic because of the emphasis placed on fixing new rules of the game that would prove less contentious and thus viable. Reconstruction, as the period is known, meant not merely the rebuilding of infrastructure, administration and commerce, to



say nothing of the rehabilitation of blacks in the former slave states; it was the process whereby a new settlement to the contest of the rules for the political game was established. Whereas the antebellum period was characterised by uncertainty given the constant contestation of these rules, reconstruction meant providing a more stable political environment for the Union. Historians express this tectonic shift by describing the civil war as a “second American revolution”,<sup>215</sup> where the victory of the Union went hand in hand with a deliberate cultivation of the ideology of nationalism. As James McPherson argues ‘the United States went to war in 1861 to preserve the *Union*; it emerged from war in 1865 having created a *nation*’.<sup>216</sup> Militarily, as evinced by the ravaged landscape of the South, victory marked the unequivocal triumph of the Union and yet this was not enough for rebuilding the union. The war left no ambiguity as to the submission of states to the union – the compact reading of the constitution was no longer tenable as it had cost 600,000 corpses – but this still did not equate to a sudden and natural epiphany as to the merits of union.

In this sense Nicholas Butler’s reflection that ‘so quickly does war act as the solvent of the difficulties that had perplexed legislatures and courts and the people for two generation’<sup>217</sup> is a little off the mark. By virtue of its victory, the post-war Union acquired a new settlement as far as competency over competences was concerned. States lost their claim to be able to withdraw from the Union,<sup>218</sup> nullify laws or unilaterally question the constitutionality of its acts. But other fundamental elements of the rules for politics still had to be fixed, notably the representative nature of the union and the expectations of southerners.

To win the civil war Lincoln drew on the promise of freedom the Union had inherited from the Revolution and which was enshrined in the constitutional objectives of liberty and justice. Yet even after the South’s defeat, this interpretation of the Union as the guarantor of republican freedom, was not adequate to meet the demands of refounding the American union. The union represented individual freedom; however this was only one part of the greater narrative that it now tried to attach itself to: the American nation. Thus in the reconstruction phase of the union there were in fact two competing visions of the civil war and its meaning. The “emancipationist” version is obviously that of Lincoln’s rebirth of

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<sup>215</sup> This expression was originally coined by Charles and Mary Beard in 1930. See Ransom (1999).

<sup>216</sup> McPherson (1991: viii).

<sup>217</sup> Butler (1923: 266).

<sup>218</sup> A Supreme Court ruling confirmed that unilateral secession was unconstitutional because what had been created at Philadelphia was ‘an indestructible Union, composed of indestructible states’. *Texas v. White* 47 U.S 700 (1869)

liberty leading to liberation for blacks but there was also what historians call the “reconciliationist” interpretation, which as Eric Foner notes, ‘emphasised what the two sides had in common, particularly the valour of individual soldiers, and suppressed thoughts of the war’s causes and the unfinished legacy of emancipation.’<sup>219</sup> The compound system devised at Philadelphia had not proved viable for the expanding republic. Post-bellum, the nationalising of the republic was one of the new features of how the game of politics was to be conducted. Instead of a war over values, the internecine struggle that had divided families was reinterpreted as a ‘tragic conflict that nonetheless accomplished the task of solidifying the nation.’<sup>220</sup>

In the antebellum era the national idea represented in the political life of the Union was almost entirely restricted to the revolutionary era and the period of first settlement.<sup>221</sup> Hence the different respect accorded to the Declaration compared with the Constitution. The volte-face after the North’s victory was swift, proving the selective and often wilful nature of the forgetting and remembering needed to establish national narratives. To avoid perpetuating the tradition of local heroes, civil war cemeteries were intended to glorify the principles on which the nation was founded, instead of persons, and landscaped accordingly.<sup>222</sup> Battle scenes from the war of 1812 and the Mexican war were commissioned for the Capitol even though both of these conflicts were previously thought of as the product of party politics rather than national struggles. The war with Britain had been popularly known as “Mr Madison’s War” and was further tainted because it was the launch pad for Jackson’s political career, whereas the Mexican war was originally interpreted by New England abolitionists as a Southern plot to extend slavery westwards. Similarly, the settlement of the West was depicted as a new act of triumphant colonisation even though it was this territorial expansion that had re-awakened the slavery problem in a way that the Union was unable to cope with. The heroic element in

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<sup>219</sup> Foner (2001). For an in-depth study of the various evocations of the civil war in its aftermath, see Blight (2001). Blight also describes the existence of a southern vision of the war as a “lost cause”, led by chivalrous but outnumbered forces trying to protect their liberty and supposedly noble way of life.

<sup>220</sup> Foner (2001).

<sup>221</sup> ‘The Revolution’, Barry Schwartz (1982: 387) notes in his study of collective memory in this period, ‘was the only event which expressed the unity of the new nation and which could serve as a basis of national tradition.’ The heroic age of colonisation and revolution provided almost all the scenes and images for ante bellum art celebrated in Washington: ‘of the 69 images placed in the Capitol before the Civil War, 60 represented men and events of the revolutionary and pre-revolutionary periods.’ *Ibid.*, p. 385.

<sup>222</sup> In his study on American political architecture, Robin (1992: 32) explains this policy whereby: ‘Federal officials consistently discouraged the public erection of statues of generals and other Union heroes within these national shrines. The eclectic sanctuary at Gettysburg and other sites bore witness to the limited success of this effort. The Quartermaster General [Montgomery Meigs] did, however, succeed in preserving the rows of tombstones as the central motif of this celebration of nationhood. These grave markers provided the building blocks for an abstract monument celebrating ideals rather than valiant leadership.’

American life was thus no longer confined to the revolutionary struggle. Instead it was seen as a continuous process, where man fought nature and the native tribes to conquer the land for progress and freedom, forever pushing back the frontier, which proceeded despite the Union's teetering on the brink.<sup>223</sup>

Finally, the last element of the reconstruction of the rules of the game of politics was the definition of new expectations, and here cynicism and hypocrisy of the highest order triumphed. As arguments raged between Republicans and Democrats over Congress's plans for the South and what the provisions of the fourteenth and fifteenth amendments would actually entail in practice – not to mention the local backlash against Black freedom best manifested by the sadistic practices of the Ku Klux Klan – effective government was under threat. The response to this inertia was the Compromise of 1877, which secured the Southern Democrats' support for Republican candidate Hayes in the Presidential election. This came at the cost of turning a blind eye to civil rights abuses in the former slave states – an arrangement that was to last until the 1950s. When viewed from this perspective of the rules of the game, a strictly legal interpretation of the post-bellum settlement necessary for reuniting the Union seems facile. To a certain extent it is correct to argue as Goldstein does – case law in hand – that following the civil war 'the American states ceased official resistance to federal authority.'<sup>224</sup> Yet this dry depiction hardly does justice to the political struggle during reconstruction, which determined the *price* for accepting Union supremacy and the abolition of slavery: the removal of federal troops, Jim Crow and Northern acquiescence to oppression of blacks by other means in the South. Reconciliation was possible, therefore, as the acceptance of the perpetuity and supremacy of the union was compatible with a large latitude for southern autonomy in social, economic and political matters.

### 3. 3 How the EU fits the Compound Model: The Problem of Defining the Rules of the Game of European Politics

At first glance, recent events in European integration might suggest that an analogy with the US is unwarranted. The fanfare surrounding the 2003 Convention on the Future of Europe deliberately sought to mimic the constitutional moment of the American founding. Aping

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<sup>223</sup> In her essay on the frontier hero in American literature, Calder (1977: 86) notes that 'the process of America's westward expansion produced its myth and its legendary figures, but not until after the Civil War, the last phase of settlement, was there consolidated a compelling representative hero.'

<sup>224</sup> Goldstein (2001: 33).

Philadelphian rhetoric and symbolism, however, did not prevent the subsequent referendum ratifications in France and the Netherlands from turning the so-called Constitutional Treaty into a full-blown fiasco. In fact, this belaboured American analogy is one reason, according to Andrew Moravcsik, why the whole experiment failed. Instead of persevering in the steady, incremental logic of pragmatic treaty revisions without the baubles or garlands of constitutional foundation, the EU's change of tack promoted 'style and symbolism rather than substance.' This move upset the normal process of institutional innovation in the eyes of the wider public, Moravcsik claims, because it dressed up the quiet, modest reforms 'as a grand scheme for constitutional revision and popular democratisation of the EU.'<sup>225</sup> This conceit was in the swim amongst the European elites but was certainly not appreciated in the same way by large swathes of voters, thereby shattering the temporary illusion of Europe's Philadelphian moment.

The failure of Europe's constitutional moment, however, should not be allowed to disguise the shared predicament facing both the US and the EU at their moment of conception, already described in chapter one, as well as the common goals of both political projects. I will now develop this latter point further before demonstrating that this similarity also extends into the operation of the practical politics of both polities as they struggle to maintain a minimalist consensus over the rules of the game of politics.

Friction arises in Europe's compound polity as partisans of greater centralisation confront those seeking to bolster or simply maintain the autonomy of the units. The continuous task is, therefore, as Donald Maletz explains with reference to the American polity, to find an alternative 'to disintegration or to coercive centralization'.<sup>226</sup> Perpetual peace is thus a central preoccupation of both systems since violence is understood to be the likely alternative if the project of union falters. Likewise, both systems abjured coercion as a means of fostering pooled sovereignty yet also shared a mutual recognition 'that "state sovereignty" – the monopolization of political power by the state governments – jeopardizes republican government as well as the survival of the union.'<sup>227</sup> For the sake of both union and political freedom, too much autonomy could not be conceded. The compound solution was to establish *a framework for a potential process of voluntary centralisation* ("ever closer union" in the

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<sup>225</sup> Moravcsik (2005).

<sup>226</sup> Maletz (1998: 611).

<sup>227</sup> Onuf and Onuf (1993: 131).

EU, “a more perfect union” in the US). The principle of this compound system is, whenever consensus is possible, to devise ‘common rules which each member is committed to respect, and common institutions to watch over their application’<sup>228</sup> – subject to some control by the constituent units. These common rules prevent the twin evils of failing to come together and being held together only through the dominance of one (especially malign) power.

Of equal importance was the need to secure liberal democracy in the constituent units. Although the Treaty of Rome did not follow the US Constitution in guaranteeing to the sub units a certain kind of free government (“republican government”), the European nations interpreted the shibboleth of state sovereignty in the same terms. Nationally-bounded sovereignty and the concomitant balance of power dynamic was not just considered a threat to peace, it was also viewed as a sword of Damocles hanging over liberal democracy because permanent mobilisation for war withered away individual liberties and encouraged populist demagogues. Thus, ‘for liberal democrats, the European Union not only provided useful economic and social benefits, but also re-enforced peace and thus strategic and regime survival. Gradually leaving anarchy and forming increasingly substantive joint forms of government offered the best hope for the preservation of liberal democracy.’<sup>229</sup>

Alexander Hamilton made the same point in the *Federalist*, when he argued that expecting mischief from neighbours leads to an insidious bargain whereby states ‘to be more safe they at length become willing to run the risk of being less free.’<sup>230</sup> The American union, which contained a guarantee for republican freedom in the states, was an attempt to overcome the trade-off between liberty and safety ‘to avoid the emergence of another Europe in North America.’<sup>231</sup> In the latter half of the twentieth century, Europeans would eventually follow this example and try to find an alternative to their historic system of formal state equality, sovereignty and balance of power. It is misleading, however, to imagine that the strengthening of the Union and the strengthening of the units are necessarily mutually exclusive; a compound system is far from a zero-sum game. Hence the importance of expectations about what the union is for and how its ends are best achieved and the crucial role of representation as both the units and the union try to persuade citizens about the reasons for and against integration.

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<sup>228</sup> Monnet (1962: 206).

<sup>229</sup> Deudney and Suveges (2005: 8).

<sup>230</sup> Hamilton *et al.*, (1926: 32).

<sup>231</sup> Deudney (1995: 193).

Rule by the people before and during WW2 had proved itself far from infallible when it came to protecting the general welfare of the community; after the war the large communist parties in France and Italy seemed to pose a similar risk. In the light of these threats, integration was not designed 'to create a democratic organization but to establish a system of protection that would make their nation states safe for democracy.'<sup>232</sup> This interpretation naturally supports Alan Milward's broader argument that the motives behind the integration project in Europe ought not to be misread as 'the supersession of the nation-state by another form of governance as the nation-state became incapable'. From the outset, a compound polity can strengthen its member states, as was the case in the US where 'the exposed weaknesses of the states required the creation of an overarching federal union capable of providing the states with an integrity they had never fully enjoyed and were in growing danger of losing.'<sup>233</sup>

Milward's book, *The European Rescue of the Nation-State*, makes a compelling case for accepting this view that the European compound political system 'was the creation of the European nation-states themselves for their own purposes'.<sup>234</sup> This is why explaining integration as the search for a balance – thereby implying a permanent trade-off – between liberty (of the states) and agency (states acting together) is too parsimonious. Agency is only one component of the political project – and not necessarily the most fundamental. Moreover, interpreting integration from this perspective will produce a purely functional explanation about the construction of the rules of the game. Functionalism, however, ignores other vital elements of the dispute over playing the European game such as contestation by the units over the ends of integration, the self-description of the system by the EU and the debate about the compatibility between democratic representation and a further pooling of sovereignty. If functional logic explained everything, an anomaly like Norway, which is subject to most EU legislation without any direct influence over it, could never be explicable.

Finally, it is important to recognise the economic expectations enshrined in the project of both compound polities. Economic growth nurtured by integration was, in the European case, a great incentive for transcending the antagonism of centuries given the tatters of Europe's post-war economy. Likewise, it was assumed early in the life of the American republic by no less

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<sup>232</sup> Stråth (2005: 268).

<sup>233</sup> Rakove (1984: 114).

<sup>234</sup> Milward (2000: 18).

an authority than George Washington that the “cement of interest” was a necessary component of the success of the extended republic. This is why when the sectional conflict over slavery first re-entered political life after the original constitutional settlement certain federal politicians, notably Henry Clay, championed the development of an integrated economy precisely to attenuate discordant interests.<sup>235</sup> In both cases, therefore, a successful economic bond was thought indispensable to a correspondingly secure political tie.

Having surveyed in depth the analogy between the motives for establishing both unions, I will now sketch with a few broad strokes why the EU not only shares the projective component of a compound polity but also the same structure in the contestation over the rules of the game. As noted earlier in the American example, there are four elements that are subject to ongoing dispute: institutional rules, expectations, the allocation of competences, and disagreement about who best represents citizens.

A pellucid example of the conflict over institutional rules and competence allocation is the recent non-application of the sanctioning mechanism (the “Stability and Growth Pact) designed to discipline member states flouting macro-economic policy rules intended to keep the euro zone and its currency stable. These rules had largely been written at the insistence of the German Bundesbank as a way of giving credibility to a politically risky move in a country where the currency was a symbol of economic renaissance and a return to normality. Situations changed rapidly as in 2003 Germany’s public finances, heavily burdened by the costs of reunification, breached the EU golden rule of a public deficit of no more than three per cent of GDP and a consolidated public debt no greater than 60%; simultaneously, France also breached the rule.

Here the interplay of the different elements of the rules of the game is marked as expectations also entered the equation. First of all, the two bad pupils claimed the rules were poorly devised since they did not include an element of flexibility necessary in times of economic downturn or special circumstances such as re-unification. Secondly, the prospect of Germany breaching the pact was originally considered outlandish – the pact was a straightjacket for the notorious fiscal irresponsibility of Greece and Italy – and thus the scenario never having been

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<sup>235</sup> Among the policies aimed at realising this goal, as Minicucci (2001: 254) explains, were ‘a protective tariff to incubate domestic production, a national banking system, and a program of internal improvements designed to facilitate the development of integrated internal markets.’ These policies, associated with Henry Clay and the Whig party, are generally referred to as “the American System”. Lively (1955).

envisaged the Germans felt justified in opposing a measure they had devised but not expected to face. Finally, the French and German governments felt that the legality of the sanctions – a fine of up to half a per cent of GDP – was trumped by the legitimacy of both governments’ duty to re-launch dented economies. After all, they had been elected for this purpose and not to contribute to the coffers of the EU courtesy on the basis of a decision of other member states. As a result, the member states of the eurozone acquiesced and allowed France and Germany to get away scot-free. The eventual resolution of the crisis, however, involved a redefinition of the institutional rules for sanctioning – a new flexibility clause was added – thereby managing expectations, preserving a nominal European competence whilst also recognising the special representative legitimacy of elected governments.<sup>236</sup>

In the first chapter (p. 14), I explained that Bobbio’s definition of democracy as ‘characterised by a set of rules which establish *who* is authorised to take collective decisions and which *procedures* are to be applied’<sup>237</sup> was not sufficiently comprehensive to capture the intricacies of political conflict in a compound polity. The fate of the Stability and Growth Pact backs this claim further. Although Bobbio does make mention of constitutional rights such as free speech or freedom of association, which he terms the ‘preliminary rules which allow the game to take place’<sup>238</sup> this is not the same thing as recognising the role of expectations. For one thing, besides freedom of association and speech, all democracies function with the expectancy that the government will relinquish power if voted out of office, the existence of a constructive and credible opposition being dependent on this.<sup>239</sup>

In the European Union these expectations may be less apparent yet they function in the same manner even if they come under scrutiny and are even liable to change. One of these expectations, which I claim is so fundamental that it ought to be regarded as a component of the rules of the game in its own right, is the understanding of legitimate political representation. This played a crucial role in the history of the early USA, where the prospect

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<sup>236</sup> Buiter (2005).

<sup>237</sup> Bobbio (1987: 24). Emphasis in original.

<sup>238</sup> *Ibid.*, p. 25.

<sup>239</sup> What happened in the 2000 US Presidential election or the 2005 German legislative elections shows that the transfer of power is not a straightforward matter of following *a priori* procedural principles, even in a mature democratic system. The practice of politics results in problematic situations which are resolved through unwritten norms that structure the game itself – Al Gore deferred to the Supreme Court’s rulings on the adequacy of vote-counting in Florida, while Gerhard Schröder accepted that the German Chancellery could only go to a politician from the party that received the most votes.



of adding new states or changes in the structure of the party system had profound implications for the slavery compromise.

In EU politics the chief problem of political representation is managing the tension engendered by two competing principles of representation: supranational and inter-governmental. This is further complicated by the European institutions' lack, in their day-to-day business, of a governing legitimacy based on 'authoritative democratic representation of individuals'.<sup>240</sup> The latter is the combined product of institutional design, competence allocation, the disinterestedness of citizens and politicians alike in the European Parliament and the (sometimes deliberate) neglect of national politicians for EU matters. The consequence has been a refocusing on foundational legitimacy, that is, the legitimacy of the ends and terms of the integration project, a refocusing engendered by the use of referendums (consultation and binding alike) on treaties. These referendums are now seen as the best tool for linking citizens with the European project as a whole, which after all is the principal purpose of political representation. Furthermore, the dominant democratic assumption that political power has to be congruent with a shared political identity has remained undiluted. This is best evidenced by the German Constitutional Court's opinion on the Maastricht Treaty, which ruled that, in the absence of developments in political integration that it considered necessary for a functioning democracy, the Court reserved the right to declare future deepening incompatible with Germany's Basic Law protecting the democratic rights of citizens. (The court's verdict is discussed in more detail in section 4.3.1)

The subsequent chapter will provide a substantive exploration of how the rules of the game in the EU have evolved as well as advancing reasons for how and why these have changed or not. In the final section of the present chapter, I now outline five key differences between the US and European compound systems identified as the most significant factors for explaining how and why disputes over the rules of the game have evolved in divergent ways. It is these crucial differences that explain why the components of viability in both compound systems are not the same.

### 3. 4 Five Differences in the Conflict Over the Rules of the Game in Europe and America

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<sup>240</sup> Kincaid (1999: 35).

As I showed in chapter two, when the EU's viability has come under the spotlight, the historical record of federalism and state formation have tended to be used to impugn the European polity for not having the right preconditions to sustain greater integration.<sup>241</sup> These claims are made on the basis of a direct analogy between other states and the European Union. Typically, the comparison has been drawn with the US because of the latter's divergence from the state-building pattern of European history. One of the commentators who has dwelt most seriously on this fact claims that it is this similar deviance from European state-building that makes the US/EU comparison fruitful: 'the American experience of democratic nation-state building is useful for Europeans because it is the one most diverse from the experience of the single European countries and therefore useful for understanding it.'<sup>242</sup>

Yet the analogy to be pursued in this thesis is not a direct one. Rather than exploring the common deviant pattern of state formation characteristic of the US and the EU, as Fabbrini has done, I want to explore the pattern of disputes over the rules for the conduct of politics in each compound system. The former approach, no doubt inspired by the literature on political development, depicts the US almost as a prototype of a supranational polity because the American experience is thought to 'challenge the view that democracy requires a nation and a state to prosper.'<sup>243</sup> From the perspective of the *problématique* of viability, however, the above interpretation does not dwell sufficiently on the nature and extent of political contestation in the American compound system and why it broke down. Instead, the analysis of viability in both contexts requires an exploration of the notable differences in how clashes over the rules of the game take place in both compound systems. These differences are much less evident when making a direct analogy between the US and the EU. Since the observation lens in the case of a direct analogy is focused on the common problems facing both unions (dilemmas of democratisation, centralisation or the problem of effectiveness in a veto-system) this approach tends to neglect the evolving relationship between the parts and the whole in either system. This neglect thus also extends to understanding exactly how the contested relationship between the parts and the whole affect the politics and viability of the respective compound polities.

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<sup>241</sup> Besides the literature previously mentioned, there is also the work of David Miller (1998), who claims the link between democracy and nationalism is inescapable, and Manent (1997), who argues that only the nation provides a satisfactory answer to the problem of bounding political space.

<sup>242</sup> Fabbrini and Sicurelli (2004: 240).

<sup>243</sup> Fabbrini (2005a: 17). Other scholars note the exceptionalism of the American case but interpret this as an illustration of 'the essential independence of nationality from geo-political and ethnic factors' rather than as the success of a post-national project. See Greenfeld (1992: 23).

The existence of several fundamental differences between how the rules of the game are contested points to the fact that even though both are compound systems the opportunities necessary for managing or overcoming these conflicts and, therefore, ensuring viable polities are not the same. To convey what I meant by a viable polity, I claimed in chapter one that there are two possible scenarios of viability for compound systems to survive: voluntary centralisation and dynamic equilibrium. Although I accepted the possibility of some mixture of both equilibrium and voluntary centralisation across issues, if dynamic equilibrium entirely gives way to voluntary centralisation, it means the compound system as it was originally devised was not tenable in the medium run. In the second scenario, that of managed dynamic equilibrium, the viability of the compound system depends on being able to find new arrangements to solve political conflicts without recourse to straightforward centralisation. The comparison will thus highlight the differences between the nature of political conflict in both and what this reveals about the strategies and options for remaining viable and, by extension, which scenario is more likely: voluntary centralisation or the maintenance of dynamic equilibrium.

What follows, therefore, is a list and explanatory synopsis of five crucial ways in which both compound systems differ with respect to how the rules of game of politics are contested and the implications this has for how such crises can be managed. Often it is the case that these differences are better considered as mutually reinforcing rather than discrete and separate variables.

**(a) Dual Federalism (with the highest functions of government) v. Joint Federalism (with the most numerous)**

As a government designed to act directly on individuals, the American union had tax-raising powers and its own agents – what Edward Corwin later christened “dual federalism”.<sup>244</sup> Moreover, its exclusive sphere of competence concerned the most exalted functions of government: international politics, defence, immigration, inter-state commerce and monetary policy. This is not the case with the EU, whose powers of execution are largely indirect, falling as they do on national legal and administrative structures, and this dissimilarity means

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<sup>244</sup> Corwin (1934). In order to reflect the modern inter-locking of federal, state and municipal government the theory of “co-operative” or “marble-cake” federalism has now replaced that of dual federalism.

the EU will always have a tremendous element of dependence on the member states for matters such as revenue. In addition to framing expectations about the future, radical dependence on the member states constitutes a formidable practical barrier to voluntary centralisation. Given this path-dependency aspect, many aspects of further integration are in practical terms non-starters. As Maurizio Ferrera has remarked about the historical embeddeness of the welfare state in the European nation-state, this means that ‘a fully-fledged reconstruction of social citizenship at the European level appears today so unrealistic as to render the question of its actual desirability a nonissue.’<sup>245</sup>

Joint federalism in the EU revolves around the more numerous – the *acquis communautaire* represents more than 80,000 pages of legislation and constitutes the bulk of member state law-making – yet less prestigious functions of government. This is clear from the dull panoply of its exclusive areas of competence: customs union; the establishing of the competition rules necessary for the functioning of the internal market; the conservation of marine biological resources under the common fisheries policy; common commercial policy. These competence areas are needless to say those furthest removed from the politics of identity-building, such as education, foreign policy or welfare. Starting from this competence base means the EU faces a greater struggle to justify accruing more competences since these necessarily must be transferred from the member states. By contrast, in the US, the division of competences had already been agreed upon meaning the struggle over competences was more a question of constitutional interpretation rather than justification.

### **(b) A Constitution for Popular Government v. a Treaty System**

In the American case, conflicts over the rules of the game of politics inevitably centre on the constitution. As a foundational document, the constitution represents – for all its ambiguities and compromises – an original agreement for regulating the conduct of politics that is essentially timeless. Only when conflict reaches its paroxysm can the constitution even begin to be considered as something that can be ignored; otherwise problems over the rules of the game are to be managed by amending it or changing the interpretation of its meaning. The principles articulated in a constitutional document and the practices derived from them can form the basis of a powerful popular identification with the Union; constitutions, which touch individuals directly, can become reverential documents in a way that treaties cannot. A

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<sup>245</sup> Ferrera (2003: 648).

negative proof of this claim can be found in Peter Onuf's study of the Northwest Ordinance. Onuf chronicles how this document was originally revered as constitutional in the sense that it conferred the promise of statehood to territories in the designated area once they reached a settler population of 60,000. By the 1850s, however, the ordinance lost "its constitutional aura" as a result of the sectional crisis in which the admission of new states played a dominant role. Thus constitutions can become an ideological keystone of representative politics, thereby allowing the Union to distinguish itself from its units.

The European Union has no such bedrock, which is a hindrance but also an opportunity. New goals or objectives for the Union can be introduced from scratch at every treaty renegotiation. This makes it difficult to identify and exalt what Europe is for, although – in theory at least – it does allow it to be responsive to new circumstances. As the product of treaties subject to periodic revision, the EU is constrained in a way that is impossible under a constitution: sometimes there is a state of virtual suspended animation as the EU awaits the ratification of a treaty by all member states. Only states or governments can be the contracting parties to a treaty. Unlike a constitution, a treaty-based system cannot maintain the fiction of individual consent or social contract. This has fundamental implications for how the possibility of exit is conceptualised or used, especially its use as a threat to change expectations. Finally, a treaty system is less rigid because it allows for more permutations of reform as "package deals" can be crafted, linking various changes together to form a new compromise. Constitutions, to a greater or lesser extent, are inevitably compromises but they also enshrine principles or values that cannot be compromised, at least not explicitly: institutional hypocrisy is more lethal in a constitutional context. Thus political conflict in a constitutional system will tend to be resolved through legal or constitutional reform. In a treaty system there is a greater possibility of using symbolic reform or non-application as a tactic to defuse conflict and re-establish consensus by changing expectations without having to agree on clearly-worded first principles.

**(c) A Project for Freedom (the union as means to an end) v. A Project for Undefined Ever Closer Union (integration as an end in itself)**

The first sentence of the American constitutional preamble explains limpidly – obviously harking back to the problems of the articles of confederation – that what is both necessary and desired is "to form a more perfect union". In terms of its stamp on popular conceptions of the

principles of American government, however, this phrase is a very poor relation in comparison with the Declaration of Independence's trinity of "life, liberty and the pursuit of happiness". If there is one thing that brings continuity to the history of both theoretical interpretations and popular understanding of the Constitution, it is the belief in the instrumentality of the American Union. The plethora of competing interpretations over whether the constitution is supposed to promote self-government thanks to checks and balances, limit democracy to protect individual rights, or serve as a beacon to a corrupt world nevertheless converge on the fact that the Union exists as a means to promote certain ends or values.

Conversely, Daniel Elazar and Ilan Greilsammer have made the invaluable observation that

in many respects the process of integration [in Europe] has been the very reverse of the process in America: in Europe integration has tended to have been seen as a value in itself, confusing the means with the ends, and it is only once the process has started to produce some results that the question of the type of government, indeed the nature of the political enterprise, is being questioned.<sup>246</sup>

Incremental progress in European construction – even if only a matter of inching towards ever closer union – has thus always been valued by the political elite. The reverse side of this coin is the fundamental absence of a shared idea of where the project is heading. The new Constitutional Treaty reveals perfectly how this project lacks a clear end. Its preamble trumpets the member states' determination to be "united ever more closely, to forge a common destiny" whilst also affirming, in seeming contradiction, that the specificity of the EU is to be "united in diversity".

Project-driven polities have their origins in soul-searching exercises followed by the inevitable compromises between different visions of the future. Yet the original self-justification is not enough: the self-definition of the Union is liable to evolve, whilst democratic credibility requires *ex post facto* legitimisation and mobilisation to sustain them. The EU's original ends, as enshrined in the Treaty of Rome under the title of "four fundamental freedoms", follow a strictly economic logic (free movement of goods, services, persons and capital). As a result the EU has become increasingly desperate in its attempt to refocus the Union on more explicitly political ends. Here, of course, the treaty system of the

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<sup>246</sup> Elazar and Greilsammer (1986: 84-5).

EU affects its perceived legitimacy not only because the treaties are poor at expressing the ends of the union to a broad public. Lacking an obvious form of self-justification, a problem compounded by the absence of a governing legitimacy given the decision-making primacy of the Council, the EU has to rely on proxies namely treaty referendums. The object of these consultative devices is to confer foundational legitimacy at specific moments. However, since these voting mechanisms lump together a heterogeneous mass of different issues and debates they offer, even when successful, a poor opportunity for establishing or conveying a steady concept of what the European project is for.

#### **(d) Single Fault Line v. Multiple Fault Lines**

The US had a single and constant cleavage between the states: slavery. However, it is vital to note that this cleavage should also be understood more generally as the tension between two competing economic systems, agricultural production based on chattel slavery and the manufacturing society of free labour and free soil. Territorial expansion exposed the original compromise to a stress that the constitution was not apt to bear. Clashes over the rules of the game involved more than just the detail contained in the founding constitutional parchment. More precisely, what mattered were the things that had remained unmentioned – deliberately or not – the extent of congressional power to regulate chattel slavery and its status in the new territories. The result was the increasing difficulty to maintain a party system based on inter-sectional interests. Moreover, this permanent cleavage undermined the logic of Publius’ extended republic, in which minorities were to be protected through the absence of permanent majorities. The obnoxious institution supported a way of life for a significant minority of the US population, meaning there was a constant majority living outside the slave states but which could not be translated into a quorum for constitutional amendment because this procedure required an unobtainable two thirds vote in both houses as well as the support of three-quarters of the states.

Conversely, the EU has overlapping as well as evolving cleavages: rich and poor, big and small, free-market and *dirigiste*, federalist and inter-governmentalist; the dramatic rise in prosperity in Ireland and the economic resurgence of the United Kingdom suggest that even wealth cleavages can change in the course of barely one generation. Only territorial size is an ever-lasting cleavage. Indeed, in the case of state policy preferences, the position of a member state can even be subject to change from government to government. This suggests there is

more room for negotiating compromises as states can hold different positions according to the issue at hand – again increasing the possibility of packaged reforms – and the government of the day. Knowing full well that financial or security prospects can change in the future as well as membership itself and competences, member states may be less intransigent in maintaining positions that could ultimately prove harmful under different conditions. As a result, in this compound system there is less risk of playing a zero-sum game of politics than in a single-cleavage system. This multiple cleavage structure makes for a powerful and enduring obstacle to centralisation but one which at the same time does not sanctify the *status quo* and prevent it from evolving. Neither was true of the American case.

### **(e) A Party System and Supreme Court Arbitrator v. Referendum Politics and Council Arbitration**

Tocqueville held that the Supreme Court was a forum for adjudicating disputes between the states and the union. In part this was exactly what the founders had wanted. But another reason why the Supreme Court came to exercise this power was that the states proved less able to influence federal politics than expected, notably because they could not impose instructions on senators nor sanction those who were thought to act against state interest.<sup>247</sup> As a judicial body, the Court's decisions can only refer explicitly to principle and precedent, not expediency. Moreover, as an institution it represents first and foremost an ideal (the constitution) rather than an identity (nation or citizenship). This explains why, however august the institution and however wise the justices, it offers a very imperfect solution to legal disputes stemming from – or concealing – political conflict, especially when occasioned by clashes over identity or representation. Given the Court's imperfect nature for resolving the gravest political disputes, the task fell mostly to the various party systems of this era. Frederick Grimke's reflection on the purpose of political parties was never truer than when applied to the early American republic: 'parties take the place of the old system of balances and checks. The latter balance the government only, the former balance society itself.'<sup>248</sup> Party politics, however, inevitably entailed a certain centralisation of political life in terms of debate and organisation. As a result, parties are vectors of centralisation even if only for the sake of finding sectional balance.

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<sup>247</sup> Riker (1955).

<sup>248</sup> Grimke, quoted in Hofstadter (1970: 266).



In the EU the adjudicating role over disputes about resources, values or competences, is played by the Council of Ministers supplemented by the European Council more than by the Court of Justice. As explicitly political bodies, both Councils are more sensitive to public opinion and more legitimate than a judicial body when it comes to finding compromises that affect interests and identity in the member states. This is because these political actors represent interest and identity directly. They can be held accountable for their decisions and explain them to their constituencies in a way that judges cannot. When the rules for the conduct of politics are contested, the appeal to a judicial institution may vindicate one party but it is unlikely to provide a useful way of redefining the rules in a way that is acceptable to all. In the absence of agenda-setting and governing pan-European parties, however, the EU lacks probably the single most effective means of political communication with a broad public as well as a mechanism for finding intersectional compromise and a means for redefining the ends of the union. At the same time, this constitutes a barrier against the unwanted centralisation of political life around Brussels and European politics.

## Chapter Four

### The Struggle to Maintain a Compound System: Creating and Contesting the Rules of the Game in European Integration

*“L’Union est un accident qui ne durera qu’autant que les circonstances le favorisent.”*

Alexis de Tocqueville

#### Introduction

Had he lived today, Tocqueville would probably have made the same remark about the EU. While staggering on in the face of new crises when consensus over the rules of the game breaks down, the EU also carries the millstones of previous compromises and cop-outs (the CAP, the CFSP dream, Euro or Schengen opt-outs). When the EU and its member states address new problems or exhume old ones, the burden of these millstones becomes obvious. The precarity of this political system is well known but nevertheless in this chapter I intend to retell the story of integration, albeit in a brief and idiosyncratic way. Whilst the broad narrative is a familiar one, it is less so when recounted as the contest over the rules of the game within the scope of maintaining a compound political system.

Normally the process of integration is recounted, in political science, with a theoretical slant explaining why – unwittingly as well as knowingly – the nations of Europe embarked on this path. The aim is usually also to quantify how much power has been transferred to the European entity and the repercussions this has on the concept and survival of the nation-state.<sup>249</sup> The present chapter is not intended as a discussion, or indeed a refutation, of the accumulation of EU power and its implications. Instead, my narrative reveals an evolution of the rules of the game according to a logic of dynamic equilibrium rather than of voluntary centralisation. This conclusion, despite the evident progress of integration, is drawn from the continuing inability of the EU to settle basic questions of competence, functioning and purpose. Furthermore, for all its attempts to establish its own democratic legitimacy, the EU has not been able to centralise the political life of the member states around distinctly EU

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<sup>249</sup> Fossum (2006) provides a useful survey of the various ways the effects of integration have been conceptualised.

questions; the member states have retained a fundamental dominance over the agenda of politics.

Integration as a label and concept for innovations in inter-governmental action in Europe was carefully chosen. It avoided the static connotation of co-operation and the transcending one of unification, indicating instead ‘the construction of a new entity that represented more than the sum of its participating elements’.<sup>250</sup> Rather than furnish a new theoretical claim to explain why integration took place, therefore, I have chosen to describe the incremental steps on the road to “ever closer union” in terms of how these moments challenge, reinterpret and reproduce the rules of the game of European politics. This description will then serve as the foundation for the subsequent chapter’s analysis of the reasons behind and future potential of Europe’s viability as a compound political system by analogy with the US experience.

Coal and steel were the raw materials of the first project of European integration. The European Coal and Steel Community (ECSC) was obviously intended to pool and supervise the use of these sinews of war. It makes more sense, however, to understand the ECSC as a supplement to the Paris Peace Treaties of 1947, which had dealt with all the claims against former Nazi allies and co-belligerents but not Germany itself. Allied-occupied Germany posed at least two great problems for reintegration into post-war Western Europe. Most notable were the persistence of French claims over the Ruhr, Europe’s most industrialised region,<sup>251</sup> and the quandary of what role West Germany would play in the Western defensive alliance against the Soviet bloc.

Yet when looking at the history and philosophy of integration at its origins it would be misleading to summarize the process as simply a successful peace project and, with regards to the Soviet menace, a failed security one. Two other objectives were equally at the forefront and cannot be subtracted from the irenic and defensive component. The countries prepared to unshackle themselves from a strict pursuit of state sovereignty also desired economic prosperity and the preservation of liberal democracy. Trade barriers and preferential national economic arrangements hampered the former, whereas the permanent mobilisation for war

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<sup>250</sup> Stråth (2005: 264).

<sup>251</sup> Jean Monnet linked the Schuman plan directly to the Ruhr problem, which depended on finding an arrangement that would both satisfy French economic interests and assuage their fears of being the perpetual underdog. ‘Ruhr production’, he argued, ‘should be utilized not only for Germany or as the result of bilateral arrangements, but it should contribute to the production of the whole of Europe.’ Quoted in Beloff (1963: 57).

was also considered to sap the strength of the latter. Having established these four reasons for launching a project of European integration, I do not wish to return in detail to explaining the intricacies of how influential each factor was. However, the analysis of the rules of European politics will refer back to these founding reasons when explaining the construction, evolution and obstinacy of those rules.

Table 4.0 The Four Founding Expectations About Integration<sup>252</sup>

1. Peace Project “Never Again”
2. Security against German Resurgence
3. Economic Growth
4. Strengthening Domestic Liberal Democracy

#### 4. 1 The Construction of the Rules of the Game of European Politics, from the ECSC to the EEC

##### *4.1.1 The Coal and Steel Community*

The question of the status of the *Ruhrgebiet* industrial powerhouse had preoccupied France since the end of the Great War, reflecting fears of permanent economic and military weakness. Thus rather than being a novel post-1945 issue in relations between these two countries, this question, as the leading historian of the ECSC portrays it, is ‘more accurately described as a chief source of peacetime instability, standing in the way of both Franco-German reconciliation and the restoration of a sound system of international trade and payments after each of the two world wars’.<sup>253</sup> The second obstacle to the rehabilitation of West Germany was French resistance to US pressure for German re-armament to counter the Soviet threat. This had become the first order of the day in Washington’s transatlantic policy following the deployment of American troops to the Korean peninsula. The signature of the ECSC Treaty in 1951 provided the political framework for settling the Ruhr problem and established a precedent for Franco-German cooperation which, it was hoped, would furnish an analogue for the rearmament issue.

<sup>252</sup> Joseph Weiler (1994) proposes three founding ideals: peace, prosperity and supranationalism. By overlooking the fears surrounding the future status of Germany and the project’s relationship with democracy, Weiler’s three ideals tell only a part of the integration story.

<sup>253</sup> Gillingham (1991: xi). In this sense, the contest over the Ruhr was a successor to previous centuries’ conflicts over the lowlands in northwestern Europe, which ceased only after the British guarantee of Belgian neutrality. On this point see Lukacs (1976: 62).

The ECSC resolved the first security problem by creating more than merely institutions tasked to decide and manage matters of economic policy in common. Its competences were very marginal compared to the ordinary business of government – the goal was a common market in coal and steel – and thus not subsequently decisive for framing the rules of the game of European politics concerning what government at the European level is for. The same cannot be said about the institutional innovation and the means of integration agreed upon in the Treaty of Paris. The ECSC’s institutional architecture provided the blueprint for the future European Economic Community. Its triumph though was the creation of new precedents and expectations regarding the conduct of international politics on the European continent.

ECSC institutional design reflected the compromise between federal and confederal visions of political unification,<sup>254</sup> which in turn led to the establishment of functionalism as the philosophy of government of these institutions, although the concept itself predates the integration process.<sup>255</sup> Already in 1952, when the ECSC was first constituted, there was a hybrid of supranational (the High Authority, whose sole remit was the general European interest, and the Court of Justice) and intergovernmental (the Assembly and the Council) principles. This tension survives to this day and is one of the key components of how European politics functions and is contested as euro-enthusiasts try to expand the power of supranational institutions while intergovernmentalists take a stand for the shibboleth of national sovereignty embodied by the veto. Another, equally long-lasting, tension can be found in the commitment of the Community, as enshrined in the articles of the treaty, to both free market policies (outlawing cartels and state aid)<sup>256</sup> and social protection (Article 2 refers to “safeguarding the continuity of employment”). The compatibility or not between these two objectives continues to be the platform for discussion when the left/right cleavage is transposed to the European level.

Indeed, even the problematic nature of democratic representation and accountability in European institutions, which in contemporary EU parlance is referred to as the “democratic deficit”, can be traced back to the ECSC. The Community’s Common Assembly was an

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<sup>254</sup> In this study I take federal to be synonymous with supranational and use confederal as a synonym for inter-governmental.

<sup>255</sup> See Haas (1964).

<sup>256</sup> Gillingham (1991: 313-4) claims that Monnet subsequently referred to the ECSC Treaty as “Europe’s first antitrust law”. It is clear that the liberal thrust of the treaty fitted with the free trade agenda of America’s vision for the post-war international order.

emasculated representative assembly, which monitored the work of the executive, leaving the right of initiative to the High Authority and the right of assent to the Special Council of Ministers. Moreover, the Assembly's relationship with the peoples it supposedly represented was indirect since its members were selected by the national parliaments of the member states, although the treaty did allow for direct election. A Consultative Committee was also created to represent the views of producers, consumers and workers. Their decisions were non-binding and members were selected by the Council on its own understanding of representativeness.<sup>257</sup> This marked the beginning of the ambivalent and often instrumentalised status of civil society actors within European construction.

The detail of Community institutions, procedures and policy is not the main story, at least not when it comes to the construction of the rules of the game of politics in Europe. What matters for the scope of this study is the way in which the ECSC served to produce a new understanding about the nature of the European integration process. Whilst there was already a relatively long line of projects that clamoured for the establishment of common political institutions, these were mere blueprints that had not generated any precedents about the methods or procedures by which integration would occur. In beginning the process of integration, the ECSC laid the foundation stone that shaped the future contours of the integration project.

Two basic constitutive rules emerged from the establishment of the ECSC. Firstly, the Franco-German relationship, reflecting Churchill's prescient plea in his Zurich speech (1946), was to be the locomotive of integration. This engine was to function through West Germany's overriding commitment to make integration work, including at the price of certain economic concessions and the acceptance of French political leadership. Konrad Adenauer, the Federal Republic's first chancellor was not prepared to accept West Germany's return to sovereign status at any cost. But he nevertheless acquiesced to signing a treaty 'that was supposed to redress the imbalances of nature and organization between coal-rich Germany and the remaining six [sic] fuel-importing nations'<sup>258</sup> and which the Ruhr producers had rejected.

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<sup>257</sup> 'Members [of the Consultative Committee] are appointed by the Council of Ministers for two-year terms, upon nomination by "representative" trade associations and trade unions, after the Council of Ministers has determined which groups shall be considered "representative"'. Haas (1968: 43).

<sup>258</sup> Gillingham (1991: 280).

Secondly, the method of integration was to be the achievement of political objectives through management of the economy. This is the functionalist logic of integration. The genius of this process was not merely the ability to find a proxy for furthering political ends thanks to “spillover” effects from one sectoral field of the economy into others that would create new needs for supranational administration. Functionalism’s primary benefit within the ECSC architecture was that it allowed the member states to stay in control of decision-making while habituating them to co-operation and consensus. As Altiero Spinelli, the great Italian champion of a federalist Europe, noted ‘the entire functional establishment was founded on the hypothesis that the power to decide would actually remain in the hands of the government of the member states, while the European bureaucracy would create a solidarity of common interests and rules, thus conditioning in growing measure the decisions of the governments.’<sup>259</sup> As it turns out, this original compromise has been more conducive to a dynamic equilibrium than to voluntary centralisation; the much-anticipated, supposedly inexorable spillover effects failed to materialise meaning hopes for a sudden epiphany regarding the benefits and legitimacy of European-scale government were also dashed.

Functionalism as the politically palatable doctrine of integration was greatly reinforced by the failure of the European Defence Community (EDC), which was voted down in the French National Assembly in 1954. After the initial problem of restraining West Germany had been adequately surmounted, the Soviet menace posed a new security dilemma, which revealed the limitations of the solution of the former. EDC was France’s proposal to settle the issue of West German re-armament in the wake of the US strategy of global communist containment, which required that Western Europe strengthen its own capacity to resist a hypothetical Soviet invasion. The French establishment was fearful of West Germany’s integration into NATO as an autonomous military power. Yet the United States exerted tremendous pressure on its allies to find a new agreement for defending Western Europe that would allow for a German military contribution.<sup>260</sup>

In this context EDC was intended as a hybrid supranational-intergovernmental analogue to the ECSC. The project called for a European army comprised of national battle units ‘grouped into multinational Army Corps whose command, general staff and tactical and logistic support

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<sup>259</sup> Spinelli (1966: 23).

<sup>260</sup> In 1950 the Americans threatened to cut off funds for European defence, at a time when the US financed a quarter of the entire French defence budget. Harrison (1981: 33; 240, n. 78).

echelons were also to be integrated.<sup>261</sup> Troops would fight wearing a common uniform, something an initial French proposal (the Pléven Plan) had balked at. These corps would come under the control of a nine-member board of independent commissioners, itself a joint decision-maker alongside another council of ministers. The unanimity principle applied to key matters such as the budget and equipment programmes, thereby endowing France with a clear control over the size and scope of German rearmament.

Reasons for the failure of the EDC – despite the usual blandishments from Washington – are not important for this story as it is the simple fact of failure itself which had the greatest consequence on the framing of European politics. With the ambition of integration acutely attenuated to sector by sector functionalism, the project of unifying Europe became an open-ended process without a clear end in sight. This is still the case today as evinced by Joscha Fischer’s call in 2000 for a debate on EU finality, another issue the Constitutional Treaty failed to settle. Indeed, given the absence of a consensus over the final political form the EU will take, each time further deepening is on the agenda the understanding over what point the integration process hitherto reached becomes itself a source of much debate.<sup>262</sup>

Thus the achievement of the ECSC lies with *the process of cooperation it began rather than its outcome*.<sup>263</sup> This conclusion is not unusual in the study of political institutions and the effects of interaction between different actors.<sup>264</sup> Indeed, there is a parallel here with how the American constitution, in the first decades of its existence, can be said to have failed in its attempt to remedy the lacunae of the Articles of Confederation: ‘the nation proved unprepared for the War of 1812. States under the Constitution defaulted on bonds so often they became the subject of ridicule abroad. State-chartered banks issued large amounts of what became, in effect, paper money.’<sup>265</sup>

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<sup>261</sup> Fursdon (1992: 231).

<sup>262</sup> I am very grateful to Hilde Zeiner for having showed me the significance of this point. Magnette (forthcoming) makes a similar point when he explains, with reference to the EU Constitution that ‘un fédéraliste verra dans l’élection du président de la Commission par le Parlement européen le signe d’une légitimation de l’exécutif collégial, tandis qu’un intergouvernementaliste insistera sur l’établissement d’une présidence stable du Conseil européen pour démontrer le renforcement de la logique nationale.’

<sup>263</sup> In fact, there was little to show in the field of anti-trust action for, as Gillingham (1991: 299) argues, ‘decartelization had given way to reconcentration ... the common market created to discipline heavy industry had become its common property.’

<sup>264</sup> March and Olson (1989) point out how ‘outcomes can be less significant than process’.

<sup>265</sup> Wildavsky (1998: 126).



Nevertheless, by 1820, no-one would have called the new American republic a failure, which suggests that the success of political projects is not always best measured with reference to the successful pursuance of original policy aims. Likewise the ECSC can be termed a success despite its inability to create a single market for coal and steel. As Haas noted, the new coal and steel entity depended ‘on the good faith of the old power centres for the realisation of [its] aims’.<sup>266</sup> It was exactly this good faith that the ECSC fostered. But this faith was based on four basic expectations about how the game of European integration would be played. Firstly, that it would proceed according to the logic of functionalism. Secondly, there was to be a hybrid institutional and decision-making structure that would forestall any rapid move towards pure supranationalism. Thirdly, this process was to be open-ended with no need for a consensus on the final destination. Finally, France and Germany were to co-operate to provide the animus for taking the European project further.

Coal and steel quickly came to symbolise the past more than the future – by the mid 1950s attention turned to oil and nuclear power, whilst heavy armaments seemed trivial compared to the atomic bomb. Hence the ECSC’s limited domain of integration – the pooling of natural resources – suddenly seemed, in the light of the failure of EDC, somewhat inconsequential to the mammoth task of taming nationalism. Now I will explore the significance of the founding of the EEC and how it relates to what the ECSC had already established.

#### *4.1.2 The European Economic Community*

Certain existing aspects of institutional design, expectations and decision-making rules were reinforced by the terms of the Treaty of Rome but these were coupled with the development of new expectations.<sup>267</sup> Finality, for instance, was singularly missing from the new treaty. Whereas the ECSC treaty had a shelf-life of fifty years (article 97), the Rome treaties had no such time limit thereby enshrining integration as something that can take an unspecified time to arrive at an undefined destination.<sup>268</sup> What now framed the trajectory of integration was a new treaty commitment to “ever closer union” meaning that even if the process was to be slow and tortuous, it was at least expected to be unidirectional: forwards never backwards.

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<sup>266</sup> Haas (1968 : 58).

<sup>267</sup> For a comprehensive legal comparison of the two treaties, see Soulé (1958).

<sup>268</sup> The ECJ’s ruling in the van Gend en Loos case referred to the creation of ‘a Community of unlimited duration’ as part of the rationale for why the EEC was not be considered as an ordinary international treaty. See below for a discussion of the importance of this case.

This expectation lay at the heart of the refusal by the other five members – in spite of their acquiescence to many other French demands – to grant France the option of withdrawing from the customs union if the economy suffered badly.<sup>269</sup>

The logic of linear integration was perhaps the greatest new contribution to the rules of the game made by the EEC treaty. This can be seen by the way in which the *acquis communautaire* (the voluminous corpus of accumulated legislation and jurisprudence) that binds the member states has acquired legal protection in the treaties. The principle of never dismantling prior European legislation is considered so fundamental – a bulwark against regression away from closer union – that it merited a place in the preamble to the Constitutional Treaty.<sup>270</sup>

The hybrid nature of the system of government was enshrined in the core of the EEC institutions. These reproduced the essential design of the ECSC with a supranational executive, an intergovernmental decision-making body that would in the future, however, sometimes use qualified majority rather than unanimity, a court and a representative assembly lacking legislative powers. Member-state control, therefore, over the pace and direction of integration was further reinforced as a result of the “joint federal” nature of the new polity, which was the only form acceptable to all the member states. Rather than copy the American founders’ “dual federalism”, in which two tiers of government occupy two autonomous spheres of activity, each with their own resources and direct relationship with citizens, the European system established an almost entirely indirect form of government.<sup>271</sup> Not only does the Commission not have autonomous tax-raising powers<sup>272</sup> and the obligation to run a balanced budget (article 199 [268] EC)<sup>273</sup>, it also relies on the member states’ administrative and legal infrastructure for compliance with European-level decision-making.

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<sup>269</sup> Moravcsik (1998: 144).

<sup>270</sup> The signatories are ‘determined to continue the work accomplished within the framework of the Treaties establishing the European Communities and the Treaty on European Union, by *ensuring the continuity of the Community acquis*’ [my italics].

<sup>271</sup> Whereas the ECSC regulated steel and coal companies and member states, the EEC treaty allows for European institutions to have a legal relationship with physical persons. This difference was of vital importance for the subsequent constitutionalisation of the EEC treaty.

<sup>272</sup> It does, however, have its “own resources”, consisting of revenue from the common external tariff and a percentage of national value-added tax.

<sup>273</sup> The Treaty of Amsterdam (1997) provided for the renumbering of both the EEC and Maastricht treaties. I have kept the original treaty numbering to avoid anachronism; the number in square brackets refers to the article number as amended by Amsterdam.

In the driving seat of integration was the Commission, given its monopoly on proposing new legislation and its mission to express the common interest of the Community. Yet the institutions of the EEC deliberately forsook the classic distinction between executive and legislative powers, preferring instead to blur these two competences. Since the Council can only act on a proposal from the Commission, which in turn can only be amended by unanimity (article 189a [250] EC), this provides a built-in system of mutual co-operation which ‘keep[s] the intergovernmental ingredient under the control of the supranational one and *vice versa*.’<sup>274</sup>

In the proper sense, moreover, the Commission is not an executive because it can only implement legislation vicariously through national administrations; lawyers call this a “non-executant administration”. Even if the Council adopts a proposal from the Commission, there are plenty of foot-dragging possibilities for stymieing the effectiveness of legislation, particularly directives which are phased in over a period of time. In addition, the Commission relies on the strength of member states’ administrations to supply information on compliance and do its bidding when implementing Community legislation. In effect, what exists is thus a hybrid system of administration alongside the hybrid supranational and intergovernmental decision-making. The European legal-administrative order is not autonomous, therefore, like that of the US states; it is parasitic on national bureaucracies and court systems for income, information, personnel and execution of law. Peculiarly, then, the efficiency of the European compound system is dependent on the strength of its member states.<sup>275</sup>

As outlined above, one of the four *raison d’être* of integration was ‘the pursuit of the national economic advantage of all parties.’<sup>276</sup> This is not surprising given that modern political legitimacy is to a great extent based on the ability to improve the economic welfare of citizens: ‘it’s the economy, stupid!’<sup>277</sup> Implicit in this assumption is that for European integration to be seen as effective and legitimate, it has to deliver tangible results on economic growth. As Milward explains, ‘West Germany was the pivot on which the increases in foreign trade, investment and prosperity turned’ and the common market ‘was the one durable way

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<sup>274</sup> Cassesse and della Cananea (1992: 78).

<sup>275</sup> This of course is the basis for Alan Milward’s (2000: 2-3) thesis that ‘the evolution of the European Community since 1945 has been an integral part of the reassertion of the nation-state as an organizational concept.’

<sup>276</sup> *Ibid.*, p. xi.

<sup>277</sup> This aphorism dates back to Bill Clinton’s 1992 presidential victory over George Bush. Despite basking in the afterglow of a successful military campaign in Iraq, Bush’s electoral millstone was the so-called “jobless recovery” that Clinton claimed his Republican opponent had no answer to.

that had been found'<sup>278</sup> to make this pivot lever upwards the economies of its erstwhile adversaries. But Thatcherism *avant la lettre* this was not; the EEC maintained the ECSC's ambiguous dual commitment to laissez faire alongside social protection. The free market created by the EEC was not supposed to disrupt the level of social protection available in the various member states. In fact, a social fund was established, with unemployment at historically low levels, for the limited purpose of 'promoting within the Community employment facilities and the geographical and occupational mobility of workers' (article 123 [146] EC). Social policy, therefore, was clearly established as a legitimate area of European co-operation even if the results were negligible.

Tony Judt rightly calls the EEC Treaty 'for the most part a declaration of future good intentions'<sup>279</sup> because of its tendency to signpost certain goals without necessarily providing for their realisation. This is most obviously the case with regards to the twofold ambition of completing the free market for capital, goods, service and people, and orchestrating the common economic and monetary policy sketched out originally in articles 103 to 108 [99-110 EC]. Both goals were subsequently the basis of two further treaties, the Single European Act (1986) and Maastricht (1992) respectively: these two jump starts in integration have their origins in the founding document. Thus the EEC, more so than the ECSC, underscored the projective nature of integration, asserting explicit policy goals like common economic and monetary management or the commitment to reducing regional inequalities that implied significant political consequences. Important to note, however, is the fact that as with the case of social policy, this rule of the game was not accompanied by any certainty that these objectives were politically feasible.

The choice of deferring decisions, pending a new consensus or sudden external impetus for forging ahead, was not limited to the most ambitious and sovereignty-eroding goals. Even the process of moving towards qualified majority voting in the Council on trade negotiations with third parties or price-setting on agricultural goods was fudged until a later date. This was symptomatic of the kind of treaty agreement the EEC represented, and which was to become the established norm for later ones. Moravcsik calls these "framework documents". In outlining how the customs union would be followed by the introduction of QMV for external negotiations and competition policy, the treaty of Rome fixed 'institutional procedures

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<sup>278</sup> Milward (2000: 223).

<sup>279</sup> Judt (2005: 303).

through which rules would be elaborated rather than specific rules themselves.’<sup>280</sup> Unlike the ECSC, known to lawyers as a *traité de règles*, where what matters is the application of rules contained in the treaty, the EEC is a *traité de procédures* (or *traité cadre*), outlining the procedures by which the Community can eventually adopt policies.

Such a description illustrates the benefit of looking at European politics through the lens of the rules of the game because it shows how the debate in this compound system revolves as much around the way decisions are to be taken as it does on what the eventual decision is. The debate in the European polity concerns not only the type of social, regional or monetary policy that is to be adopted, but ‘is centred on the levels and ways in which authoritative decisions should be made.’<sup>281</sup> Since integration is a project with certain far-sighted goals, sometimes actively pursued at other times in abeyance, member states have squabbled repeatedly over the way rules are to be decided because this will affect the extent to which individual nations can influence or control future decision-making. Unsurprisingly, the biggest crises in the following decades arose when the fragile consensus over how decisions ought to be taken broke down.

#### 4. 2. After the EEC: Unexpected Constitutionalisation (ECJ), the First Enlargement (UK) and Democratic Consolidation (Mediterranean Enlargement)

There is a tendency, in the political science textbook account of integration history, to rely on a somewhat tendentious (and optimistic) philosophy of history to present the EEC as the natural next step in the creation of a supranational polity.<sup>282</sup> This is what John Gillingham sardonically refers to as ‘the New Testament version of ECSC: bigger, better, and accessible to all believers’.<sup>283</sup> Eschewing the progressive story of closer and closer integration over time, in this section I have two aims. Firstly, to analyse the way in which the rules of the game functioned in this period and, secondly, how they evolved in relation to the previous set of expectations and procedural norms outlined above.

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<sup>280</sup> Moravcsik (1998: 152).

<sup>281</sup> Hooghe and Marks (1997: 13).

<sup>282</sup> Of course, the EEC did not replace the ECSC. Following the 1965 Merger Treaty, a single Council and Commission were created for the “three communities”: ECSC, EEC and EURATOM. The ECSC treaty expired on 23 July 2002 and the international agreements it had made were devolved to the EU.

<sup>283</sup> Gillingham (2003: 74).

The two decades that followed the signing of the treaty of Rome were not fallow ones. The framework provisions of the treaty needed to be transformed into concrete policy action and so began the work of the EEC institutions. Unexpectedly, it was the ECJ, which on paper stood out least from the four major organs of the proto-polity, which made some of the most dramatic changes to the rules of the game. The two decisions in the *van Gend en Loos* (1963) and *Costa v ENEL* (1964) were the vital instruments for ‘fashion[ing] a constitutional framework for a federal-type structure in Europe.’<sup>284</sup> Yet the Court of Justice had been ‘expected to play a marginal role ... in part because it was expected to resolve only minor, intra-organizational disputes as it had in the ECSC’;<sup>285</sup> under the ECSC, the Court could not consider actions brought by individuals nor did it have the power to interpret the treaty. Thus the precedent of the ECSC proved very misleading for understanding the impact the court would have on European politics.

#### 4.2.1 *The Impact of the Court on the Rules of the Game*

Although the ECJ had already been created by the ECSC treaty, it was able to establish itself as a dominant actor in the shaping of the rules of the game only after the EEC (article 177 [234] EC) gave it the power to interpret the treaty *per se*, as well as subsequent legislative acts, and not just the legality of the actions of its institutions as under the ECSC treaty. Nevertheless, member states expected the court to deal with disputes arising under articles 169 and 170 [226 and 227], which enabled the Commission or a member state respectively to bring a suit for a state’s failure to fulfil treaty obligations. Indeed, article 173 [230], allowing the ECJ to rule on the lawfulness of acts of the Council and Commission, suggested a role as a bulwark against potentially *ultra vires* EEC legislation.

However, Article 177 associated the right to interpret the treaty with the competence to make a “preliminary ruling” at the behest of a domestic court ‘if it considers that its judgment depends on a preliminary decision’ on a question of European law. Drawing on its desire to ensure that the treaty’s objectives would triumph over member state reluctance, the Court was able to claim the power to ‘enforce rules necessary for the operation of the single market’<sup>286</sup> when asked by domestic courts for preliminary rulings.

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<sup>284</sup> Stein (1981: 1)

<sup>285</sup> Moravcsik (1998: 155).

<sup>286</sup> Gillingham (2003: 74).

The two historic cases that are the starting point of any EU lawyer's studies were actions brought by a Dutch company importing chemicals, van Gend en Loos, and an Italian citizen, Flaminio Costa, respectively. At stake were three serious questions concerning sovereignty: did the EEC treaty confer rights to persons moral and physical against their state? Who decides when a state has broken its treaty obligations? What happens when member state law and European legislation conflict?

In the van Gend en Loos case, the firm took the Dutch government to court for not respecting the EEC treaty's provision forbidding increases in customs duties on imports from member states. Since Article 177 instituted a procedure for national courts to seek a preliminary decision on questions concerning the interpretation of the treaty, the Dutch tribunal (the *Tariefcommissie*) referred the matter to the ECJ. The Dutch government argued, firstly, that the ECJ had no jurisdiction in this matter as, according to articles 169 and 170 [226, 227 EC], only the Commission or a member state could bring a charge of treaty infringement before the court. Secondly, as the case concerned 'the effect in Dutch internal law of an international treaty', under the practice of customary international law it was affirmed that the enforcement of treaty obligations 'must be determined exclusively by Dutch constitutional law.'<sup>287</sup> Demonstrating its federalist tendencies, the Commission disagreed with the doctrine of limited jurisdiction upheld by the member states (Germany and Belgium also appeared in the case).

The court ruled that individuals' rights were best protected by allowing them to take their grievances to the ECJ. 'To confine', it argued, 'the guarantees against infringement of Art. 12 [forbidding new import duties] by the member states to the procedures under Articles 169 and 170 [action by the Commission or member states] would remove all direct legal protection of the individual rights of their nationals.'<sup>288</sup> Furthermore, the analogy with standard international law was not pertinent because: 'the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights, albeit within limited fields, and the subjects of which comprise not only Member States but also

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<sup>287</sup> Stein (1981: 5).

<sup>288</sup> [1963] ECR 1.

their nationals.<sup>289</sup> This ruling established the norm of “direct effect”, meaning that treaty provisions created legally binding obligations that were justiciable in the member states.<sup>290</sup>

A subsequent ruling, *Van Duyn* (1973), had to adjudicate on the clash between a directive providing for free movement of persons and the British government’s refusal to give work permits to members of the Church of Scientology. The ECJ found in favour of Van Duyn’s suit against the UK authorities, who had yet to implement the directive, extending thereby the Van Gend en Loos decision to cover directives as well. These two cases changed the rules of the game, therefore, by ensuring that European legislation has to be implemented into domestic law and that individuals have the right to see that this is done. Thus the responsibility for overseeing compliance is not the preserve of the Commission or the member states. Henceforth, national courts played an important role in integration by highlighting the member states’ failure to comply with European law and seeking redress thanks to the ECJ.

In *Costa v Enel*, the ECJ treated a question of conflict of laws, which had been elided in the van Gend en Loos case. In effect, Costa became a proxy for settling the clash between federalist principles and confederal ones, at least in the legal arena. Although the court pronounced the “primacy” of European law over its national counterparts, this did not entail a definitive settlement of the competence over competences issue. Nor did it simplify the identification of a locus of political authority. By reading the EEC treaty in this way, the ECJ only increased the member states’ desire to design the procedures for future decision-making so as to control the outcome by making it virtually impossible to reach decisions except via consensus. Likewise their wariness towards adopting new policies that would transfer more power to the Community was heightened.

Costa makes an unlikely European founding father. Yet the court ruling that followed his tenacious pursuit of a dispute arising from his failure to pay an electricity bill almost seems to entitle him to a place alongside Monnet, Schuman or Hallstein – at least in terms of the number of times his name is cited. Contesting the Italian government’s nationalisation of the electricity industry (he owned shares in an electricity company, Edison Volta), Costa claimed the plan infringed EEC provisions on such things as monopolies, state aid and new restrictions on competition. It was the lower (magistrates) court in Milan, the *Giudice Conciliatore*, who

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<sup>289</sup> *Ibid.*

<sup>290</sup> Under the terms of the EEC Treaty “regulations” were already recognised to be directly binding (Art. 189).



seized the ECJ of the case and asked for a ruling. Once again the member state in whose jurisdiction the claim began denied the admissibility of this request and thus the supranational court's authority to offer a ruling on what was a matter of domestic law. The Italian government's objection was that 'Article 177 cannot be used as a means of allowing a national court, on the initiative of a national of a Member State, to subject a law of that State to the procedure for a preliminary ruling for infringement of the obligations of the Treaty.'<sup>291</sup>

The judges were at pains to point out that the EEC treaty could not be understood as a normal instrument of international law that states could avail themselves of by selecting for themselves which aspects to comply with. In their famous opinion, 'by contrast with ordinary international treaties, the EEC Treaty has created its own legal system which, on the entry into force of the Treaty, became an integral part of the legal systems of the Member States and which their courts are bound to apply.'<sup>292</sup>

Italian nationalisation of the electricity industry was not overruled by the ECJ; nor did the judges ever seriously consider deeming it unlawful despite asserting the primacy interpretation. Treaty restrictions on state aid and the right for the Commission to be consulted on state measures possibly distorting the operation of the common market did not, in the court's opinion, create individual rights. Moreover, the nationalised monopoly did not breach rules preventing discrimination against non-nationals since nationalisation meant no individuals could hold stock in the company. Instead of dictating government policy, the court's ground-breaking ruling sought to make a point about the evident contradiction between committing oneself to the creation of a common market and having domestic laws override these rules: 'the executive force of Community law cannot vary from one State to another in deference to subsequent domestic laws, without jeopardizing the attainment of the objectives of the Treaty.'<sup>293</sup>

In another landmark case, *Internationale Handelsgesellschaft* (1970), the court returned to the subject of supremacy and reiterated the superiority of Community law by declaring that it also trumped constitutional law and traditions. The judgment coolly announced that 'the validity of a Community measure or its effect within a Member State cannot be affected by allegations

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<sup>291</sup> [1964] ECR 585.

<sup>292</sup> *Ibid.*

<sup>293</sup> [1964] ECR 585.

that it runs counter to either fundamental rights as formulated by the constitution of that State or the principles of a national constitutional structure.<sup>294</sup> What the ECJ (always acting with the support of the Commission) did, therefore, was less to settle permanently questions of sovereignty than force EEC members to recognise that treaty ratification had serious ramifications on the exercise of their authority.

These court decisions, however, did not trickle down into the broader public consciousness of citizens in the member states. Thus awareness of the existence of this ‘quasi-federal law’<sup>295</sup> was limited to a small and learned elite. A similar veil of ignorance surrounds acts of resistance by the judiciary in certain member states. The most notable contrariness came from France, whose Conseil d’État (Chief Administrative Court) twice defied Article 177 and point blank refused to accept a request from a lower administrative court for an ECJ preliminary ruling.<sup>296</sup> Only in 1989 did the Conseil d’État recognise EC legal supremacy, although France’s highest court of appeal had done so in 1975.<sup>297</sup> Moreover, from the moment that a member state’s judiciary has ‘announced that it accepted the European higher law doctrine of the ECJ, that doctrine remained accepted within national jurisdiction.’<sup>298</sup>

Legislative resistance to the constitutionalisation of European law, too, has remained nugatory. In 1980, the French National Assembly attempted to pass a law that would have made it illegal for French judges to transpose ECJ judgments into domestic rulings but this was blocked by the Senate. Armed with the knowledge that European legislation took precedence over domestic law and that this conferred rights on individuals, states revised their expectations about the integration process and sought less to defy European authority than to pre-empt its unwanted consequences.

The compound system to which member states had committed themselves was a complex juridical and political environment characterised by an unresolved tension between federalist and confederalist tendencies. In fact, this tension was an integral and entrenched part of the integration process itself, requiring constant negotiation amidst temporary consensuses. If consensus was impossible, the other alternative became opting out of certain policy domains

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<sup>294</sup> *Internationale Handelsgesellschaft mbH v. Einfuhr- und Vorratstelle für Getreide und Futtermittel* [1970] ECR 1125.

<sup>295</sup> Stein (1981: 24).

<sup>296</sup> *Syndicat général des fabricants de semoules de France*, 1968; *Ministre de l’Intérieur c/ Cohn-Bendit*, 1978.

<sup>297</sup> *Nicolo*, 1989; *Administration des Douanes v. Société des cafés Jacques Vabre*, 1975.

<sup>298</sup> Goldstein (2001: 42).

entirely (with the option of opting in) since the ECJ had established that European-level decisions were not to be superseded by subsequent domestic legislation. Changes of heart reflecting changes in national policy or preference could not derail integration: the principle of *lex posterior derogat priori* does not apply. Ever closer union is a truly binding principle, which establishes the need for reluctant states – unless they were foresightful enough to insert an accession protocol, as Malta did on abortion<sup>299</sup> – to either prevent unwanted policy expansion from within the Council, or else secure opt-outs before they come into force as the UK and Denmark did when asylum and immigration were shifted to the first pillar as well as for the Euro.<sup>300</sup> Despite its statute referring to the promotion of “*une union plus étroite*” between member states, the Council of Europe, the inter-governmental organisation established in 1949 to protect human rights, has not been a vector for integration. Closer union requires a system for binding the governments of the member states from within their domestic jurisdictions.<sup>301</sup> Without ECJ activism it is likely that the EEC mechanism of integration would have faltered.

Thanks to the ECJ, law has functioned as a mask for politics but it is clear that politics continues as before because the Court’s ability to “federalise” or force compliance by member states depends on decisions adopted by the Council and the content of treaties unanimously ratified by the member states. Supremacy of European law is almost meaningless without a proper understanding of how internal politics severely constrains the spheres in which the Community can consider itself supreme. The autonomous element of politics and its impact on integration is probably best shown by the political process surrounding the enlargement of the Community.

#### 4.2.2 *British Accession: Opening Up the Pandora’s Box of Domestic Politics*

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<sup>299</sup> Under protocol 7 of the 2004 accession treaty ‘Nothing in the Treaty on European Union, or in the Treaties establishing the European Communities, or in the Treaties or Acts modifying or supplementing those Treaties, shall affect the application in the territory of Malta of national legislation relating to abortion.’

<sup>300</sup> The other alternative is secession. The only territory ever to have done so is Greenland, which joined as part of the Kingdom of Denmark but after home rule was granted in 1979 Greenlanders voted in a 1982 referendum against continued membership. They seceded in 1985 with the consent of the Council. Rasmussen (1983).

<sup>301</sup> As one noted legal scholar observes, this joining together of the ECJ and the national courts has a significant effect on compliance. As a result, the supranational element of ever closer union is strengthened by the integration of European juridical decisions into national court systems: ‘The national Courts and the European Court of Justice are thus integrated into a unitary system of judicial-decision making. What is important – indeed crucial – is the fact that it is the national court acting in tandem with the European Court which gives the formal final decision on the compatibility of the national measure with Community law. The main result of this procedure is the binding effect and enforcement value which such a decision will have on a Member State – coming from its own courts – as opposed to a similar decision handed down from Luxemburg by the European Court of Justice.’ Weiler (1982: 55).

After the horse-trading and haggling had been resolved and the treaty of Rome signed, the existence in practice of the institutions it engendered was not straightforward. The framework nature of the treaty opened up many possibilities for dissent and dispute as the integration project was about to make its impact felt. This was not limited to just radical disagreement over the level at, as well as the procedure by which, political decisions are taken. At stake was also the question of who could participate in these decisions since membership of the community was not fixed and the vague rules for admitting new members were yet to be put to the test.

Ever closer union was not an exclusionary principle.<sup>302</sup> Article 237 of the original treaty spelled out the expansionary design of the EEC: ‘any European State may apply to become a member of the Community.’<sup>303</sup> Whereas the spatial criterion for potential new members was hardly limpid the rule for deciding the admission procedure’s outcome, unanimity, was at least remarkably clear. Once offered membership, applicant countries sought a democratic mandate for joining this compound polity by resorting to the use of referendums. More than ever, Europe became a subject of domestic political debate, both rational and hysterical, as existing and prospective members debated the merits of enlargement.

Great Britain proved reluctant to participate in the Franco-German initiatives of European integration. It had snubbed the ECSC and, after declining to join the EEC, had constituted a European Free Trade Area (EFTA) of its own in 1960, which brought together seven states. British participation in the EEC nevertheless loomed large given its size (in 1962 almost as populous as West Germany), strength and solid historic commitment to liberal democratic principles. Besides, the death throes of empire and the dismantling of the system of imperial preference were forcing a major rethink of national economic strategy and positioning in the world economy. Only a year after the launch of EFTA, the Macmillan government began negotiations for belatedly entering the community. Eventually, Britain would be allowed to join following two French vetoes and after a special French referendum on the question.

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<sup>302</sup> The ECSC treaty was similarly open to new members. Article 98 declared that ‘any European State may request to accede to the present Treaty.’

<sup>303</sup> This article was subsequently repealed during the Amsterdam negotiations. Currently it is the “Copenhagen Criteria” that govern the eligibility of candidate countries.

French President Charles de Gaulle announced his unilateral veto of British entry on 14 January 1963, spelling the end of the road also for Ireland, Norway and Denmark, as their applications were tied to Britain's admission. The concerns surrounding this proposed enlargement and the reasons for the eventual veto shed important light on how expanding the community alters its existing rules of the game of politics. A wide variety of reasons have been put forward to explain de Gaulle's decision. What matters in this thesis is not the search for a definitive explanation but an appreciation of why enlargement proved so problematic, how the issue was eventually resolved and what were the future consequences.

Negotiations during Britain's candidature were a drawn-out affair that revolved largely around concessions needed to fit Britain into Europe's agricultural policy. Technically, this was the biggest sticking point because it meant Britain would be switching from 'a system of low market prices and high farmer subsidies to the Community system of artificially sustained higher prices'.<sup>304</sup> It is important to note that the negotiating table was not a two-sided affair in which the EEC six were dealing with Britain as united protagonists. At stake was in fact the emerging equilibrium about the details of European agricultural policy itself, notably the Franco-German bargain on supported prices for certain foodstuffs. When conducting the negotiations, therefore, 'the Community faced the dual problem of reaching an agreement with the British and at the same time reordering their own relationships'.<sup>305</sup>

The same was true of other bones of contention. British admission went beyond setting conditions for Britain's entry into the game of European politics; enlargement threatened to rewrite the rules of the club itself. The EEC members realised the extent to which expansion placed a question mark over the viability of the community. This is why, besides the technical aspects of agricultural policy or the status of the Commonwealth and EFTA in the customs union, they also made 'conjectures about where the British would stand on given issues'<sup>306</sup> to assess the long-term cohesion of the bloc. There need not be any incompatibility between an economic argument for the veto and explanations linked to geopolitical or ideological factors.<sup>307</sup> The discrete aspect of the negotiating process over agriculture and commonwealth trade was separate from and not necessarily related to broader expectations about how the UK

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<sup>304</sup> Lindberg and Scheingold (1970: 230).

<sup>305</sup> *Ibid.*, p. 229.

<sup>306</sup> *Ibid.*

<sup>307</sup> Explaining De Gaulle's motives is a hot topic in EU studies. Moravcsik (1998: 177) is the leading voice of the economic interpretation, claiming that the French president wanted, to use Europe as a sheltered outlet for French agricultural production 'after failing to reform French agriculture domestically'.

would behave as a member. Lindberg and Scheingold make this point when they refer to ‘two sets of negotiations – one explicit and the other tacit.’<sup>308</sup> Whereas economic policy was the subject of formal talks, tacit negotiations involved “penumbral problems” about where the Community would be heading if it expanded to include Britain and its northern fellow-applicants. Indeed, the need to resort to the veto can be read as ‘a sign that the Commission was manipulating a consensus’<sup>309</sup> on the issues undergoing formal negotiation.

Expectations about the future were crucial since the EEC six were at that moment discussing a radical proposal, known as the Fouchet Plan, to redesign the institutions and purposes of the integration project. This plan owed its existence to de Gaulle’s triumphant return to French politics, which postdated the EEC treaty but whose institutions he nevertheless sought to impose his stamp on. The Fouchet Plan was a canny move that called for furthering integration by creating a “Union of Peoples” that would ‘reconcile, co-ordinate and unify the policy of Member States in spheres of common interest: foreign policy, economics, cultural affairs and defence.’<sup>310</sup> It was clever because at the same time as it proposed new areas of joint action it made all of these dependent on unanimous agreement and lacked any supranational institutions; clearly it aimed to curtail federalist aspirations or at least prevent any developments contrary to French interests.

Fouchet’s plan collapsed before de Gaulle announced his veto. In the absence of a settlement for the rules by which Europe would forge ahead on the path of integration the possibility of enlargement became more threatening. This fear can be seen in de Gaulle’s defence of the veto, in which he specifically identifies the potential clash between widening the EEC and strengthening integration. Drawing on his geopolitical perspective and his obsession with securing an independent foreign policy, he prophesied that as a bloc of eleven or more ‘it is to be foreseen that the cohesion of its members, who would be very numerous and diverse, would not endure for long, and that ultimately it would appear as a colossal Atlantic community under American dependence and direction, and which would quickly have absorbed the community of Europe.’<sup>311</sup> In other words, expansion did more than jeopardise

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<sup>308</sup> Lindberg and Scheingold (1970: 232).

<sup>309</sup> *Ibid.*, p. 245.

<sup>310</sup> Art. 2, Fouchet Plan II.

<sup>311</sup> Charles de Gaulle, quoted in Nicholson and East (1987: 31). De Gaulle had some good reasons to doubt that the UK could use nuclear weapons independently after President Kennedy had, under the Nassau Agreement of 1962, pledged to supply Polaris missiles after the abrupt US cancellation of the Skybolt programme.

the current agreement over the rules of the game on matters such as agriculture or customs union; future projects of integration could not be realised if the community grew too heterogeneous. The fact that this decision split the Community (the other five sought to continue negotiations) also reveals how the actors participating in the EEC project imagined different possible futures for this entity, whether in terms of expansion, new areas of integration, or international role. Maximising economic benefit was never the sole motive, for, as Lindberg and Scheingold argue, 'if only material payoffs had been at issue, then there is every reason to believe that Community solidarity would have been maintained, perhaps at the expense of the British.'<sup>312</sup>

A second British application soon followed in 1967, which was again rebuffed by de Gaulle for near-identical reasons after negotiations barely lasting a few months. It is the expansion of the EEC in 1973, however, that provides the next most telling development in the rules of the game of European politics, for it is the moment when both money wrangles and referendums emerge as crucial factors in the integration process. The results on both domestic and European politics were far-reaching.

The key to successful British accession lay in deliberately linking together widening and deepening to prevent the former hindering the latter. This policy was agreed upon at The Hague Summit of 1969 as the twelve-year timeframe for completing the three initial stages of integration drew to a close. Prior to enlargement, the six sought to settle the unfinished business of devising a system for financing the CAP and sketch an outline of the next phase of integration. The subsequent financial package, which allocated to the Community funds from levies on food imports and the common tariff on industrial goods as well as a proportion of VAT receipts, was then presented to the new members as an *acquis communautaire*. Likewise, the decision to begin foreign policy cooperation and implement an eventual economic and monetary union agreed upon at The Hague was considered a definitive blueprint for closer union, which Michael Leigh aptly calls 'an insurance against any drift to Atlanticism following the entry of Great Britain'.<sup>313</sup>

Despite these efforts to consolidate the integration process before the admission of a troublesome new member, British entry opened up a new aspect of Community politics that

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<sup>312</sup> Lindberg and Scheingold (1970: 247).

<sup>313</sup> Leigh (1975: 158).

has time and again threatened the stability of the union and the goodfaith of its states: distributive politics. Britain's imports of food and industrial goods were well above those of the other members, whilst 'the domination of the budget by the CAP, from which Britain stood to benefit little, meant that Britain faced the prospect of becoming one of the largest net contributors to the budget.'<sup>314</sup> In these circumstances, the British Prime Minister negotiated a commitment to create a European Regional Development Fund as a way of reducing his country's net contributions, without which he felt accession would not pass domestic muster. Thus a policy goal, the reduction of economic inequality between regions, originally contained in the Treaty of Rome was revived as part of the deal to expand the EEC.

In another return to precedent, it was to be Germany that would pick up the bill for financing this new fund – as it had done for the aid package to (mostly French) overseas territories in 1957. It was, as Stephen George explains, 'a price worth paying for consolidating British membership of the EC',<sup>315</sup> especially when the new member was already making noises about the inefficiency of the Community's institutions. These changes set in motion a new and permanent debate about who gets what out of the budget and who funds it that is only resolved through periodic budget settlements for a number of years. Equally important, the addition of Britain also introduced a heavyweight political actor with a natural hostility to the CAP due to its small and efficient farming sector. The consequence was that in spite of temporary budgetary deals, there was now an on-going discussion not only about net contributions but also concerning where Community funds were best spent.

The British accession itself is a story of two referendums, one French and one British; the first decided the fate of the application<sup>316</sup> and the second, held two years after joining, determined whether or not Britain should remain in the Community. These referendums – although I will only discuss the British one – demonstrate both the desire and plausibility of linking domestic politics and the Community system. However, once referendums are used the fate of

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<sup>314</sup> George, Stephen (1998: 53).

<sup>315</sup> *Ibid.*, p. 66.

<sup>316</sup> The new French President, Georges Pompidou, unilaterally announced he would hold a referendum on enlargement in April 1972. Pompidou's gamble has largely been forgotten; if it is remembered at all it is usually treated as an instrument of domestic political positioning. Yet it was also intended as means of strengthening France's negotiating hand at the Paris Summit scheduled for later that year, where the details of EMU were to be discussed.



integration is strictly tied to the mobilisation of public opinion, which has had a profound impact on the construction of the rules of the game.<sup>317</sup>

Edward Heath's Conservative government conducted negotiations to a successful conclusion, formally joining in 1973 after parliamentary ratification.<sup>318</sup> The UK, at a time of poor economic performance and relative political instability, held two general elections in 1974. In the first of these, the Labour Party pledged to re-negotiate the terms of accession to the EEC, which were still highly controversial especially because progress on the regional fund was at a standstill. In the second election, Labour promised to hold a referendum on the results of this re-negotiation to determine Britain's continuing membership – a line more consistent with its original opposition to the treaty under the previous government. In the end, the re-negotiation resulted in the adoption of a “financial mechanism” for refunding excess gross contributions but with a plethora of strings attached so that ‘with hindsight it seems unlikely that it was ever intended to be effective.’<sup>319</sup> It would be left to Margaret Thatcher to hammer out a more successful rebate. In any case, this cosmetic change was sufficient to allow the then Prime Minister, Harold Wilson, to let the people return their verdict on the EEC. The final result was sixty-seven percent in favour, with a turnout of around sixty-four percent.

Predictably, the referendum debate aroused strong feelings as Commonwealth and Atlantic attachments proved resilient. Yet the content of the debate, which mostly revolved around sovereignty and Britain's position in world affairs, is perhaps less consequential than its impact on British party politics. This most stable of party systems, unsullied by wartime collaboration unlike much of the continent, was nevertheless unable to cope with the new cleavage issue of European integration. To start with, the constitutional innovation of inviting voters to decide a single question for themselves was unprecedented in parliamentary history. For only the second time in the history of parliamentary democracy, cabinet collective responsibility was waived<sup>320</sup> and both major parties were divided into pro- and anti-common-market camps. Thus the referendum device itself was ‘a way of circumventing internal party

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<sup>317</sup> It is no coincidence that the first round of enlargement in 1973, which heralded the use of referendums, corresponded with the creation by the Commission of regular, standardised public opinion surveys – called Eurobarometer – in all member states.

<sup>318</sup> Fellow-applicants Ireland, Denmark and Norway, all held popular consultations on the subject of joining the common market; Norway voted against, in Denmark two-thirds voted yes and in Ireland the figure was 83% in favour.

<sup>319</sup> Denton (1984: 121). The mechanism only applied if a state suffered from a balance-of-payments deficit, something the UK's North Sea oil revenues soon made improbable.

<sup>320</sup> The first was in 1932 when the Liberal government debated whether to abandon the principle of free trade.

splits'.<sup>321</sup> These had already been apparent in 1972 when the law ratifying British entry was passed with the aid of pro-European Labour parliamentarians. The implosion of the Labour Party on this issue intensified when it came to power, to the extent that Wilson was forced to concede a referendum to mollify his anti-European critics inside as well as outside parliament. At the grassroots level, hostility to continued membership was very pronounced: in a special party conference on the subject, the party voted two-to-one for rejecting the re-negotiated terms. 'The country thus witnessed', in George's fine description, 'the spectacle of a Labour Government recommending to the people in a referendum a line of action that it was official Labour Party policy to oppose.'<sup>322</sup>

With parties splitting before the vote and then re-uniting afterwards, the net result was that the referendum 'resolved few of the tensions surrounding Britain's membership of the EC or the failure of elites to deal with the question within traditional party frameworks.'<sup>323</sup> An extraordinary measure was thus used to deal with a new political issue that would keep recurring in the future and yet which cut across the traditional left/right party cleavage. The British precedent would be followed in many other member states, thereby illustrating the self-perpetuating character of the referendum when used as a palliative for internal party strife. Nevertheless, this is typically how referendums are used on questions of integration: 'in all EC countries disagreements over European unification do not occur between the main political parties but within them.'<sup>324</sup> In Denmark's accession referendum, for instance, an anti-EEC party was formed from splinter politicians from the main party formations who later rejoined them, whilst in France both the Maastricht Treaty poll (1992) and the vote on the Constitutional Treaty (2005) have produced unlikely alliances between offshoots of mainstream parties.

The temporary suspension of party cohesion on a recurring issue only defers an intraparty resolution on the matter; the exercise is cathartic but this purging of emotions hardly precludes them from reappearing and so the patient is not cured in any meaningful sense. This means that the political elite deliberately evades its traditional role of leading public opinion. Referendums are thus crude instruments for mobilising popular support behind integration. Yet their use also builds new expectations that referendums are the legitimising principle *par*

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<sup>321</sup> Smith, Julie (1998: 56).

<sup>322</sup> George, Stephen (1998: 93).

<sup>323</sup> *Ibid.*

<sup>324</sup> Franklin et al. (1994: 469).

*excellence* of European construction since traditional parties are poor containers for the debate for and against integration.<sup>325</sup>

It has become a norm that countries acceding to the EU invite their electorates to ratify their governments' decision. Likewise, it is increasingly common for treaty amendments to be put to the referendum test and public opinion will even try to pressure the political class into holding one. Habitual activation of popular mobilisation means that tampering with the rules of the game is no longer something that can be shielded from the public for 'even where referenda are not imminent constraints, politicians are induced by public scrutiny to act as if they were.'<sup>326</sup> With parties in evident disarray over the integration question, voters tend to believe that a public consultation is a way of avoiding the disingenuous inter-party consensus that normally holds in parliamentary ratifications. This was the case in Sweden in 2005, where before the failed vote in France and the Netherlands there was a growing clamour for a referendum by a coalition of opponents under the banner *folkomröstning nu* (referendum now). More so than the introduction of direct elections to the European Parliament, it was the staging of referendums that sounded the death knell for the "permissive consensus" that once allowed elites to negotiate integration amongst themselves.

Apart from the predictable outpourings of Atlanticist stalwarts and imperial nostalgics, the content of the UK referendum debate was notable for two reasons indicative of the way referendums on European matters enter the public sphere. Firstly, it reveals the difficulties of selling integration to a mass public and, secondly, it demonstrates the extent to which it leaves fundamental political problems unresolved. Rabid, if articulate, opponents of the EEC like Enoch Powell had it easy: their appeal for a no vote was a loud argument about sovereignty and special bonds with the US and the Commonwealth. Those who wished to remain in the Community, on the other hand, had a harder time expressing a finer argument, which stayed clear of sovereignty and identity debates. Instead, as Michael Steed observed, the yes campaign revolved around 'the familiar bread and butter issues of a British general election' once the 'federalist leadership of the European Movement was manoeuvred out of the way'.<sup>327</sup> Quite literally since food prices were a primary electoral concern at a time when

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<sup>325</sup> With the major parties struggling to set the discourse of integration, the possibility for misjudging public opinion also increases, as when de Gaulle's difficult re-election proved the unpopularity of his empty chair policy or when Chirac's referendum on the constitution backfired spectacularly.

<sup>326</sup> Hooghe and Marks (1997: 5).

<sup>327</sup> Steed (1977: 130-1).

world prices for many foodstuffs had risen above the EC stabilised price. In the government's pamphlet advocating continued membership, the emphasis was placed squarely on "food, money and jobs".

The expectation of growth thanks to integration is apparent, albeit often in a negative way, at times when new treaties are subject to national consultation. Invariably, one of the central tenets of the campaign for sanctioning new steps in integration is the economic uncertainty caused by stalling the process. Integration projects are thus intended to be relevant to citizens through their positive impact on economic life chances. This justification of the costs of "non-Europe" works both *ex post facto*, to explain the benefits of the SEA's deregulations, as well as *ex ante* in the case of the single currency that was often sold on the basis of the size of the expected savings on conversion charges.<sup>328</sup> Due to the preference for selling integration as a means of securing peace and economic growth, referendums have proved themselves very poor ways of settling the questions of sovereignty raised by closer union. More precisely, they fail to provide the voting public with a clear understanding of the implications integration has for national sovereignty – in large part because they sanction not a simple structured system of government but a complex and often opaque project with a high propensity for future changes.

The UK is a case in point. Given its historical and insular detachment from continental Europe, as well as its stringent doctrine of parliamentary sovereignty, it would seem sensible to expect strong assurances or clarifications about what integration entails for UK sovereignty so that any transfer of power would be sealed with the stamp of incontrovertible democratic legitimacy.<sup>329</sup> These were not very forthcoming, however, as the government preferred to debunk popular myths by going on the record to state that 'to say that membership could force Britain to eat Euro-bread or drink Euro-beer is nonsense.'<sup>330</sup> At the very least, the assurances proffered on sovereignty matters revealed only a partial picture of how the EEC works. The

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<sup>328</sup> Looking at those west European countries which have chosen not to integrate with their neighbours also offers *ex negativo* proof of the importance of the economic, security and democratic arguments in justifying integration. Norway and Switzerland are very wealthy thanks to certain distinct advantages (oil and banking secrecy respectively), which makes the economic incentive for joining the club trifling (they would also be expected to be net budget contributors). Also, Switzerland has a long tradition of both security independence and democratic culture.

<sup>329</sup> In the 1971 White Paper that set out the advantages of joining the Community, the government claimed 'there is no question of any erosion of essential national sovereignty; what is proposed is a sharing and an enlargement of individual national sovereignties in the general interest.' HMG (1971: 8).

<sup>330</sup> Butler and Kitinger (1976: 298).

government's advice to sceptics was to remember that 'it is the Council of Ministers, and not the market's officials, who take the important decisions. These decisions can be taken only if all the members of the Council agree. The Minister representing Britain can veto any proposals for a new law or a new tax if he considers it to be against British interest.'<sup>331</sup> What this overlooks is the use of QMV in decision-making, as well as the more fundamental point about the constitutionalising role of the ECJ in creating a binding legal order the members had not anticipated. After all, the Rome Treaty 'does not contain a supremacy clause and does not provide for the direct effect of directives or treaty provisions.'<sup>332</sup>

Hence the existence of a new legal order came as a shock to a large section of the British public when a landmark constitutional case, pertaining to a dispute over Spanish fishermen's right to fish in UK waters, was referred to the ECJ in 1990. In *Factortame* (the Spanish fishing company) v. Secretary of State for Transport, Lord Bridge explained why ECJ jurisprudence enabled the House of Lords to strike down an act of parliament that contravened European legislation:

if the supremacy within the European Community of Community Law was not always inherent in the EEC Treaty, ... it was certainly well established in the jurisprudence of the European Court of Justice long before the United Kingdom joined the Community. Thus, whatever limitation of its sovereignty Parliament accepted when it enacted the European Communities Act was entirely voluntary. Under the terms of the Act of 1972 it has always been clear that it was the duty of a United Kingdom court, when delivering final judgment, to override any rule of national law found to be in conflict with any directly enforceable rule of Community Law.<sup>333</sup>

This verdict spelled out much more clearly the way in which the integration process bound Westminster sovereignty – notably by abolishing the principle of *lex posterior derogat priori* – than the government's promise that veto power in the Council was a barrier against the unwanted erosion of powers. Sovereignty remains the elephant in the room, despite integration now being dependent on popular consultation, with member states still at pains to insist that they have the capacity to prevent unwanted legislation.<sup>334</sup>

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<sup>331</sup> *Ibid.*

<sup>332</sup> Stone Sweet (2005: 48).

<sup>333</sup> Lord Bridge, quoted in MacCormick (1999: 79).

<sup>334</sup> Even after *Factortame*, the UK government prefers to stress intergovernmental power. Thus when asked in 1995 about whether it was legitimate that the ECJ could make decisions gravely affecting the public purse (as was the case in *Barber v. GRE*, [1990] ECR I-1889, which outlawed gender discrimination regarding pension age) the then Attorney General evaded the question. With the forthcoming Amsterdam negotiations in mind, he

#### *4.2.3 The Mediterranean Enlargement Round: Defining the Community's Democratic Values*

One thing that the first enlargement round neither called into question nor changed was the Community's self-understanding about its values. Expectations concerning the purpose of integration were not subjected to serious revision by the admission of three northern countries. What evolved during the Mediterranean enlargement (Greece in 1981; Spain and Portugal in 1986), however, was that the Community found itself emphasising the liberal-democratic element of its values in a hitherto unprecedented way. In the preambulatory text of the Treaty of Rome, the founding six had declared themselves 'resolved by thus pooling their resources to preserve and strengthen peace and liberty'. But this was a somewhat awkward, coy acknowledgment of the baneful collapse of liberal democracy during the thirties and forties. As the Community welcomed new members with their own fragile histories of liberty and democracy, however, the strengthening of liberal democratic practices became an explicit goal of integration.

This new emphasis on democracy, rights and the rule of law became part of the official conditions for membership of the future European Union.<sup>335</sup> The turn towards a justification of integration in terms of nurturing democratic values in Europe was instrumental in persuading the EU-15 to take the momentous decision of healing the artificial rift between east and west in 2004.<sup>336</sup> But there was also a downside to all this celebration of using integration to complete the democratic transformation of post-authoritarian regimes. The rhetoric of democracy was turned against the process of closer union itself as member states, public opinion and commentators took it in turns to lambaste Europe's "democratic deficit".<sup>337</sup>

The formal Greek application for admission to the EEC was submitted immediately after the successful British referendum. In fact, the government of national unity had declared its intention to apply less than a month after the fall of the junta provoked by the Turkish

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insisted that 'the way to overcome such problems is for the member states to act collectively through the intergovernmental conference'. Quoted in Goldstein (2001: 61).

<sup>335</sup> These are known as the Copenhagen Criteria, which specify 'the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities' as paramount criteria for admission.

<sup>336</sup> For a constructivist account emphasizing the rhetoric of liberal democracy in enlargement, see Schimmelfennig (2003).

<sup>337</sup> For a survey of the arguments as they stood in the 1980s see Weiler (1988).

invasion of Cyprus and the spectre of all-out war with Turkey. Without the democratic revolution there could be no Greek accession. After the military coup in 1967, the EEC had frozen the Association Treaty (signed in 1962, which established a customs union and acknowledged that Greece would eventually be considered for admission economic progress permitting) and in the intervening years European institutions refused all Greek demands for normalising relations. The Europeans' treatment of Greece as a pariah state – including the suspension of loans that were part of the association agreement – singled them out from the conciliatory stance of Washington who 'carried on "business as usual" with the Athens regime.'<sup>338</sup>

This commitment to supporting the return of democracy was made more explicit still after the Commission returned its verdict on Greece's bid for membership. Citing concerns over the country's readiness to join the common market, the Commission dismissed talk of prompt admission. Instead it proposed a pre-accession period, of unlimited duration, during which time fundamental economic reforms would be carried out. Unimpressed by this recommendation, the Council of Ministers believed these economic hurdles were 'overshadowed by political considerations of the same kind as those harboured by the Greeks themselves: fear for the future of the newly reconquered Greek democracy'.<sup>339</sup> On the unanimous decision of the Council (1977), the Greek application was separated from the Iberian applications owing to France's fears of unmanageable agricultural competition if all three countries joined simultaneously. Greece's application was thus fast-tracked leading to full admission in 1981. Confirming the importance of this enlargement for the Community's self-image, Roy Jenkins, the outgoing president of the Commission, welcomed the new member by emphasising that 'democracy is at the heart of the Community'.<sup>340</sup>

Spain and Portugal shed their autocratic regimes at almost the same time as Greece did, although these odious regimes were far older. As in the Greek case, the undemocratic nature of these countries had led to their isolation from the political project of ever closer union – trade agreements were the only form of negotiation the EEC members would countenance.

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<sup>338</sup> Siotis (1983: 58)..

<sup>339</sup> Torbiörn (2003: 50).

<sup>340</sup> EEC (1981, vol. 1: 10). As befits the history of integration, with its invariably bathetic moments, parliamentary ratification passed smoothly in every country with one exception. During the debate in the French national assembly, where competition from another heavily agricultural country was causing a stir, 'references to the Acropolis, Solon and Greek culture were mixed with expressions of fear about pears, aubergines and courgettes.' Tsoulakis (1981: 142).

Even then the nine were not prepared to ignore the brutal means of repression commonly used in Spain and Portugal. Thus in 1975 negotiations with Spain on a new trade agreement were broken off as a protest against the speedy trial and execution of five men accused of murdering members of the security forces. An attempted military coup in 1981 emphasised the precariousness of free institutions in Spain, but Iberian accession was greatly delayed by continuing problems with the British rebate dispute and Greece's insistence on a new aid package as its price for accepting wider Mediterranean membership. Proving, once again, that for all the rhetoric used to justify enlargement, internal disputes have a great impact on enlargement negotiations, as widening the Community is invariably tied to new deals concerning the rules of the game.

In the 1986 enlargement, as would happen in 2004, the addition of new members with a standard of living well-below the average of the ten meant questions of migration policy and redistributive politics were paramount. The first was settled by the ten's willingness to compromise on one of the fundamental freedoms of the Treaty of Rome, free movement of persons, by introducing a seven-year transitional period during which mobility would be restricted. This served as a precedent for a similar temporary period of restricted labour mobility imposed on the 2004 enlargement countries. Financial issues were settled once Britain was awarded a fixed, no-strings-attached, 66% rebate on gross contributions and an Integrated Mediterranean Programme of economic assistance was agreed upon.

Nevertheless, the Mediterranean enlargement as a whole was far more than a set of what Harold Wilson had earlier termed "squalid wrangles" about agricultural prices, fish quotas or regional funds. Nor was the admission of three fragile new democracies a simple recognition of the superiority of the EEC nine's values. Rather, they served as a mirror for the existing members' own troubled political histories (with the major exception of Britain), thereby embodying the previously tacit principle that liberal democracy in Europe is mutually self-sustaining and cannot be achieved in isolation. Thus enlargement placed the practice of democracy at the centre of the integration project, something reflected in the Commission's favourable opinion on Greek accession in 1979 which declared that 'the principles of pluralist democracy and respect for human rights form part of the common heritage of the peoples of



the States brought together in the European Communities and are therefore essential elements of membership of the said Communities'.<sup>341</sup>

Announcing itself as a mechanism for engendering and protecting liberal democracy, the Community soon was subject to a critical questioning of whether this regime in fact matched up to the democratic credentials it extolled so much. It was this new concern that prompted so much soul-searching around the time of the Maastricht treaty as new analyses suggested that the integration process suffered from its very own “democratic deficit”. Already at the time of the introduction of direct elections to the European parliament in 1979, David Marquand – generally credited with the coining of the term – fretted that in a future with fewer opportunities for using the national veto:

a national parliament will no longer be able to hold its government to account for what the Council has done. The resulting “democratic deficit” would not be acceptable in a Community committed to democratic principles. Yet such a deficit would be inevitable unless the gap were somehow to be filled by the European parliament.<sup>342</sup>

Marquand’s prediction of a growing resentment over the divergence between democratic principles and institutional practice was correct – but not entirely for the same reasons as he first imagined. The Single European Act had reintroduced QMV into the rules of the game following the hiatus after the empty chair crisis whilst the parliament was granted few powers to check the Council’s decisions. Yet the deficit was not only the product of QMV, the unexpected impact of legislation removing non-tariff barriers to establish the common market and the weakness of a parliament devoid of pan-European parties. Even with the national veto, the ability to hold governments to account in national legislatures is attenuated because although the latter can sanction a government for not using the veto, once the Council has endorsed legislation national parliaments cannot subsequently overturn it. This was what the Factortame case proved.

Hence the critique of the democratic failings of the European polity was linked to the hoary debate over sovereignty and the legitimate powers of the EU.<sup>343</sup> However, the question of

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<sup>341</sup> EEC (1987, vol. 2: 119).

<sup>342</sup> Marquand (1979: 65).

<sup>343</sup> Morgan (2005: 1-2) begins his study with the classic British avatar of this struggle, the case of a greengrocer prosecuted for selling a pound of bananas.

how much sovereignty ought to be pooled was in turn part of and a stimulus for a wider debate, which dominated the next decade of integration, about the nature and purpose of the European project. The extent to which sovereignty had to be pooled depended on what integration was supposed to achieve. With the fall of the Soviet empire and the prospect of more enlargement, the need to offer answers to these questions proved even more pressing, thereby setting in a motion a process that would once again re-visit and challenge the rules of the game as they had developed since the Schuman declaration.

#### 4. 3. Maastricht and After: Questioning the Purpose and Nature of Integration.

In the first forty years of integration, the political struggle between supranational (federalist) projects and proponents of a states- or peoples-based concept of inter-governmental co-operation was a constant background feature. Clear indicators had been placed by the national leaders to mark the limits of federalist ambitions, such as the rejection of the EDC, the empty chair crisis and Margaret Thatcher's infamous Bruges speech warning of the menace of 'a European super-state exercising a new dominance from Brussels.'<sup>344</sup> In addition, the creation of the biannual European Council (1974) had emphasised the states' control over the agenda-setting of integration.

The three enlargement rounds and the Single European Act prior to Maastricht (1992) had done little to warrant a new pan-European discussion and clarification of where member states and public opinion stood on the issue of the nature of the European polity. Despite the Paris Summit's promise in 1972 to transform, by the end of the decade, 'the whole complex of the relations of Member States into a European Union' the plan was quietly shelved. A "solemn declaration on European Union" was pledged at the Stuttgart European Council in 1983 but it was left to the federalist group within the European parliament to devise an institutional blueprint, the Spinelli Draft Treaty on European Union, for a more consolidated European government. But with the exception of a positive vote in the Italian parliament, this draft treaty was studiously ignored by the member states. In fact, the significance of this supranational/intergovernmental tension – perhaps as a result of the ECJ's landmark rulings that gave the Community legal bite – seemed to have faded in comparison to the time of de Gaulle's first veto, when John Pinder spoke of the clash between 'Monnet's Europe against

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<sup>344</sup> Thatcher (1988).

the Europe of nation-states; federalism against nationalism; in the last analysis, order against chaos.<sup>345</sup> *Pace* this doom-saying, integration had not faced such a simple antinomy; a *modus vivendi* was quite workable in the middle ground between these two extremes, as shown by Europe's ability to evolve from the "euro-sclerosis" of the 70s to the dynamism of Jacques Delors' completion of the single market.

The collapse of the Soviet Union and its communist satellites, however, signalled a possible new departure for European construction thereby rekindling the debate concerning how much sovereignty was to be pooled and why. With the arrant collapse of the German Democratic Republic and the possibility of unfettered enlargement to the north and east came the old spectre of German hegemony in Europe. Re-unification severed 'the neat balance between German economic power and French military power.'<sup>346</sup> In this new geopolitical context, the expectation was that economic preponderance would translate into political power, which led to a reconsideration of the politico-security arrangement for supervising this economic giant. To redefine the arrangement a new Franco-German agreement was needed. The plan sought to allay French fears of unmanageable German political influence, whilst also serving as a vehicle for furthering French ambitions by transforming Europe into an economic bloc capable of forcing the Americans 'to sit down and negotiate the shape of the world economic order'.<sup>347</sup>

In this way German re-unification was tied to the abandonment of the Deutschmark and the creation of the single currency.<sup>348</sup> But while the currency that would eventually be christened the euro was at the heart of this latest design for closer union, the treaty that spawned it, the Maastricht Treaty, was in itself a much broader enterprise, as evinced by the symbolic change of name to "European Union". Besides the proposed monetary union, Maastricht was intended to clarify the nature and distribution of European competences, create the conditions for new policy innovation and try to address the problems of legitimacy and democratic accountability for which it had recently been stigmatised. This was done with an eye to the future: as in the previous enlargement rounds, the member states wanted to have a fixed,

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<sup>345</sup> Pinder (1963: 159).

<sup>346</sup> Laffan (1996: 24).

<sup>347</sup> Gillingham (2003: 234).

<sup>348</sup> An added advantage for the French was that since under the exchange rate mechanism the Franc was pegged to the Deutschmark 'decisions on interest rates made by the Bundesbank simply had to be accepted by the French if they wanted to keep the link' between the two currencies. Thus for the French this was also 'an attempt to reassert some control over their own monetary policy'. George, Stephen (1998: 226).

timetabled project of deepening before another expected wave of new members joined the Union.

#### *4.3.1 The Maastricht Treaty: The Construction of a Democratic Union, Demarcating Competences and the Struggle Over Social Policy*

Although the Maastricht Treaty endowed the European project with a new name suggestive of a more consolidated polity, this new treaty also reflected a certain watering down of integrationist ambitions. Whereas the Single European Act's first article had mentioned the objective of 'making concrete progress towards European unity', the Maastricht preamble referred only to 'a new stage in the process of creating an ever closer union among the peoples of Europe'. This was also a much narrower version of political union compared to that contained in Altiero Spinelli's 1984 draft treaty, which among other things envisaged a quasi-sovereign parliament and a set of fundamental rights. Conversely, however, it was more expansive than the Fouchet Plan's proposed "union of states" and it deftly side-stepped the conventional labels of federation and confederation, which were either too integrationist or too lukewarm for reaching a consensus. In particular, the United Kingdom blocked all attempts to introduce the expression "a union with a federal purpose"; the f-word was similarly taboo for the Labour government that negotiated the Constitutional treaty a decade later.<sup>349</sup>

The treaty did, however, retain the integrationist expectation that this was only another step in an ongoing process: the text was called a "treaty on European Union", amending the treaty of Rome, not a treaty *establishing*, once and for all, a European Union. In fact, there was a special provision (article N) for convening an intergovernmental conference in 1996 to revise the treaty in order to achieve its objectives – this reflected the disappointment of certain federalist member states with the Maastricht compromise. It also allowed certain contentious issues to be shelved until a future date. Above all, in its general provisions and tone, the treaty sent out a clear message that it was futile to expect that economic integration would always be

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<sup>349</sup> Dehousse (2005: 116) claims the equation between federalism and centralisation is 'an ahistorical reading, certainly, but now so deeply ingrained in British culture that it has become a factor to be taken into account.' Yet this is an inherently ideological claim since political science literature clearly distinguishes federation from confederation. The former consists of 'communities of both individuals and polities and are committed to protect the liberties of both, but with a greater emphasis on the liberties of individuals than on the liberties of the constituent polities. Confederations, on the other hand, place greater emphasis on the liberties of the constituent polities, since it is the task of each polity to protect individual liberty, more or less as each defines it, within its own borders.' Majone (2005: 221).

accompanied by corresponding and adequate steps in political integration thanks to the invisible hand of “spillover”.

Maastricht was thus a new departure as it sought to establish a comprehensive institutional framework (called the “pillar” structure) to allow potential political union to complement economic integration. Economic and monetary union, which created the conditions for reunited Germany’s expanding economic ties in post-Soviet Europe, could not exist in splendid isolation. At Germany’s own insistence – Chancellor Helmut Kohl believed that domestic support for such an ambitious and controversial move had to be legitimated by concrete advances in the political side of European construction<sup>350</sup> – it was to be accompanied by a political mechanism for common decision-making in foreign policy (the second pillar) and justice and home affairs (pillar three). Unlike the clear goal of EMU, ‘the negotiations on political union were completely open-ended.’<sup>351</sup> Admittedly, these discussions were parasitic to those on EMU – Moravcsik calls them a “sideshow” – but their importance for the rules of the game is incontrovertible, which is why I shall discuss them in some detail.

One of the landmarks, as well as one of its most hard-fought details, of the provisions for political union was the somewhat curious definition of the Union’s own principle of democracy. Stung by the ferocity of criticism levelled at its democratic shortcomings, especially when seen as meddling in domestic affairs and pressured by the UK government, European leaders decided to react by adopting a practice called “subsidiarity” in order to ‘enhance further the democratic and efficient functioning of the institutions’ (preamble). This principle is supposed to respect democracy by ensuring that political decisions ‘are taken as closely as possible to the citizen’ (preamble).

Unusually for a principle espousing democratic credentials, the origins of subsidiarity can be traced back to the social teachings of the late nineteenth-century Catholic church. According to this teaching, subordinate groups within society are considered better placed to empower individuals and assist them in leading meaningful lives.<sup>352</sup> In the EU, subsidiarity was envisaged as the expression of a strong claim that ‘member states are not prepared to accept

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<sup>350</sup> ‘Since mid-1989 Kohl had argued that the Bundestag would demand progress on foreign policy and the powers of the Parliament in exchange for ratification of a monetary agreement’. Moravcsik (1998: 447).

<sup>351</sup> *Ibid.*

<sup>352</sup> For a full exploration of the moral, theological and political dimension of subsidiarity see Millon-Delsol (1992).

an unlimited extension of Community competences.’<sup>353</sup> There was a twofold purpose behind making the proximity of decision-making a yardstick of European government’s democratic legitimacy at a time when the treaty extended the Union’s competences into nine new specific policy areas alongside the invention of the second and third pillars.<sup>354</sup> The hope was both to show citizens that the EU lived up to its own professed values and to give states a way of preventing an unwanted transfer of powers to the European level. In the end, neither of these objectives was fulfilled. Subsidiarity did not convince Europe’s citizens that the new Union was committed to democratic principles, whilst in reality other methods were used to safeguard national sovereignty on vital issues.

From the very beginning, the difficulty with the subsidiarity principle was ‘that it is not really a problem of competence’.<sup>355</sup> Defining and demarcating Union competences is the subject of other articles spelling out the areas in which Europe can legislate and the procedures by which these decisions can be taken. Moreover, in areas where the Union has exclusive competence subsidiarity does not apply; the *acquis* is similarly shielded from any *ex post facto* challenge. The UK government disputed this limitation, as during the negotiations it sought to regain powers at the national level (fisheries, in particular) something the application of subsidiarity in these areas might have enabled it to do. Ever closer union withstood this attempt to roll back European competences. Thus subsidiarity was designed to apply to those areas of policy where the EU has non-exclusive competence but where the principle of primacy means that there can be no permanent derogation from European directives once adopted.

Instead of serving directly to create a competence catalogue, subsidiarity uses an effectiveness and efficiency criterion to determine the level of government action by comparing the costs and benefits of Community action with those of the nation-state:

the Community shall take action, in accordance with the principle of subsidiarity, only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale or effects of the proposed action, be better achieved by the Community.  
(Art. 3b)

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<sup>353</sup> Dehousse (1994: 125).

<sup>354</sup> These were: European citizenship, visa policy, education, culture, public health, consumer protection, development co-operation, transport, telecommunications and energy infrastructures and industry.

<sup>355</sup> Dehousse (1994: 110).

This raises the obvious question of whether or not such a principle is justiciable by the ECJ, the body charged with overseeing the Union's adherence to this principle, because 'what will ultimately be needed is a ruling on the compared efficiency of both types of measure.'<sup>356</sup> In other words, the Court would have to assess a (potentially hypothetical) comparison between the merits and demerits of government action at two different levels. Obviously this is very different from hearing a case about trespassing competences if only because competences have a basis in the treaties whereas efficiency and effectiveness are in the realm of pure interpretation. In 1994 a leading EU lawyer delivered a sceptical verdict on the usefulness of this principle. 'As a general guideline in favour of decentralization', he wrote, 'I would argue that its direct utility as a legal instrument is limited. As it currently stands in the Treaty, it will not readily be used by the Court of Justice'.<sup>357</sup>

This prediction has proved to be entirely correct. Subsidiarity has not been invoked to counteract competence creep at the EU level nor has it been used as a shield for national policy prerogatives. In only two cases has the ECJ been compelled to 'give an explicit opinion in respect of the principle of subsidiarity';<sup>358</sup> in both instances the Court ruled against the state opposing European action. When, in 1996, the UK tried to use subsidiarity as a means of annulling a directive fixing a maximum forty-eight hour working week (health and safety of workers falls under QMV) the Court ruled that subsidiarity 'concerned the need for Community action, rather than the nature of intensity of that action.'<sup>359</sup> Given that the treaties had endowed the EU with powers over workers' health and safety, the ECJ dismissed the UK's claim without asking for any 'demonstration of any of the reasons behind the Council's conclusion that levels of health and safety in this field should be raised across the Community'.<sup>360</sup>

Thus the introduction of the subsidiarity principle was tactical: on paper it allowed for what seems to be a credible commitment to democracy without undermining in practice the exercise of EU competences. Paul Margette explains the cynicism behind this choice,

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<sup>356</sup> *Ibid.*, p. 114.

<sup>357</sup> *Ibid.*, p. 124.

<sup>358</sup> Margette (2005: 54).

<sup>359</sup> Búrca (1998: 223).

<sup>360</sup> *Ibid.*, p. 224. Besides the Court's unwillingness to become a tool for the member states to strike down unwanted legislation, there is also a practical reason inhibiting this potential role of arbiter between European and national power. As a result of the complex inter-relationship in the joint federal structure that connects the EU with the member states, it is also difficult to disentangle the two levels of government to determine the comparative effectiveness and efficiency of each.

explaining that because the concept of subsidiarity itself was deliberately extrinsic to conventional federal political systems this ‘made it particularly adaptable and allowed difficult debate on establishing a list of powers to be avoided. On its own it brought no clear response to preoccupations linked to the division of powers’.<sup>361</sup> Unsurprisingly, the question of competences would arise at every subsequent treaty amendment.

Control over the division of competences – the kernel of the ubiquitous struggle between federalist and confederalist visions of integration – has thus been maintained by other, more subtle means. From the member states’ perspective, especially the more euro-sceptic ones, such control was even more necessary than before as with the treaty on European Union ‘the Union’s competencies seem to cover everything, or almost.’<sup>362</sup> In making this argument I differ from the assertion found in some of the IR literature on member state compliance that ‘the nature of the ECJ has not changed, nor have the tools the member states have to influence judicial politics.’<sup>363</sup> Whilst the first part of this statement is indubitably true, the second does not seem to correspond to the subtle shift in the rules of the game of European politics designed to prevent the accrual of competences at the European level.

Besides the traditional veto power, still pertinent in matters such as tax policy, Maastricht saw three innovations for limiting the process of pooling sovereignty and preventing unexpected surprises.<sup>364</sup> The first method was the infamous opt-out negotiated by John Major’s government. These covered two areas: the third stage (the single currency) of EMU (protocol 11) and the social charter (protocol 14). In the first, Britain was granted the right not to join as well as the possibility of joining consequent on a separate parliamentary decision. This was necessary because the move toward a common currency was “irreversible” according to the treaty and not something that could be derailed in the Council. Under a second protocol, Britain obtained a derogation from the implementation of the Community Charter of Fundamental Social Rights of Workers into European law. These deals marked an important new departure, for instead of blocking an undesired new policy, a member state chose simply

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<sup>361</sup> Magonette (2005: 53).

<sup>362</sup> *Ibid.*, p. 11.

<sup>363</sup> Alter (1998: 122).

<sup>364</sup> Included in the treaty was also a protocol protecting Ireland’s constitutional principle of the “right to life of the unborn” against EU encroachment. Ireland felt threatened by an undesired legal precedent: a 1990 case brought before the ECJ had to rule on whether abortion was a service and thus whether Irish students could freely distribute information about clinics performing terminations in the UK. The protocol was designed to avoid holding a messy referendum on the treaty, as had happened with the SEA, by securing a cross-party coalition.



to withdraw from its provisions. In practice, even new member states can abstain from participating in a policy already adopted by the EU prior to admission, as Sweden – who officially had negotiated no opt-out – has not joined the single currency following a referendum refusal by its citizens.

The second method of limiting the transfer of competences for the foreseeable future was the introduction into the amended treaty of Rome of specific clauses prohibiting harmonization in certain fields of law. In the fields of education (article 126), vocational training (127), culture (128) and public health (129) [now 149-152 EC] the European Union was only permitted, by QMV, to ‘adopt incentive measures, excluding any harmonization of the laws and regulations of the Member States’. In doing so, the EU set limits to its own supremacy by declaring harmonization in certain domains to be illegal.

Finally, the third and perhaps most unusual – certainly the most abstruse – method was the creation of a three “pillar” structure as the framework for governing this nascent political union. Each pillar is governed by its own set of rules and objectives. The genius of the pillar structure is its ability to partition the inter-governmental and supranational components of EU decision-making. Of course, when unanimity is required in the first pillar (the European Community, comprising the legislation, institutions and *acquis* of the three communities plus EMU) the EU remains an intergovernmental organisation at heart. In the second and third pillars, however, the EU’s intergovernmental nature is reinforced because these areas are deliberately shielded from the EU’s supranational institutions: Commission, Parliament and Court.<sup>365</sup> Here is how. The Commission has no right of initiative on legislation in the second and a limited one in the third pillars whilst the presidency of the Council and a Council-appointed High Representative represent the EU foreign policy to third countries. The Parliament, as opposed to its co-decision power in many areas of the first pillar, has only a consultative role in both pillars, whilst the legal instruments for action ‘are ad hoc legal instruments, are not of a legislative nature and escape jurisdictional control.’<sup>366</sup> Thus they differ from those in the first pillar, meaning that the ECJ has no involvement in overseeing their application and enforcing compliance. Such measures, writes Stone-Sweet, were ‘an acknowledgement on the part of the member states of the ECJ’s capacity to pre-empt the EU-

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<sup>365</sup> There was a precedent for this in the SEA. A declaration annexed to the treaty specified that the goal of completing the internal market by 31 December 1992 did not “create an automatic legal effect” thereby depriving the ECJ of the ability to force the pace of integration.

<sup>366</sup> Magnette (2005: 42).

legislator and the national parliaments’,<sup>367</sup> proving once again the significance of expectations when it comes to writing the rules of the game.

In this way the continuing federal v. confederal tension was neither neglected nor resolved. Rather, the existing settlement was reworked into a new institutional package that promised to satisfy neither camp fully and yet still represented at the same time some progress, for the federalists, and safety for the less integration-minded. No attribution of *Kompetenz Kompetenz* had been made; no primary locus of sovereignty had been identified. Despite their absence, or better, because of it, the hybrid arrangement, albeit with a few minor modifications, is still the model for integration today. Magnette captures this ambivalence perfectly, when he notes of the Constitution that ‘*ayant choisi de ne pas choisir entre les deux modeles concurrents, les gouvernements ont aussi préservé l’hybridité fondamentale du régime européen*’.<sup>368</sup> This formula – deciding not to decide – expresses succinctly the logic of dynamic equilibrium at play in European integration.

The alternatives to subsidiarity – none more so than the pillar structure – used to prevent a slide towards thicker federalism made the Union far more complicated than its predecessor by multiplying the different rules applicable in different fields. This had the perverse effect of making the Union more opaque, less comprehensible in comparison to nation-states and seemingly more democratically unresponsive. Anticipating this consequence, Maastricht tried to counterbalance it with the creation of a European citizenship, granting the right to vote in European and municipal elections in other member states and diplomatic representation in third countries, as the first step in building a common identity.<sup>369</sup>

In addition to these symbolic moves, the Maastricht Treaty also tried to foster European-level social policy – a goal of the original Rome treaty but a largely forestalled one – in the hope this would make the EU more legitimate in the eyes of citizens. This was to be achieved by the Protocol on Social Policy, which expanded the use of QMV in this policy field. It was a classic compromise given the ‘impasse between British unwillingness to expand majority

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<sup>367</sup> Stone Sweet (2005: 54).

<sup>368</sup> Magnette (forthcoming).

<sup>369</sup> In reality, the identity agenda predated Maastricht by several years. Already in the mid-1980s the Commission had pursued a policy in the symbolic sphere – albeit a shallow one. It persuaded the Council to celebrate “Europe Day” on the anniversary of the Schuman declaration, to adopt a flag (purloined from the Council of Europe), a hymn (likewise borrowed from the Council of Europe), a common burgundy-coloured passport and a stylistically identical driving licence.

voting to social policy and France's refusal to sign a treaty that did not do so'.<sup>370</sup> Indeed it was a double compromise. The UK was exempted from being subject to the expanded QMV competences of the Community in these aspects of social policy; whilst promoters of a welfarist version of integration were rewarded with the introduction of QMV into only the least controversial areas of social policy.

The social protocol to the Maastricht Treaty, allowed the Council to use QMV in five areas already included under the treaty of Rome: health and safety at work, working conditions, information and consultation of workers, gender equality in the labour market and the integration of those excluded from the labour market. Since the most contentious categories of social policy it covers, such as social security, employment protection and employee representation, are decided by unanimity this marked no great expansion in Union competences. Moreover, under article two of the protocol, 'the provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs.' Not only was the tax revenue necessary for funding social transfers still dependent on unanimity but the policy areas where regulatory measures could be used as proxies for creating a European system of social protection were likewise subject to unanimous decision-making. This was the most lukewarm manifestation of "social Europe" that could be passed off as a step in the right direction. According to the rules of the game, therefore, 'issues of redistribution are off the table while those having to do with economic liberalization are on the table.'<sup>371</sup>

The combined efforts of the Commission's identity-building programme and the new Maastrichtian political order (with some added social policy spice) were not sufficient to convince Germany's Constitutional Court that the time of a pan-European democracy had come. In a startling decision, the Constitutional Court of Europe's most pro-integrationist country declared that the Union's democratic deficit placed definite limits on the constitutional transfer of powers away from the member states. Rejecting the complainant's claim that the QMV principle was antithetical to Germany's Basic Law provision on the democratic character of political authority, the court nevertheless found that 'should the Bundestag transfer too many of its competences, too much state power would be legitimated

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<sup>370</sup> Pierson (1998: 132).

<sup>371</sup> Sbragia (2000: 236).

only indirectly; as a result, the Democracy Principle would be violated.<sup>372</sup> Although it did not specify what might constitute an illegal transfer of sovereignty, the Court based its judgment on the fact that the Union's democratic credentials were too weak as things stood to permit an empowered federal Europe well beyond the qualified extension of powers under the Maastricht treaty. In particular, the court singled out the absence of 'a constant, free exchange of ideas leading to a common public opinion, transparent and understandable (to the ordinary citizen) objectives of public authority, and the possibility of every citizen to communicate in his native tongue with public authorities to whom he is subjected'.<sup>373</sup>

This decision is an important marker rather than a cavil. It represents a line in the sand signifying that political integration can only go so far if the institutional framework of indirect representation through the Council, with a weak Parliament and public sphere, is maintained. Of equal importance, the criteria it specifies for democracy are so exacting as to suggest the implausibility of breaking through the indirect paradigm of integration in anything except the long term. The judges 'characterised the European Union as a *Staatenverbund*, or "league of states", which involves Germany in membership of supranational organisations but not the membership of a European state.'<sup>374</sup> According to this interpretation, as Stone Sweet explains, the process of integration must progress through intergovernmental control for 'at the community level, the German government negotiates and authorises, by treaty law, whatever there is of EC governance; at the national level, the Bundestag legitimises and transposes these authorizations in national law.'<sup>375</sup>

Thus the German court's vision of the current nature of the European project and the conditions under which dramatic further integration would be justifiable suggest a double bind that will work to keep the Union in its halfway-house position beyond an ordinary international organization and yet well short of a consolidated federal system. The impediments to integration outlined in legal and political theory were, in fact, quite neatly mirrored by developments in the real world as voters had their say on the treaty. Maastricht nearly knocked one of post-war Europe's most influential political leaders off his presidential perch, whilst the continent reeled from the first ever popular rejection of a treaty.

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<sup>372</sup> Boom (1995).

<sup>373</sup> *Ibid.*

<sup>374</sup> Duff (1994: 61).

<sup>375</sup> Stone Sweet (2004: 93).

French President François Mitterrand gambled his remaining three years' mandate on a treaty referendum, announced as a true Gallic *coup de théâtre* the day after the Danes' rejection. Dividing the opposition was part of the explanation for this dramatic departure but the desire to have France lead Europe in this new era of political integration was paramount. The result, “*le petit oui*”, with only 51.05 per cent in favour unmasked the perils of seeking popular support for an elite-engineered political project deliberately chosen to remedy the indifference shown towards economic integration. As a signal of where French opinion stood on closer union it was as clear as the German constitutional court's verdict that a radical and unforeseeable change of circumstances would have to take place before a deep union was legitimate. Public legitimation of top-down initiatives could no longer be taken for granted. The lesson and expectation it generated was that future deepening had to correspond with more than just the ambitions of French politicians: additionally, the French population had to give their earnest support

The Danish “no” to Maastricht was another blow to the ambitions of integrationists. It revealed a new problem: that of accepting the democratic verdict of a national electorate when they rejected a treaty. A trifling difference of 47,000 votes resulted in a 50.7 per cent majority against ratification. An emergency Council meeting was called, which ‘categorically rejected any renegotiation of the treaty.’<sup>376</sup> The alternative was to convene the European Council to give Denmark certain cast-iron assurances that would placate the treaty's opponents. Contestation hinged on several key issues: the single currency, defence, levels of social and environmental protection and the right to attribute citizenship. Under a protocol of the treaty the Danes already had the possibility of being exempted from the third stage of EMU, the single currency stage. At the Edinburgh summit, the member states reaffirmed this opt-out and also gave specific assurances about other Danish concerns: they would also be allowed to forbear from participating in ‘decisions and actions of the Union which have defence implications’,<sup>377</sup> the right to set the bar of social and environmental protection higher was confirmed and nationality was affirmed to be ‘settled solely by reference to the national law of the Member State concerned’.<sup>378</sup> Rather than wait for the long-dreamed of “social Europe” and its sovereignty gamble of pooling more powers in order to extend protection levels across Europe, the Danes preferred to fence off their own social *acquis* from negative integration.

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<sup>376</sup> Duff (1994: 55).

<sup>377</sup> EC (1993: 23).

<sup>378</sup> *Ibid.*

This shows that there is no in-built complementarity between advocates of a social Europe and federalists.

These new guarantees were enough to save Maastricht. On 18 May 1993, 56.8 per cent of the Danish population returned a “yes” vote. In other words, non-treaty guarantees were enough to secure the consent of an initially hesitant country. A subsequent referendum debacle further highlighted this incapacity to accept democratic rejection of ever closer union. In 2001, Irish voters spurned the Nice treaty, supposed to pave the way for the accession of central and eastern European countries. Again the Union’s leaders declared immediately that re-negotiation was off the agenda. A specific guarantee about Ireland’s neutrality was hastily granted. Ever since the vote count, however, it was obvious that Ireland – under massive pressure from other countries for behaving as a “bad European”, ungrateful for all the injection of European funds – would have to hold a new referendum on the exact same treaty. The immediate reaction of the Commissioner on enlargement was to announce that the Irish vote did not matter: ‘the outcome of a referendum in one country cannot block the EU's most important project.’<sup>379</sup>

The Danish and Irish experience begs the question as to what kind of political legitimacy referendums can confer on pooling more sovereignty and enlargement if there is a correct result that must be obtained in spite of initial reluctance. The difference between the double votes in Denmark and Ireland with the aftermath of the failed referendum on the Constitutional treaty in France is patent. Size matters: rather than make any rash announcements concerning the status of the treaty the European Council agreed to a six-month “period of reflection” before the matter could be seized upon again at an official level.

Maastricht, therefore, was successful in creating a new and irrevocable step in integration but at a price: opts out had to be given to certain countries, new methods of intergovernmental control were introduced, the UK was finally revealed as a potent anti-federalist force, France was unmasked as an ambivalent integrationist since elite enthusiasm was not matched by public opinion and small countries’ democratically expressed opinions were shown to be nugatory. Discerning the nature and purpose of European government was no easier a task than before since the compound political system of the EU remained firmly located in the

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<sup>379</sup> Günther Verheugen, quoted in [The Independent](#), 9 June 2001.

middle of a spectrum between international organisation and federal state. In sum, these precedents did not bode well for voluntary centralisation.

#### 4.4 Conclusion: Two Steps Forward But How Many Back? European Integration's Dynamic Equilibrium

Fifty years of integration have been surveyed in this chapter.<sup>380</sup> Instead of trying to explain actor preferences and the reasons for negotiation outcomes, the analysis has concentrated on bringing to light what I have termed the rules of the game of European politics. Special emphasis has been placed on the evolution of these rules: that is, the way new developments relate to previous expectations, bargains and ambitions. Evolution is used here in its etymological sense of “unfolding”. Biologists refer to the concept of punctuated equilibrium when explaining the process of evolution. This refers to moments of rapid evolution followed by lengthy periods of stasis, which revises the gradualist notion of the development of species. Superficially, the story of European integration I have analysed seems to fit this punctuated model: the various treaties serve as convenient markers for new steps towards closer union separated by periods of standstill. But the suggestion that during a moment of progress sufficient advances are made to make the past an irrelevance is erroneous. From having traced a series of recurring tensions and omnipresent unsettled questions, it should be clear that the integration process is not a simple dichotomy between stagnation and progress. Integration is a process with an eye on the future but also constant glances over the shoulder to the past.

Rather than interpreting integration as a gradual process of progress, like a species' adaptation to a particular environment, I have tried to present the story as one of subtle development without the guidance of an invisible hand or intelligent design. By definition, therefore, this story has not been that of the steady maintenance of the existing *status quo*, otherwise there would be no unfolding. Integration has been characterised by a series of great unknowns (how institutional actors would behave, the consequences of enlargement, the use of referendums etc). These have been confronted and managed without resolving the two basic tensions between different visions of the institutional nature of the Union (confederal or federal) and

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<sup>380</sup> For the sake of simplicity I have deliberately omitted a discussion of the Amsterdam Treaty (1997), which although it transferred immigration and asylum policy to the first pillar did not fundamentally reconstitute the rules of the game.

its policy purpose (free trade or social protection). In addition, the lingering rivalry between two different visions of European security (Atlanticist v. Europeanist) is no nearer to being settled than at the time of the collapse of the EDC treaty. This ability to manage fundamental tensions, without choosing between different visions of integration, whilst also designing and implementing new projects of integration is what I have termed *dynamic equilibrium*.

To conclude this overview of the European political system's dynamic equilibrium I will make a few points about the Constitutional Treaty. This new document closes the circle rather neatly as it mimics the Maastricht Treaty's side-stepping of fundamental tensions yet nevertheless introduces certain new innovations allowing for a greater possibility of governing in common.

The Constitutional Treaty thus belongs to this logic of dynamic equilibrium because it too fails to transform the Union into a political union in which the rules from the past no longer matter. From the outset the new treaty was engaged in the relics of previous compromises and failures. The three essential tasks that the Nice treaty had made no progress on concerned establishing the role of national parliaments, clarifying the legal status of the Charter of Fundamental Rights (another charter laden with commitments to high social protection whose legal status was unclear)<sup>381</sup> and the division of competences.<sup>382</sup>

Integrating the national parliaments into EU decision-making serves a twofold purpose. Firstly, it is intended to act as a "system for monitoring" the hitherto feckless subsidiarity mechanism as it gives the member states enhanced power to challenge legislation if a third (a quarter in certain areas) of the parliaments decide that European action fails to comply with the subsidiarity principle. Parliaments have also been granted the right to take the Commission to the ECJ for breaches of the subsidiarity principle. According to the protocol on the role of national parliaments, European institutions will have to transmit legislative drafts to domestic parliaments and ensure that 'the reasons for concluding that a Union objective can be better achieved at Union level shall be substantiated by qualitative and, wherever possible, quantitative indicators' (protocol on subsidiarity, article 5). The second purpose behind linking parliaments to European governance is to improve citizen's faith in

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<sup>381</sup> Although extraneous to the treaties and ordinary legislation, the EU's courts have made reference to the Charter implying it is already binding on the actions of the Union. The first time was in *max.mobil Telekommunikation Service v. Commission* case T-54/99.

<sup>382</sup> Dehousse (2005).



the mechanism of democratic control over the EU. This comes not only from the regular transmission of information from European institutions to the domestic legislature but also in the procedure for allowing a national parliament to veto a move to QMV (IV-444.3) under the “simplified revision procedure”, which makes this fundamental change possible without treaty renegotiation. By tying the transfer from unanimity to QMV to parliamentary life the assumption is that this will generate domestic party debate, which if successful will grant the direct democratic legitimacy lacking in a distant and indirect Council decision.

The Charter of Fundamental Rights (2000) was launched as a way of killing two birds with one stone: to provide a corpus of common values as the basis for a putative European identity and to incorporate a bundle of social and economic rights to maintain the political pressure for a “social Europe” with a regulated market. It forms the basis for a positive vision of integration as opposed to deregulation. Needless to say, this charter was only integrated into the Constitution after a hard-fought compromise that diluted its possible implications for the harmonisation of social policy. The charter only applies when countries implement European law (II-111. 1), meaning that it cannot create rights for individuals except in those areas where the EU is already competent. In case this declaration of rights leads to pressures for expanding their applicability, the wary member states have specified that it ‘does not extend the field of application of Union law beyond the powers of the Union or establish any new power or task for the Union’ (II-111.2).

Under great pressure from the United Kingdom and Ireland, each controversial article referring to economic and social rights, which come under the banner of the Union’s rights of “solidarity”, has been qualified by the clause ‘in accordance with the rules laid down by Union law and national laws and practices’. Thus in these areas national practice is granted equal status with EU measures so as to prevent the latter trumping the former. Moreover, in case this clause does not guarantee enough against unwanted judicial activism special provisions “governing the interpretation and application” have been added. Uniquely, these deliberately target the judiciary because ‘the explanations drawn up as a way of providing guidance in the interpretation of the Charter of Fundamental Rights shall be given due regard by the courts of the Union and of the Member States’ (II-112.7). The explanations themselves are designed to restrict all attempts to make these rights engender a common social policy through the back door. No big bang in the construction of a social Europe has thus occurred. Rather, the delicate compromise between free marketeers and interventionists has prevailed

(thus it remains in equilibrium) albeit in new circumstances, which are yet to be put to the test. Hence it is a dynamic situation and not a continuation of the status quo.

Another policy fudge was constructed to keep integration in foreign and security policy compatible with NATO obligations, a question that has plagued progress in this field of integration since Maastricht. Despite the maintenance of unanimous decision-making in almost every aspect of CFSP, the Atlantic-leaning members insisted on the insertion of a certain number of clauses preventing any infringement of NATO commitments. Thus participation in CFSP ‘shall be consistent with commitments under the North Atlantic Treaty Organisation, which, for those states which are members of it, remains the foundation of their collective defence and the forum for its implementation’ (I-41-7). Hence European cooperation in defence and international relations remains deeply ambiguous and far from autonomous.<sup>383</sup>

Allocating sovereignty through a neatly-drawn division of competences has also been studiously avoided in the constitution. Although the pillar system is replaced with three categories of exclusive, shared and complementary competences, alongside the “coordination of economic and employment policies” and the CFSP, there are 436 articles laying out the conditions for how the EU conducts its business in these areas of competence. As in the Maastricht treaty, the emphasis is on proceduralism – with decisions and negotiations going back and forth between the many institutional actors – to prevent the establishment of an internal hierarchy among the institutions. The consensus outcomes proceduralism encourages serve to avoid giving the impression that one of the conflicting principles of supranationalism or intergovernmentalism has triumphed. They are kept in check through neither being able to declare themselves superior.<sup>384</sup>

Regarding the issue of who determines competence, the constitutional treaty is far more explicit than ever before about the source of EU competences. The principle of conferral establishes that the member states confer certain competences to the EU whilst retaining those not conferred. At the same time, the possibility of conferring more competences is made

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<sup>383</sup> The symbol of this double commitment to Europe and NATO is the multinational Eurocorps force, established in 1993, which can participate in both NATO and EU missions.

<sup>384</sup> As the French political philosopher Ferry (2000: 123) remarks, ‘peut-être d’ailleurs est-ce en partie pour éviter que ne surgisse pratiquement la question critique: “qui est souverain dans l’Union”, que l’on procéduralise à l’extrême les processus de décision des instances communautaires et intergouvernementales, avec de multiples obligations de consultations et de navettes.’

somewhat easier through the creation of “bridging clauses” (IV-444) that enable the introduction of QMV in areas subject to unanimity (except for military and other defence matters) without the need for treaty renegotiation. That this is to be done within the context of a unanimous European Council decision with the possibility of a national parliamentary veto shows the member states’ ability to retain control over the conferral of powers. The opportunity for a more federal system exists but it is dependent on the full consent of all member states and their parliaments.<sup>385</sup> It would be wrong, therefore, to describe this as no improvement on the *status quo ante* because the new conferral mechanism means that any such transfer of sovereignty will be based on unequivocal consent by each national democracy after a proper debate on its merits. Additionally, this parliamentary-based system of conferral is designed to remedy some of the problems; as shown in this chapter, arising from a referendum-based mechanism for consenting to competence extension.

With the future of the Constitution hanging in the balance there is a profound risk of having, for the first time ever, an ambitious enlargement without a concomitant project for greater integration. Furthermore, the very idea of a constitution connotes something permanent or at least very difficult to revise. If an unambitious document such as this one fails then it is highly unlikely that a far more integrationist project will curry favour among the citizens and governments of the member states. This has great implications for the EU’s viability as a compound polity. According to Stanley Hoffmann’s classic interpretation of integration, the compromises and side-stepping of fundamental tensions characteristic of European integration is untenable:

Between the cooperation of existing nations and the breaking in of a new one there is no middle ground. A federation that succeeds becomes a nation; one that fails leads to secession; half-way attempts like supranational functionalism must either snowball or roll back.<sup>386</sup>

In this chapter the analysis of the evolution of the rules of the game of European politics has revealed that integration has stuck in a surprisingly dynamic fashion to this highly unusual middle position – a *tertium genus* – that so disconcerted Hoffmann. Voluntary centralisation, that is, the unanimous agreement of all member states to increasing the scope of EU competences and a consensus on why this should be done has always proved an elusive grail.

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<sup>385</sup> There is also a provision for “enhanced cooperation” (first present in the Nice Treaty), which is the opposite of the opt-out mechanism: it allows for a pioneer group of states to pool more sovereignty in new areas

<sup>386</sup> Hoffmann (1966: 909-10).

Perhaps the most important process of centralisation, the creation of an autonomous and binding legal order as interpreted by the ECJ, was less voluntary than stealthy or surreptitious as can be seen by the immediate opposition it raised as well as various subsequent measures to limit the extension of competences via ECJ interpretation. From this analysis I conclude that the EU is only viable to the extent that it can keep reproducing a dynamic equilibrium between conflicting visions of its nature and purpose that shy away from voluntary centralisation of power. In the following chapter I will seek to determine why this conclusion is also tenable by analogy with the experience of the American compound system in which neither a dynamic equilibrium nor voluntary centralisation was possible.



## Chapter Five

### Contrasting and Explaining the Viability of Two Compound Systems

*“And what should they know of England who only England know?”*

Rudyard Kipling

#### Introduction

It is easy to offer a partial representation of the EU that only reveals the success of the ongoing constitutionalisation of European law. Taken in isolation, this constitutional approach does not reveal much about the viability of this polity; it paints a picture of the increasing reach of EU legislation without revealing the recurrent and intractable conflicts over what the EU is for. As I tried to show in the preceding chapter, however, the integration of ECJ decisions into domestic law – the most visible form of constitutionalisation – and the resistance of domestic politics this sometimes engenders can only make sense within a wider understanding of the rules of the game of European politics. Supranational integration has not been, nor will it be, a product simply of judicial activity. It has to be explained in relation to, amongst other things, enlargement, political decisions during treaty negotiation and referendum campaigns. Thus law-focused studies of integration, such as Goldstein or Stone Sweet’s,<sup>387</sup> are not guides for explaining why the EU has maintained a compound system and how problematic this has been.

This over-insistence on the legalistic approach has a parallel in the study of American political development. Until Reconstruction scholars tended to see the US Constitution as ‘giving existence to government and prescribing and limiting its powers, rather than as the basic structure of the polity, not consciously constructed but growing organically through history’.<sup>388</sup> Once the difficult struggle against secession had ended and the compromises necessary for re-establishing the Union were in place, the Constitution was more likely to be

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<sup>387</sup> Goldstein (2001); Stone Sweet (2004); cf Alter (2001).

<sup>388</sup> Belz (1969: 111).

read ‘in essentially political terms’<sup>389</sup> as the role of parties, leaders and unwritten norms became more obvious. This self-consciously critical reflection on what Woodrow Wilson called “the constitution in operation” rather than the “constitution of the books” was also made possible by the withering away of faith in guiding providence.<sup>390</sup>

In this chapter I want to pursue a similarly multi-faceted interpretation of the legal and political orders of both the European and the pre-civil war American compound systems. To do this I will contrast the differences in the disputes over the rules of the game within both polities according to the five major differences already identified in section 3.4. The objective is to use these differences to explain why the European compound system has so far maintained a dynamic equilibrium between confederalism (inter-governmentalism) and federalism (supranationalism), and why in the US this ultimately was not possible, leading to an open conflict that paved the way for eventual centralisation. Needless to say, this discussion compresses and simplifies both the political history of this period and the historiographical disputes that abound.

So far, what I call the viability debate has been conducted from two perspectives, as previously outlined (2.3). One approach tends to deliver perfunctory dismissals of further European integration because of certain missing social and political “preconditions” necessary for a more federal organisation. The other is convinced that the European Union’s limbo position between international organisation and federal state is by definition a structural anomaly that cannot be maintained. The former approach, which identifies the deficiencies in Europe’s proto-federal momentum explains what the EU *cannot* become; the latter, which advocates greater deepening suggests that it *has* to become more federal in order to survive.

Instead of these formulations, I claim that it is more fruitful to consider how integration has continued to prove resilient in the face of crisis by analogy with the US example and, extrapolating from this, I discuss what potential it has to do so in the future. As explained in section 2.4, this contrast between two different compound systems is an exploration of the “similarity in the relation of the parts to the whole” in the contest to define the rules of the game of politics in both cases. Of primordial significance in this chapter is not the overall

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<sup>389</sup> *Ibid.*, p.123.

<sup>390</sup> Perhaps the best account of post-bellum political science’s attempt to comprehend the living constitution can be found in Orren and Skowronek (2004: ch. 2).

pattern of similarity in the tensions between the union and its members. What matters most in this analogical analysis are the consequences resulting from the differences between how and why these conflicts manifested themselves and the implications this had for how they could be managed. Of notable importance is the way in which the conflicts over the rules of the game gave rise to voluntary centralisation or dynamic equilibrium. Investigating the five major differences is thus supposed to yield a new interpretative paradigm for understanding how the EU functions best and the possible limits of integration. This analysis suggests that the EU is only viable as a halfway house given its structural problems of generating democratic legitimacy by enabling citizens to determine what kind of integration is warranted.

### **5. 1 American Dual Federalism (with the highest functions of government) v. European Joint Federalism (with the most numerous)**

Theorists of American federalism describe the original republic as founded on the principle of “dual federalism”.<sup>391</sup> The result is two separate levels of government whose conflicts take the form of legal disputes about respective competences and compliance between state and federal law. To determine the impact of this dual structure upon the US compound system it is instructive to see how these disputes arose and how they were settled. States notably protested about certain suits in the federal courts, their ability to treat with Native American tribes, specific acts of Congress and later the problem of fugitive slaves. Sometimes judgments that impinged upon the states’ assumed prerogatives were either never enforced or simply disobeyed. On a few occasions, the states even determined themselves competent to decide on the constitutionality of an act of Congress.

Resistance was not simply a matter of judging where the weakness of the federal government permitted state forbearance from compliance.<sup>392</sup> States waged a juridical and political struggle to protect the autonomy of their sphere of government. The first amendment to the

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<sup>391</sup> According to the American constitutional expert Edward Corwin, there are four criteria constitutive of dual federalism: ‘the national government is one of enumerated powers only; the purposes which it may constitutionally promote are few; within their respective spheres the two centres of government are “sovereign” and hence “equal”; the relation of the two centres to each other is one of tension rather than collaboration.’ Quoted in Derthick (2001: 45).

<sup>392</sup> When the Supreme Court ruled in *Worcester v. Georgia* (1832) that the states did not have the authority to regulate relations with Native American tribes, it was relatively simple for the governor of Georgia to ignore the judgment and continue expropriating Cherokee lands. President Andrew Jackson, himself a veteran of Indian wars, knew the federal government’s limited coercive capacity. In a private letter to one of his generals he wrote that ‘if order were issued tomorrow one regiment of militia could not be got to march to save [the Cherokee] from destruction and this the opposition know’. Quoted in Friedman (1998: 400, fn 269).



constitution after the Bill of Rights was the product of Georgia's stubbornness in refusing to accept the 1793 ruling (*Chisolm v. Georgia*)<sup>393</sup> that federal courts could hear creditors' suits against a state. This protest succeeded in persuading Congress to pass an amendment granting the states sovereign immunity against suits in law and equity. Significantly, this is the only antebellum example where the constitution was revised as a result of state defiance.

Another tool of contestation in the US compound republic was the use of nullification to declare acts of congress invalid if the state legislatures or a special state convention deemed them unconstitutional. The two great nullification controversies concern the so-called Alien and Sedition Acts' restriction of civil liberties in 1798 and South Carolina's hostility to the imposition of tariffs on imports of manufactured goods in 1832. In the first case, two states challenged the federal government's constitutional right both to claim jurisdiction over the aliens in a state and to restrict the liberty of the press. Under the constitution of 1789 no specific power had been granted to the federal government regarding aliens except regarding laws of naturalisation; an amendment specifically protected free speech. In these circumstances Kentucky and Virginia upheld the right not to comply with these federal laws, claiming in effect a veto over this unconstitutional extension of federal sovereignty.<sup>394</sup>

In the Alien and Sedition Acts dispute what was at stake was less the abstract principle of who had the power to determine competences than a struggle over a particularly unwelcome extension of federal power in a certain domain for a specific partisan purpose (see below). The same was true of the 1808 embargo controversy and the later tariff dispute, which again involved a disagreement over the way the federal government interpreted its own powers of policy-making. Thus the sovereignty of the states, although a commonplace ideology – 'almost everyone spoke of the Union as "our confederacy", of the Constitution as a "compact"<sup>395</sup> – was a residual possession, infrequently invoked and not an active component of American constitutional government.

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<sup>393</sup> 'Chisolm was a citizen of South Carolina and his suit was based upon a claim for the delivery of goods to the state for which no payment had been made ... In deciding that Georgia was subject to suit, the Court was rejecting the claim that the state was vested with the traits of sovereignty. "As to the purposes of the Union," to repeat the declaration of Justice Wilson, "Georgia is not a sovereign state.'" Schwartz, Bernard (1993: 20-2).

<sup>394</sup> As the Kentucky resolution of 1798 affirms, the US is a compact in which certain precise powers are delegated but with each state reserving 'the residuary mass of right to their own self-government; and that whensoever the general government assumes undelegated powers, its acts are unauthoritative, void, and of no force'. Rabun (1956: 51).

<sup>395</sup> Stamp (1978: 28).

Whereas the US constitution was ambiguous enough about certain elements of sovereignty to allow for a compact reading of the origins of federal power, it clearly enumerated those areas of government that were the prerogative of the federal branch. These are what James Bryce called “the highest” functions of government,<sup>396</sup> covering international politics, trade and defence; the states had accepted this fundamental division of competences but sometimes believed it was necessary to protest when their usage went beyond what they saw as the letter of the constitution. Thanks to this distinction the difference between the division of competences in the EU and US compound systems becomes clearer. Unlike the American union, which was founded on the acceptance that the highest competences were for the central government, the EU countries have with difficulty pooled the most numerous functions of government rather than the highest. International trade, agriculture, health and safety at work, environmental protection, consumer safety all come within the compass of European law. In most of these areas the European system of law calls for *uniformity* to ensure the operation of a single market with common rules.<sup>397</sup>

The United States’ original dual federalism, therefore, was designed primarily to ask the states to forbear from trespassing on competence areas assigned to the federal level. Writing in the 1950s before the revolution in American federalism provoked by the massive use of grants-in-aid – heralding a new co-operative relationship<sup>398</sup> – a constitutional scholar illustrated this point by remarking that ‘federal law often says to the states, “Don’t do any of these things,” leaving outside the scope of its prohibition a wide range of alternative courses of action. But it is illuminating to observe how rarely it says “Do this thing,” leaving no choice but to go ahead and do it.’<sup>399</sup> Conversely, the EU has been granted the most numerous functions of government – the transposition of European legislation accounts for up to three quarters of domestic law in some member states – which entails the power to oblige states to harmonise law.

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<sup>396</sup> ‘In the partitionment of governmental functions between nation and state, the state gets the most but the nation the highest’. Bryce (1995: 378).

<sup>397</sup> Even today, with a far more centralised power, the US sometimes struggles to harmonise law in this kind of area. A non-federal organisation, the National Conference of Commissioners on Uniform State Laws, drafts proposals for uniform laws to be adopted by all the states in certain technical areas of commercial legislation as well as family law, notably adoption and wills. Its principal success is the Uniform Commercial Code that harmonises the law of sales and other commercial transactions. Stein (1986).

<sup>398</sup> Elazar (1984). Much less convincingly, Elazar (1962) also claimed that nineteenth-century federalism was also cooperative.

<sup>399</sup> Hart, Henry (1955: 194).

National vetoes in certain crucial areas of the first pillar – tax and the move to QMV notably – also mean that the commands of the EU are less likely to shock member states into non-compliance. In the other two pillars the EU can only act if it is granted the capacity to do so by its members. Under the American dual federalism, the federal government had the power to interpret the general good according to its own definition and seek its own solutions for promoting it – the only state check on this was via representation in the Senate. Conversely, the EU is constituted so that the member states have at least a say and sometimes a veto both on what the European general good is supposed to be in the first place and what policy action is called for. In this way the European nations have deliberately sought to avoid a confrontation akin to nullification, which is *ex post facto*; they seek instead to rely on a more powerful *ex ante* barrier against centralisation.<sup>400</sup> This is precisely because a unilateral declaration of the union’s actions as *ultra vires* in both compound polities is accompanied by no mechanism for revision besides a complicated amendment procedure. In the whole of the antebellum period only one constitutional amendment (the eleventh) followed from a state’s refusal to co-operate with the union. This is proof that the states’ presumed right to interpret federal power as unconstitutional and forbear from complying with the union’s legislation is a weak means of controlling the accretion of power at the centre.

Under the EU’s system of joint federalism, therefore, the member states are constantly in a position where they have to decide whether or not to grant an extension of competences, change the rules for decision-making or contribute more resources. Thus their power of supervision is acute, active and continuous. In the last chapter it was seen how the evolution of the rules of the game of integration invariably tied the expansion of the Union’s potential competences to a new framework for retaining national control. Among the best examples of this process, which I labelled dynamic equilibrium, were the creation of the inter-governmental second and third pillars at Maastricht and the Constitutional Treaty’s proposed parliamentary veto on the abandonment of unanimity in certain policy areas, to which one can also add the ingenious catalogue of opt-outs and protocols. In this way European countries have found a fuzzy middle ground between granting competences and surrendering the highest functions of government.

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<sup>400</sup> Certain member states, of course, are notorious foot-draggers when it comes to implementing European directives or complying with ECJ rulings. This explains the creation of a regime of fines for non-compliance in the Maastricht Treaty (Art. 228).

Hypertrophied institutional proceduralism under the codecision provision (a joint-legislating process involving the Council and the Parliament, which can include up to thirty different stages) in the first pillar also balances federal and confederal legislative power to prevent hierarchy that undermines compromise. It is correct to observe then, as Heckly and Oberkampff do in their comparison of American and European federalism, that ‘*à mesure que l’espace et les compétences de l’Europe s’élargissent, il apparaît de plus en plus nécessaire de faire une place accrue à la négociation et au compromis.*’<sup>401</sup> What escapes their notice is the far more significant point that the evolution of federalism in America did not necessitate the creation of new institutional or decision-making procedures for building consensus. The fact that growth of the federal centre was possible using the existing architecture proves the importance of *how* the federal and confederal tension over competences is settled: either through parties and popular mobilisation as in the US case or via states and the creation of new institutional rules as in the EU. In the EU’s joint system this tension is managed by increasing the procedural probabilities of consensus, while allowing for safeguards against unwanted competency expansion.

This means that the EU’s ability to issue authoritative instructions regarding uniform laws in the first pillar is not necessarily an indicator of a nascent strong state as some have interpreted it. Rather, the ability of a weak centre to act in this way to harmonise large swathes of legislation is to a great extent a product of its joint federal structure, which promotes consensus and leaves open alternative means of resistance. In fact, this emphasis on checking and compromising is exactly the paramount virtue that the great theorist of American states’ rights, John Calhoun, thought he saw in the US system. According to Calhoun:

It is, indeed, the negative power which makes the constitution – and the positive which makes the government. The one is the power of acting; - and the other the power of preventing or arresting action. The two, combined, make constitutional governments.<sup>402</sup>

The dual nature of the US compound republic, in which the union exercised the highest powers of government, however, turned out to be a brittle instrument for compromise as the states’ individual veto of non-compliance could only check once the federal government had acted. Nullification disputes in American history indicate, therefore, the existence in the US of another method of resolving conflicts between states and the union beyond the amendment

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<sup>401</sup> Heckly and Oberkampff (1994: 171).

<sup>402</sup> Quoted in Forsyth (1981: 121).

procedure. What seemed like grave constitutional crises actually passed off with relatively few consequences for the relationship between the states and the union only because of the ability of political parties to work necessary compromises. This was very much an unexpected development as the founders held that one of the chief merits of an “extended republic” was to minimise the possibility of rule by party.<sup>403</sup>

For instance, the Alien and Sedition Acts controversy was primarily a conflict between ideological partisans. On the one hand there were the Federalists, led by Hamilton, who favoured an active, national government and were hostile to an alliance with France; on the other, there were Jefferson’s Republicans who ‘proclaimed themselves to be in favour of minimal government [and] favoured a frugal military and naval policy and a pro-French foreign policy.’<sup>404</sup> The contested laws were intended to censor Republican pamphleteering and weed out French agitators and thus did not directly threaten states’ rights in the abstract. Hence the resolution of this conflict came not by virtue of state nullification, although the Kentucky and Virginia resolutions were certainly a warning shot, but through a change in policy after the election of Jefferson in 1800, who allowed the acts to lapse. In fact, this settlement was part of a far broader movement: the creation of the first American party system. Likewise, the crisis over the 1832 protective tariffs was defused through a compromise brokered by Henry Clay in Congress,<sup>405</sup> at a time when federal politics was dominated by the Democrat party that deliberately sought to construct an intersectional alliance. A separate analysis of the role of the party system concludes this chapter, at this point I only signpost the importance of this factor. It suffices to remark that the emergence of national parties linking national leaders with state politics as vectors for compromise was the key to the Union’s survival amidst serious political tension about the proper scope of federal government.

The absence of an initial agreement over the division of competences thus makes the contest over the rules of the game of politics in the EU quite different from in the early US compound system. Whereas the American states occasionally exercised what they considered to be their right to interpret the limits of federal power, European member states participate in a constant

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<sup>403</sup> Thomas Jefferson, prior to his activism in federal politics, had vituperated that ‘such addiction [to a political party] is the last degradation of a free and moral agent. If I could not go to heaven but with a party, I would not go there at all.’ Quoted in Aldrich (1995: 93).

<sup>404</sup> Robertson (2001: 1271).

<sup>405</sup> Under the terms of Clay’s tariff bill the increases in import duties were to be phased out over the next decade. Remini (1998: 24-44).

debate over what further powers are to be delegated. The futility of nullification as a means for changing the relationship between both levels of government was soon learnt in the US and led eventually to the use of a threat of secession instead. With few options for directly moulding the agenda of union politics to fit their preferences, recalcitrant states came to see the threat to withdraw as the best way of indicating their hostility to certain policies. The fact that the threat of exit is absent from mainstream politics in every EU member state and has never been used as a negotiating tactic by a government indicates the extent to which they feel confident in their grip over the direction of integration. This is particularly striking given that the EU is a treaty system, which implies an unequivocal possibility of revocation.

Expectations about conflicts over competences are also a vital part of the struggle over the rules of the game in compound polities. European leaders understand the logic of ever closer union – whereby once granted powers cannot be reclaimed just like the *acquis* cannot be undone – and operate in the knowledge that no pan-European party system has emerged to negotiate this tension between federalist and confederalist tendencies. Conversely, in the United States the expectancy arose after Washington’s presidency that political parties, even if only temporary expedients consisting of loose groups of like-minded correspondents, would be in the front line of this tension.<sup>406</sup> Whereas cross-unit popular mobilisation and debate became a part of the attempt to solve disputes over competences and the very role of the Union in the US, in the EU popular engagement serves to complicate such disputes as shown in 4.2.2. Referendums can lead to a show of hostility towards integration. Even if positive they may fail to answer important questions about integration as campaigns often insist upon the economic growth potential of integration and play up fears that non-integration will prove costly for the economy; the purpose and justification for integration is thus usually limited to economic incentives rather than linked to policies or competences.

Not only does this context make European states more hawkish about protecting their prerogatives but in so doing it also opens up more avenues for compromise that allows member states to find common positions without conceding more than the most hesitant country allows. This is one of the reasons why the process of dynamic equilibrium option prevails over voluntary centralisation. In the following section, I intend to show how the

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<sup>406</sup> Martin Shefter (1994: 65) explains that in the first party system (Federalists and Republicans) Jefferson and his clan did not imagine permanent party rule. Instead, they saw their role as merely ‘a temporary expedient to rout the enemies of republicanism and, thereby, to establish the preconditions for a partyless regime.’

treaty system on which EU competences are based is another crucial factor. The treaty structure greatly affects how mobilisation in favour of the EU is possible.

## **5.2 A Constitution For Popular Government v. A Treaty System**

In the European compound polity international treaties are the means by which policy powers are granted to the EU and new rules are devised to allow for potentially more European-level decision-making. The purpose of this section is to explore the impact of a treaty system on the debate over the rules of the game of politics by comparing it with the US's experience of a constitutional political order. This difference has far-reaching consequences for how popular mobilisation can be used to support voluntary centralisation.

In the absence of a formal constitution and “constitutional moment” of pan-European participation, it is nigh-on impossible to sustain any fiction of a social contract that links European citizens, either individually or collectively, to the integration process. Individual consent, even of the most tacit kind, is not part of the edifice of European government, where all important decisions are filtered through representatives of the national governments usually deciding behind closed doors. Inter-institutional compromise is the order of the day for less controversial subjects, thereby minimising the impact of the European Parliament, which has the best claim to be able to link policy to collective consent; in any case turnout for EP elections is dreadful. Moreover, the “constitutional legal order” created by the treaties is a reality for legal scholars rather than a reflection of what the popular understanding of the EU actually is.<sup>407</sup> The insignificance of democratic participation of individuals to eventual policy choices can partly be seen in academic attempts to justify the system on other grounds. One theory holds that the EU's legitimacy must come from the outputs it produces rather than the inputs it receives;<sup>408</sup> another holds that since the EU is not a nation-state with an extensive set of competences the deficit of democratic participation should not be of such paramount concern.<sup>409</sup>

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<sup>407</sup> In 2004, when the member states were discussing the Constitutional Treaty, a Eurobarometer sample discovered that a third of the EU population had never even heard of the document. Eurobarometer Poll 27 Oct-29 Nov 2004. This low level of awareness is nothing new; in 1957 half the French population was unsure whether their country was a member of the common market. Parsons (2003: 115).

<sup>408</sup> Scharpf (1999) was the first to popularise this distinction between input and output legitimacy.

<sup>409</sup> This is Andrew Moravcsik's (2002: 65) argument, according to which, 'if we adopt reasonable criteria for judging democratic governance, then the widespread criticism of the EU as democratically illegitimate is unsupported by the existing empirical evidence.'

Individual consent, or at least the fiction of such consent, is not indispensable to government, however, as David Hume pointed out when examining the origins of political authority.<sup>410</sup> Originally, the office of the American President was intended to preclude the possibility that the head of the federal government would be tied to the majority of individual preferences.<sup>411</sup> Nevertheless, in the early American republic it was still possible to invoke a collective fiction, a first person plural pronoun (best symbolised by the “we hold these truths to be self-evident” of the Declaration of Independence) that expressed a common desire to pursue a political project together. This notion of a collective grant of authority – rather than the acquiescence of each state – to create the Union was famously used by Supreme Court chief justice John Marshall to explain the origins of the federal government in *McCulloch v. Maryland* (1819). Referring to the state conventions, special assemblies convened to debate and ratify the proposed constitution, Marshall declared:

From these conventions the Constitution derives its whole authority. The government proceeds directly from the people ... The assent of the States in their sovereign capacity is implied in calling a convention, and thus submitting that instrument to the people. But the people were at perfect liberty to accept or reject it; and their act was final. It required not the affirmance, and could not be negated, by the State governments. The constitution, when thus adopted, was of complete obligation and bound the states.<sup>412</sup>

Thus even if the federal government lacked the ability to determine its own competences – amendments required the approval of three-quarters of the states in addition to a Congressional vote – sovereignty could at least be plausibly located in the people instead of in the aggregation of states. For in a unique political moment, the people had proved themselves to be the “constituent power” by electing representatives with the special design of ratifying the constitution; a similar device had earlier been used to ratify the state constitutions written after independence was declared. Thus, as Peter Onuf has persuasively argued, the supporters of the federal Constitution used the notion of a constituent power as a means of resolving the twofold problem of sovereignty and legitimacy:

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<sup>410</sup> ‘My intention here is not to exclude the consent of the people from being one just foundation of government where it has place. It is surely the best and most sacred of any; I only pretend that it has very seldom had place in any degree, and never almost in its full extent’. Hume (1994: 192).

<sup>411</sup> As Bruce Ackerman (1991: 68-9) explains, ‘the [electoral] College was a clever device to avoid the plebiscitarian Presidency ... since the President was supposed to gain the White House on the basis of his past service, it was unthinkable for him to claim that his (nonexistent) “mandate” allowed him to transform his office into a functional equivalent of a third house of the legislature.’

<sup>412</sup> Quoted in Baker (1974: 595).



Neither the states nor Congress should be considered “sovereign”, insisted supporters of the new regime ... The recent history of state constitutional development emphasised the distinction between the sovereign people – the constituent power – and their governments ... Americans should be able to distinguish between the source of legitimate authority and the various governments charged with its exercise.<sup>413</sup>

The popular ratification of the US constitution – which in Gordon Wood’s words ‘seemed to have legitimized the revolution’<sup>414</sup> – was to prove an important rhetorical and conceptual resource during the nullification crisis over tariffs. According to Stamp, South Carolina’s assertion of the right to judge the constitutional limits of federal government provoked ‘an explosion of unionist rhetoric’<sup>415</sup> fuelled by the identification of the Union with the collective will of the people solemnly expressed during the state conventions. On the floor of the US Senate, Daniel Webster and Robert Hayne clashed over the question of whether the Union was a treaty-like compact between sovereign states. It was the “popular” or “people’s” conception of the constitution espoused by Webster that provided a counter-argument to South Carolina’s compact interpretation. President Andrew Jackson, in his 1832 Proclamation on the nullification crisis resorted to this image of popular participation to justify his ferocious attack on South Carolina’s presumed right to declare a federal law unconstitutional:

The people of the United States formed the Constitution, acting through the state legislatures in making the compact to meet and discuss its provisions, and acting in separate conventions when they ratified those provisions; but the terms used in its construction show it to be a government in which the people of all the states collectively are represented.<sup>416</sup>

Thus the American Union’s founding enabled the doctrine of popular sovereignty to be applied to the federal level of government with some justification. Moreover, popular legitimacy was not restricted solely to the foundational period as the development of mass politics during the Jacksonian era effected a connection between executive government and the people. In spite of the founders’ designs to create obstacles to populist presidentialism, by the time Jackson sat in the White House he was able to claim, in his Proclamation, that:

We are ONE PEOPLE in the choice of the President and Vice President. Here the States have no other agency than to direct the mode in which the vote shall be given. The candidates having the majority of

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<sup>413</sup> Onuf, Peter (1991: 667).

<sup>414</sup> Wood (1969: 342).

<sup>415</sup> Stamp (1978: 28).

<sup>416</sup> Elliot (1836, vol. 4: 589).

all the votes are chosen. The electors of a majority of States may have given their votes for one candidate, and yet another may be chosen. The people, then, and not the States, are represented in the executive branch.<sup>417</sup>

Jackson was deliberately cavalier with the electoral reality of presidential elections – in certain states the legislature continued to select voters for the electoral college without a poll of voters<sup>418</sup> – and in 1824 he himself had won a relative majority of both the electoral college and the popular vote but still lost out to John Adams. However, he was correct in his assertion that the electoral mechanism provided for a strong representative bond between the president and the people. The will of the states, as Jackson, the great populist, realised, did not carry the same influence since electoral college votes were weighted according to population. Moreover, the development of a cross-state system for mobilising public opinion and participation prevented the states from acquiring a monopoly over agenda-setting and speaking in the name of the people. In this way, the practice of American politics was by mid-century much less anti-majoritarian than Fabbrini and Sicurelli seem to have appreciated, thereby already establishing the conditions for the eventual ‘radical nationalization of the political process’<sup>419</sup> of the twentieth century.

Such a feat of collective, cross-national representation is impossible in the present EU polity. The legitimacy of the actual EU political actors is only indirect and certainly not pan-European: none of the commissioners is elected, the members of the Council as members of national governments are elected principally for national representation, whilst the Parliament, whose members are drawn from the ranks of national parties, is a dull sideshow to domestic political debate. Since national and European electoral cycles are out of kilter there is also little possibility of having a majority of both member state governments and of MEPs belonging to the same political family.<sup>420</sup> These democratic drawbacks are more than well-known; they are part and parcel of the hackneyed lament about a deficit of democracy, for which the most commonly-proposed solution is a parliamentarisation of power on an

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<sup>417</sup> *Ibid.*

<sup>418</sup> The American constitution has no formal requirement that the electoral college should be appointed by the people; the organisation of the college is left to the states’ discretion.

<sup>419</sup> Fabbrini and Sicurelli (2004: 243).

<sup>420</sup> As Magnette (forthcoming) explains, ‘le Parlement pourra incliner au centre-droit tandis que le Conseil européen est majoritairement au centre gauche, ou l’inverse. De surcroît, un Président de la Commission européenne peut voir le Conseil Européen dériver graduellement au gré des élections nationales, vers le centre-droit.’

unprecedented scale.<sup>421</sup> Not seeking to reiterate this complaint, I raise this particular difference with the US compound polity only to emphasise the fact that the EU's treaty system denies the Union the ability to use a popular collective bond, which stems from an electoral mandate to govern, as a political resource in its struggle against member state reticence.<sup>422</sup>

In the absence of a mechanism for direct and continent-wide popular participation in European government, the EU is compelled to try to endow the foundational moments that are treaty negotiations with popular legitimacy through referendum ratification. This process, however, is entirely at the discretion of the member states since there is no obligation to submit a treaty to popular ratification. When a referendum is used, however, the terms of the debate are national as what matters is the acquiescence of that particularly country's electorate and the reasons for voting in favour can vary considerably from country to country. This variation between member states in the justification for closer union adds to the problem of identifying a common goal for European construction that has been clearly mandated by a majority of European citizens. What compounds this further are the unexpected developments that may follow from the European treaties. The latter, as shown in the last chapter, are invariably framework documents specifying procedures for taking common decisions rather than the content of these decisions. As a result, a referendum vote is a poor guide to judging citizens' opinion on the legitimacy of certain European policies adopted at a future date.<sup>423</sup> So David Runciman is correct to say that the EU Constitution – a *traité de procédures* if ever there was one given the preoccupation with devising new decision-making rules – 'is not a document that can be put to the people to force the issue of European integration'<sup>424</sup> as it contains no grand policy project.

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<sup>421</sup> Fabbrini (2005d: 188).

<sup>422</sup> The proposed Constitutional Treaty does contain a right for a citizen's initiative that it is apposite to discuss here in relation to the legitimating mechanism of European government. Under Article I-47.4, a million citizens from across the EU – the number of states has not yet been specified – 'may take the initiative of inviting the Commission within the framework of its power, to submit an appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing this Constitution.' This backdoor approach to supranationalism via direct democracy is unlikely to change the rules of the game much since the petition – which itself is non-binding – could only refer to a policy area already within the existing powers of the Commission. Nor would it necessary alter the tendency for consensus-building as the Swiss experience shows that direct democracy instruments are 'largely incorporated into the overall consociational framework, and strengthen it instead of acting as majoritarian devices.' Papadopoulos (2005: 461).

<sup>423</sup> The typical complaint of British eurosceptics is that whereas a treaty providing for a common market was ratified by referendum in 1975 this decision certainly did not equate to a sanction for later developments in integration.

<sup>424</sup> Runciman (2003).

Popular, pan-European mandates, therefore, whether for governing or for treaty negotiation are not possible in the EU's treaty system as it currently stands and there is an expectation that this is unlikely to change for a long time. As such, the chances of pursuing supranational integration against the wishes of one or more obstreperous states on the basis that it carries the support of the majority of European citizens are virtually nil. This sets the EU apart from the US, where the centralisation of the Union has invariably corresponded to a mobilisation of the majority – in Ackerman's periodisation there are three such constitutional moments, the Founding, Reconstruction and the New Deal.<sup>425</sup>

Experiments with an alternative to conventional treaty amendment have been tried recently as pro-integrationists have sought to bypass the stranglehold of the states so as to foster the participation of transnational civil society. Twice now “conventions” have been assembled, consisting of European and national parliamentarians and other political actors as well as representatives of the member states' governments, to discuss first a charter of fundamental rights and freedoms and latterly to debate on the future of Europe.<sup>426</sup> The results have been underwhelming.<sup>427</sup> The convention method, however, has fallen well short of its legitimating ambition as the member states continue to reserve the right to oversee the outcome of such proceedings. In the case of the Charter of Fundamental Freedoms, its legal status remained dependent on treaty revision which implies member state unanimity, whilst the draft Constitutional treaty was picked over by the European states in order to conform to their preferences. Neither convention proved a resounding success in realising the popular mobilisation that the ordinary amendment process has lacked because ultimately the convention itself was relegated to a marginal preliminary to diplomatic treaty negotiation. When the Constitutional Treaty did enter broad political debate it was the result of a national referendum, as in France, rather than a recognition of the more open process of revision afforded by the convention method.

This is a good point at which to introduce the observation that, in response to structural problems of citizen engagement, the EU has tried top-down institutionalisation of '*canali e*

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<sup>425</sup> Ackerman (1991; 1998).

<sup>426</sup> According to one leading law scholar, the ‘undoubted attraction of the convention method lies in the way it broadens participation in the constitutional conversation and thereby allows a public *débat d'idées*'. de Witte (2003: 215).

<sup>427</sup> A similar gambit for expanding public debate on integration by bringing together national and European parliamentarians was tried prior to Maastricht. The brainchild of President Mitterrand, an “Assizes” met in late 1990 to prepare a Declaration on their expectations of the IGC. The whole experiment is now almost entirely forgotten. See Corbett (1993: 23-6).

*forme per ora alquanto artificiali di rappresentanza elettorale (il parlamento ed i partiti europei), territoriale (le regioni ed i governi locali), e degli interessi (la “commitologia”, i networks, le comunità epistemologiche)*.<sup>428</sup> The marginalisation of the European Parliament, the failure of the “convention” method to transcend the parameters of treaty amendment and the foreseeable problems with the planned citizens’ initiatives<sup>429</sup> support Bartolini’s theory about the artificiality and ineffectiveness of the proxies for political representation cultivated by the EU. The failure of this strategy for building political legitimacy beyond the participation of the member states is thus an additional constraint on any attempt at justifying voluntary centralisation.

This analogical comparison between the American constitutional system and the EU’s treaty framework has so far illustrated how the latter is deficient when it comes to grounding in popular consent an extension in Union competences. A pro-EU popular constituent power, although a holy grail for many integrationists, is not congruent with the diplomatic, country by country process of negotiation and ratification of treaties. Democratic consent for foundational treaty moments, conducted on a national basis, is not, therefore, a likely political resource for ensuring the viability of a more consolidated European polity. Yet the treaty method is far from devoid of advantages with regards to the maintenance of a dynamic equilibrium.

In the European case, the treaty system has so far never been static. In fact, it is a dynamic process subject to ongoing speculation, negotiation and revision. Since the Maastricht Treaty, ‘there has been, in effect, a semi-permanent revision process, whereby one revision already contained the seeds of the next one.’<sup>430</sup> Given the twin commitments to “ever closer union” and the preservation of the *acquis*, the ceaseless striving for a renegotiated settlement ensures that these moments are always discussions about how far to move forwards in integration. Treaty amendment in the EU knows of no reverse gear as the member states have never, for instance, claimed back competences or diminished the budget.

There is also an inherent pressure to forge ahead with a proposed treaty rather than derail negotiations even when there is a ratification setback. This was the case after the Danish “no”

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<sup>428</sup> Bartolini (2004: 193).

<sup>429</sup> See above fn. 422.

<sup>430</sup> de Witte (2003: 213).

referendum on Maastricht, which was immediately followed by a meeting of the twelve European foreign ministers who ruled out any treaty renegotiation. Equally important, they announced that despite this setback ‘the ratification procedure will continue in the Member States on the basis of the existing text and in accordance with the scheduled agreed on’.<sup>431</sup> As a statement of intent this was as strong a signal as possible that ratification was a Danish problem rather than a European one. This despite the fact that the Vienna Convention on the Law of Treaties stipulates that states cannot be forced to become parties to treaties they have not ratified.<sup>432</sup>

Thus Denmark found itself in the curious situation whereby Europe’s foreign ministers magnanimously declared that ‘the door should be left open for Denmark to participate’<sup>433</sup> in a Union that could not come into existence without its consent. Ireland found itself in an identical situation in 2001, after its voters had spurned the Nice Treaty, proving that Europe’s consensus-building game of politics is capable of making the *status quo* evolve despite the veto potential of a negative referendum. Even the stalled Constitutional Treaty does not signal the enshrinement of the existing treaty arrangement; the likelihood is that some parts will be resurrected as there is little inclination to stick to the clumsy provisions of the Nice treaty.

The foremost reason for member states’ enthusiasm regarding semi-permanent amendment negotiations is the way that these can be used to remedy blockages in consensus-building that threaten the coherence of European government. Thus the prospect of UK accession was used to resolve the wrangling over financing the European budget once the CAP had been established; the prospect of Spanish and Portuguese membership made it imperative to settle Mrs Thatcher’s fury over excessive UK budget contributions. Amended treaties also serve to craft agreement on new projects of integration at times when this prospect seems doubtful. Several examples were mentioned in the previous chapter, chiefly those occurring when the possibility of enlargement was used to resolve questions of where integration was heading.<sup>434</sup>

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<sup>431</sup> Statement by the Twelve Foreign Ministers following the Danish Referendum, 4 June 1992, quoted in Corbett (1993: 490).

<sup>432</sup> Nor could the EU function under two different legal regimes. For the significance of this point see de Witte (2004). However, Schmitter (2000) has proposed a two-treaty structure to meet different states’ preferences, whereby a confederal arrangement among certain states would co-exist alongside a more federal treaty for the rest.

<sup>433</sup> Corbett (1993: 490).

<sup>434</sup> UK entry coincided with the launch of foreign policy co-operation and an agreement to begin economic and monetary union; Spanish and Portuguese enlargement coincided with the return of QMV after the Luxemburg compromise to pursue the completion of the single market; the Maastricht treaty that established two new inter-governmental “pillars” was framed with the expectancy of new post-cold war members in mind; while the

Thus the decades since the first enlargement round have certainly been a story of welcoming new member states whilst finding novel compromises for nudging integration forward through unanimous consent.

The process of negotiating deepening alongside widening provides, therefore, an opportunity for every member to express and defend their interests in order to seek ways of reconciling them with the extension of competences, new rules of decision-making or new policy goals. Whereas constitutions founded on a central compromise try to prevent discussion of a taboo, treaties subject to ongoing revision can be more flexible instruments for finding ulterior compromises as long as these settlements adhere to the principle of dynamic equilibrium.

In the US, the slavery problem required the establishment of new compromises as territorial expansion re-awakened the question of extending slavery each time. Yet thanks to the “two-thirds clause”, whereby a slave counted for the purposes of representation by population as two-thirds of a freeman, American political institutions bore a permanent over-representation of slave-holding states designed to prevent a questioning of the legal status of slavery by the Union. For this reason, as well as for others that will be outlined below, the American Union found it increasingly difficult to reinvent a compromise on the subject. This is not true of the process of European integration, in which the original bargain over competences, institutional decision-making, the budget and foreign policy has evolved even if the tensions underlying the struggle over the rules of the game have never been settled definitively.

The foregoing analysis is not meant to portray the EU’s treaty system as an inexorable means of furthering dynamic equilibrium, although hitherto it has succeeded in achieving this against considerable odds. In fact, the viability of reworking the compromises between federalist and confederalist visions, free marketeers and promoters of social rights and NATO backers and Europeanists is now more open to question than before. This is because the enlargement process itself is running out of steam, both as the number of realistic prospective entrants dwindles and the integration project itself becomes far more controversial among European citizens. Since widening has in the past always presented itself as an opportunity for persuading member states to reconsider the existing rules of the game of politics, the abeyance of this process could mean a stagnation of integration. Moreover, the failure of the

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Constitutional Treaty seeks to link the big band expansion of the EU with a single document of rules, allowing for the possibility of more common decision-making.

Constitutional Treaty to pass according to its original schedule also marks a fundamentally negative precedent whereby widening has failed to be associated with deepening suggesting that the dynamism of the past has run out of momentum.

Paradoxically, however, the story of the Constitutional Treaty illustrates well the flexibility of the treaty system, which is one of the major factors behind the viability of the integration process as a dynamic equilibrium. For although the nature of the treaty itself resembles in many ways a statement about the endpoint of integration – not least because of its name – it nevertheless also contains “bridging clauses” to allow the transfer of decision-making procedure from unanimity to QMV without treaty renegotiation. Cunningly, any such bridging would by definition be stringently legitimate as national parliaments would have a veto power over them. At the same time, the initial failure of the Constitutional Treaty may not be such an obstacle to reworking old compromises. Institutional re-design, budget priorities and policy competences have remained squarely on the reform agenda in spite of the two negative referendums; the quandary has simply been reformulated into what can be salvaged from the treaty and how.

Europe’s treaty system for changing the rules of the game of politics, which leaves little room for popular consent, thus negates James Madison’s fears about the baneful effect of a frequent revision of the rules organising a polity. In response to Thomas Jefferson’s argument that each generation must give its sanction to the social contract that is the constitution, Madison fretted that ‘such a periodical revision [would] engender pernicious factions that might not otherwise come into existence.’<sup>435</sup> Perhaps Madison was not misguided in his judgment when it comes to unitary states and constitutionally-organised polities as the frequency of constitutional re-writing is typically a tell-tale sign of weakness. Nevertheless, in the EU compound system, frequent amendment of the treaties has compelled factions (pro and anti-integrationists, liberals and interventionists etc) deprived of a popular, majoritarian mandate to co-operate with one another. In this way, ambitious projects for a fortified EU have lost out in favour of an incrementalist process of treaty revision; fundamental compromises have been re-examined but never settled outright.

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<sup>435</sup> Madison (1962: 19).



In the next section, I examine how the absence of a settlement over the competing visions of what the EU is for and what it should do has played an important role in maintaining a dynamic equilibrium. I contrast this situation with the American Union, which benefited from the outset by identification with a clear political project. I argue that this clarity greatly helped engender the mobilisation necessary for voluntary centralisation.

### **5.3 A Project for Freedom (the union as means to an end) v. A Project for Undefined Ever Closer Union (integration as an end in itself)**

The EU's attempts to consolidate and expand European government are not just hampered by the absence of a mechanism for popular mobilisation. Another crucial divergence between the American and European compound systems is, in the latter case, the acute difficulty of articulating a clear idea of what integration is for. Thus popular mobilisation of the sort that could dramatically strengthen the power of the EU is doubly impeded. Firstly, by the fragmentation of democratic legitimation due to the treaty system that imposes country by country debate and ratification and, secondly, by the opacity of purpose behind integration beyond peace and economic growth. This section sets out to explain why this opacity exists and how this differs from the comparatively unambiguous political character of the American union.

The American republican founding has limpid ideological origins, notably 'the preservation of political liberty threatened by the apparent corruption of the [English] constitution'<sup>436</sup> as a result of maladministration by the British crown. In political theory and practice, as well as in the popular imagination, the constitution is forever associated with the Declaration of Independence. As a result, the great compromise of 1787 was understood less as a blueprint for "a more perfect union" than a means for the safeguard and flourishing of "life, liberty and the pursuit of happiness". Not only does the integration process in Europe lack a revolutionary founding moment, the treaty system itself makes it harder to understand what the nature of the European political project is.

Three major factors explain the imprecision and uncertainty that hamper a definition of what integration is for. I have already dwelt on the problem of the unexpected outcomes of

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<sup>436</sup> Bailyn (1971: 19).

integration; the classic example being the unexpected constitutionalisation of the EEC treaty into a document that could then trump domestic law. Secondly, cleavages between the member states and the obstinacy of national interest have prevented the unambiguous articulation of what the pooling of sovereignty is for. As was pointed out in the previous chapter, the treaties refer to potentially contradictory objectives such as free trade and high social protection or formulating a common foreign and security policy while still respecting the NATO pact. Disregarding, finally, the fact that Europe's treaties have never been ratified by specially convened conventions, as happened for the American constitution, there is also the radical difficulty of connecting citizens to the collective project of integration.

With the unit of political representation for expressing popular opinion (either via referendum or through political parties) on Europe still unquestionably the nation-state, the ability to launch a continent-wide debate on the future of European government remains nugatory. Debates over integration are thus fragmented according to different countries' varying preoccupations or even paranoias. Referendum campaigns are thus permeated by domestic issues and political narratives, including, invariably, the popularity of the incumbent government. Ultimately, it is easier to make the case for Europe on the basis of the benefits of expected economic growth and the frightening costs of non-integration: the Cecchini Report (1988) on the efficiency gains stemming from the completion of the single market anticipated a benefit of 4-7% of combined GDP.<sup>437</sup> Moreover, when treaties are subject to referendums, these ambiguous, compromise packages are there to be ratified or rejected rather than modified – and in the case of the weaker states they are to be ratified *or else*.

The net result, as Magnette explains, is that 'under these circumstances, it remains extremely difficult to present European stakes as clear choices between a limited number of collective projects.'<sup>438</sup> It is in this context that supporters of the EU, in the absence of a political programme backed by popular mobilisation, fall back on the justification that integration is a goal in its own right.

The significance of the American Union's ability to represent a concrete political objective will become clear by examining briefly the content of nineteenth-century debates over the

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<sup>437</sup> Cecchini (1988). The Commission also published a series of reports on the costs of "non-Europe" in various sectors of the economy.

<sup>438</sup> Magnette (2005: 171).

nature of the compound polity. During the Senate debate on the controversial tariff legislation that South Carolina threatened to nullify, Daniel Webster repeatedly took to the floor to defend the Union. In one of the most remarkable oratorical moments in American history, Webster made a nonsense of the principle and practice of nullification, while also going to great lengths to explain the purpose of the federal union. Claiming, like Jackson before him and as Lincoln would in the future, that the constitution had its origins in the people, the Massachusetts senator went on to remind his audience why the people had seen fit to innovate by creating a new type of union. ‘The people brought it into existence, established it, and have hitherto supported it,’ according to Webster, ‘for the very purpose, amongst others, of imposing certain salutary restraints on State sovereignties.’<sup>439</sup>

Freedom was thus the keystone of the original American compound polity but its preservation relies on various principles and institutions. Limited government – which the British had egregiously failed to respect – is based on institutional checks and balances at the federal level as well as the federal government union’s guarantee against potential abuses of liberty carried out by the states. Hence secession or nullification represented in the eyes of Webster and his acolytes a loss of liberty. The union did not only place limits on the extent to which the federal government could act and guarantee republican liberty in the states. It also created the possibilities for individual freedom by maintaining peace and overseeing economic prosperity unfettered by arbitrary restrictions on inter-state commerce.<sup>440</sup>

*Pace* the providentialist interpretation of the conditions of American development, there remained a fear that the new republic was too large. Those who feared the prospect of a disunited polity did not envisage ‘dozens of fully independent states, but rather their consolidation into a handful of nation-states based upon sections’.<sup>441</sup> A dissolution of this nature would herald the return of European-style rivalry and war, especially as it was easy to imagine the powers of the Old World inveigling themselves into relations between these hypothetical countries. Union was thus a guarantor of peace, a precondition of liberty.

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<sup>439</sup> Belz (2000: 136).

<sup>440</sup> Recognising the pitfalls of a lapse to regionalism, George Washington had referred to the “cement of interest” as a necessary component of the success of the extended republic. On the idea of interest as a central component of federal union see Matson and Onuf (1985); cf Minicucci (2001).

<sup>441</sup> Deudney (1995: 205).

Chief among the reasons why the union was venerated for its contribution to liberty, however, was the fact that by this time the federal government was starting to be defined as an instrument for the representation of the people (above 5.2). Thus the political institutions of the union were defended as the best expression of the will of the people. Webster distanced himself greatly, therefore, from the founding fathers' ambivalence towards democratic majoritarianism, arguing instead that 'the first great principle of all republican liberty ... is that the majority must govern'.<sup>442</sup> Thanks to the legislature's bicameralism, the American union functioned with a double majoritarian principle since 'a majority of the representatives of the people must concur, and a majority of the States must concur, in every act of Congress'.<sup>443</sup> South Carolina's obstreperousness was thus painted as minority factionalism, which 'denounces the government of majorities, denounces the government of [their] own country, and denounces all free governments'.<sup>444</sup>

Defenders of the US argued that union was inseparable from the concept of freedom itself since the purpose of the federal constitution was liberty understood both as individual rights and self-government; only with a perpetual and fortified union could this be achieved. Webster railed against 'the delusion and folly' of ranking 'liberty first and Union afterwards'. His final hortative appeal for 'Liberty and Union, now and for ever, one and inseparable'<sup>445</sup> encapsulated the political ideology of American unionism. It was precisely this ideology that Lincoln seized, making it his own thanks to his unique and largely self-taught brand of rhetorical magnetism, so that he referred, in 1862, to the 'necessity of proving that popular government is not an absurdity'.<sup>446</sup> Unsurprisingly, this ideology of union as the means for preserving and advancing freedom as both a moral and political goal was the inspiration behind the North's war effort, endowing the bloody struggle with a special sense of mission. In other words, a particular form of political organisation – the compound republic – was considered by many to be the crucible that made collective (self-rule by the people) and thus individual freedom a reality.<sup>447</sup>

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<sup>442</sup> Webster (1833: 33). Lincoln (1991: 58) would also refer to the need for government to be founded on a majority in the inaugural address of his first term: 'unanimity is impossible; the rule of a minority, as a permanent arrangement, is wholly inadmissible; so that, rejecting the majority principle, anarchy or despotism in some form is all that is left.'

<sup>443</sup> Webster (1833: 34).

<sup>444</sup> *Ibid*, p. 35.

<sup>445</sup> Belz (2000: 144).

<sup>446</sup> Quoted in McPherson (1991: 56).

<sup>447</sup> This distinguished Lincoln from the Whig understanding 'in which liberty derived from the Union and had to be regulated in ways consistent with the preservation of the Union'. Orren and Skowronek (2004: 70).

The ideology of freedom was not the prerogative of the supporters of the union, of course. John Calhoun claimed that a federal government was by definition ‘the government of a community of States, and not the government of a single State or nation’,<sup>448</sup> meaning that the several states were obliged in the last instance, when subject to injurious federal policy, to protect their own and their citizens’ liberty. Political theorists were not the only ones to dispute whether the union invariably served to promote freedom: ‘themes of liberty and republicanism formed the ideological core of the cause for which Civil War soldiers fought, Confederate as well as Union.’<sup>449</sup> What is significant is the fact that in the American case the equation between union and freedom was plausible. In fact, it was highly convincing to large swathes of the population, notably the young men who enlisted, including those born abroad. McPherson’s study of soldiers’ letters reveals that ‘many Union soldiers voiced with extraordinary passion the conviction that preservation of the *United States* ... was indeed the last, best hope for the survival of republican liberties in the Western world.’<sup>450</sup>

The contrast between this vision of a union as a cause with a distinct political objective, traceable to its origins in 1776, and the way in which the European Union is currently perceived is stark indeed. While the democratic legitimacy of the EU has been subject to manifold stinging criticisms, stimulating a plethora of policy advice, Glyn Morgan rightly points out that ‘we know considerably less about the question that really matters: What is the justification for a European polity?’<sup>451</sup> Such a justification is inherently relative: it must refer back to other forms of polity, in the same way that the American union was justified by invoking the parlous effects of nullification and the spectre of several nations in case of secession. Morgan recognises this point by noting that ‘the EU cannot vindicate its own claims to “political legitimacy” ... without delegitimizing its conceptual rivals: the nation-state and a federal Europe (whether conceived as a unitary European state or a postsovereign polity).’<sup>452</sup>

There are a number of reasons for this justificatory constipation. These chiefly reflect the way in which the rules of the game of integration have evolved over time. As explained in the

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<sup>448</sup> Quoted in Forsyth (1981: 122).

<sup>449</sup> McPherson (1994: 6).

<sup>450</sup> *Ibid.*, p. 30.

<sup>451</sup> Morgan (2005: 22).

<sup>452</sup> *Ibid.*

previous chapter, the emphasis on compromise, both at times of treaty revision and in the day-to-day functioning of institutions, has prevented the deliberate and sudden choice between competing visions of integration. By nurturing ambiguity over how European CFSP relates to NATO or the extent of social policy made possible by the Charter of Fundamental Rights, for example, it is very difficult to attribute an obvious political goal to integration.

Although economic growth is a perennial justification of the European project – a goal that it sometimes struggles to live up to – European citizens are not moved by the prospect of prosperity alone. Thus another complication arises from the fact that different economic visions of society popular in the various nation-states do not automatically overlap with arguments in favour of a stronger Europe. For instance, support for a more interventionary model of government *per se* does not necessarily correspond with a desire to extend European competences. Nordic countries who favour high social and environmental protection are wary that losing sovereignty over these areas could jeopardise their ability to keep these higher standards. French political debate is even more confused about European construction. Contradictory positions abound, including the desire to insulate “*l’exception française*” from too much European-induced reform alongside the wish to use the EU to protect a “European social model” from hyper-competitive global economic pressures while refusing to give up the financial advantages of the CAP.<sup>453</sup>

Conversely, *laissez faire* models of society correspond with attenuated projects for integration: free market or neo-liberal ideas at the domestic level go hand in hand with a free-market model of the EU restricted to promoting a single, ruthlessly efficient market with little political baggage. In other words political debates over the nature and purpose of government within the member states do not link easily with projects for the future of Europe in the way that the ideology of liberty, for many, corresponded with the notion of a strong American union. Rather, the model that fits easiest, the free market vision, is the one that calls for the most limited role for European government.

Nor can freedom and democracy be used to justify the existence and hence strengthening of the EU as easily as was the case for the American union, where the federal government played a key role in the conquest of universal rights. In many member states the political rights

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<sup>453</sup> Drake (2005).

guaranteed by the EU merely replicate those liberties that already existed in the national context, which typically predate European involvement in these areas. Strengthening domestic liberal democracy was a primary goal of integration and in this it has been highly successful as its enlargement policy amply demonstrates. Nevertheless, promoting democratic regimes beyond its borders with a view to eventual membership is not a policy that naturally leads to support for a greater pooling of sovereignty. Europe's ability to provide an environment in which the rebirth of ancient nations (like Lithuania) or the creation of new ones (Slovakia) is possible under democratic conditions can go hand in hand with a desire by these new members to cultivate and safeguard their identities.

During the accession process these countries undoubtedly made great strides to meet the EU's "Copenhagen Criteria", that is, the political conditions of democracy, rule of law and ethnic minority protection required for membership. As a recent study of ethnic minority protection has shown, however, reforms in this policy area were largely attributable to the lure of membership as a trump to domestic intolerance and did not reflect a genuine change in beliefs.<sup>454</sup> This evidence suggests that national identity still matters greatly in the new member states. Thus even in those countries where the EU's positive impact on fostering liberal democracy is greatest it is misguided to expect that they will have a greater predilection for enhanced integration simply out of gratitude for the EU's promotion of democratic values.

Finally, the EU's problematic standard of democratic legitimacy also undermines the plausibility of associating Europe with the goal of improving the accountability of government and the responsiveness of governors. Sbragia rightly argues that the prior existence of universal political rights at the national level ensures that talk of a democratic EU is 'focused, almost by default, on the mechanisms by which citizens can influence decision-making.'<sup>455</sup> Yet participation in decision-making is Europe's Achilles heel: the locus of authority is blurred, the system of legislation is fiendishly complicated and often the stakes are simply not salient enough to register amongst voters. Thus concerns over the democratic representation of citizens in the decision-making process, mingled with a desire to ring-fence national identity against unwanted erosion, enable the construction of an antinomy between democracy and integration. When outlining its "red lines" of national competences that could

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<sup>454</sup> Kelley (2004).

<sup>455</sup> Sbragia (2005: 168).

not be trespassed, the UK government justified this position as a defence of democratic accountability, which would otherwise be in jeopardy were sovereignty pooled to a greater extent.<sup>456</sup>

The argument that integration needs to be controlled for the sake of democracy is not simply the tool of the most euro-sceptic either. On the contrary, the Constitutional Treaty in effect acknowledged the validity of this critique by incorporating national parliaments into the veto-system for checking the expansion of European governance. This theoretical justification linking member state control of the integration process to the safeguarding of democracy was also the position upheld by the German Constitutional Court in its Maastricht II decision, as explained above (pp. 136-7). Thus unlike in the American example, citizens and politicians alike find it difficult to believe that the future of European democracy lies in a more consolidated polity.

Of the four founding goals of European integration (see the introduction to chapter four), therefore, none is a particularly powerful, popular identity-building ideology for the sake of justifying continuing integration. As this analysis has shown, economic growth and the promotion of liberal democracy are both problematic ways of mobilising support for the EU. The two remaining foundational goals are hardly more inspiring, ironically thanks to the success of the project itself. A security guarantee against German economic and political resurgence is no longer necessary as this fear has dwindled into the ether. This leaves only perpetual peace as a plausible justification for integration. Yet whilst peace between European nations is a clear political objective that explains the need for certain common and binding rules, this argument cannot be used willy nilly. Regardless of the natural lapse in the power of memory that occurs over time, the peace argument becomes much less plausible as integration is called for in new policy areas. What, after all, does peace between European nations have to do with devising a common foreign and security policy for dealing with humanitarian and crisis-management interventions outside Europe? Similarly, the need to preserve peace is not a convincing argument as to why a common macro-economic policy for tackling unemployment is required. Hence in Europe the success of union has in fact undermined the power of the founding vision, a singular weakness that has not been compensated by the emergence of an attractive new vision of the purpose of the project.

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<sup>456</sup> HMG (2003); cf. Kassim (2005).



Under these circumstances, therefore, is it surprising that integration has become valued for its own sake? A project that simultaneously envisages being “united ever more closely” whilst also “united in diversity” obviously does not express a single, clear political objective. Economic growth is the single most plausible cross-national justification for integration. Indeed, some have argued that ‘the EU has been a success so far because it has been able to generate, or allow, the development of a positive-sum game between member states and economic and political actors.’<sup>457</sup> But enhancing opportunities for individual and collective enrichment is hardly an objective unique to the EU and certainly not one that can be opposed, whereas both specificity and the possibility of contestation are normally preconditions for popular as well as elite mobilisation around a political objective.

Given that established political parties in important member states like Britain and France also find it difficult to formulate a coherent position on integration then the explanation for Elazar and Greilsammer’s observation that constructing Europe has become an end in itself is obvious. Faced by the doubly arduous task of both negotiating a new equilibrium during treaty reform and selling this to their citizens, governments prefer, above all else, to extol the merits of incremental integration as necessary to maintain the goodwill and trust required to keep integration working. This is how the metaphor of constant pedalling to keep the bicycle that is Europe steady became popular, which is doubly useful as this metaphor of motion indicates no fixed destination.<sup>458</sup>

Without a justification for a certain type of political project focused on a particular objective, however, it is almost impossible to see how EU centralisation at the expense of member state competences could become a successful political movement. The American analogy in this section was used to demonstrate how mobilisation behind the Union when its purpose and powers were called into question depended on a persuasive justification of why this form of government was necessary and what it alone could achieve. Union as the guarantee of republican freedom – itself the legacy of the revolution that has to be preserved – was the political ideology that justified the rally around the federal republic. This spirit has continued well into the twentieth century, for ‘it has been the growth of the national government that has

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<sup>457</sup> Fabbrini (2005b: 131).

<sup>458</sup> For a useful study of the importance of metaphors in European political discourse see Drulák (2004).

enlarged the boundaries of individual liberties’,<sup>459</sup> notably through welfare and civil rights reforms. Even the creation of a gargantuan military budget and, in the wake of the World Trade Centre attack, the restrictive reinterpretation of certain basic civil liberties have been justified by the security imperative facing American collective and individual self-government.

Although never uncontested, the American political tradition, therefore, has always relied on justifications about the nature and purpose of government to justify the gradual dismantling of a compound polity based on the permanent tension between the units and the union. The remarkable absence of such justifications in the European case – even after fifty years of integration – is thus another compelling factor for explaining why the Europe scenario of viability is so different. With no preponderant agreement over the type of government Europe needs and vacillating visions of what the EU is for, the member states negotiating changes to the treaties have little choice but to find consensus over a new equilibrium between antagonistic parties rather than risk major transformative change. Further evidence for this proposition will now be adduced by contrasting the EU context with that of the US, where a single major political cleavage, slavery, made a continuing dynamic solution to this antagonism implausible.

#### **5. 4 A Single Fault Line v. Multiple Fault Lines**

Every causal explanation about why the American compound union proved unworkable has at its heart the existence of slavery. This single cleavage predated, of course, the original institutional design agreed upon at the Philadelphia Convention. The convention’s “great compromise” was twofold: it balanced the demands of large and small states through bicameral representation and mollified the fears of the slave-holding southern states by guaranteeing them over-representation both in Congress and the electoral college due to the three-fifths clause.<sup>460</sup> Southerners were interested in maintaining a barbarous system that treated humans as property; they feared the possibility that federal institutions might restrict or abolish the practice.

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<sup>459</sup> Abrams (1996: 18).

<sup>460</sup> Rakove (1996).

What re-ignited the debate over the status of slavery was the expansion (peaceful as well as belligerent) of the Union, which opened up the possibility of spreading chattel slavery. Expansion entailed the addition of new states, thereby upsetting the original institutional compromise by potentially reducing the South's influence were slavery not to be exported to the new states.<sup>461</sup> The situation called for new ways of engineering consensus on this most vexing issue. Unable to keep manufacturing a consensus – like the Missouri compromise – over a problem that would not go away owing to continued and expected future expansion, the United States no longer remained viable as a compound polity.

Originally, the slavery question was managed to the satisfaction of both sides. The Northwest Ordinance, the pre-union law providing for the settlement of territories west of the Ohio river and their eventual accession into the union, forbade slavery in these eventual states. Yet as Peter Onuf explains, in 1787 this agreement reflected less a consensus on slavery than a common expectation that northern and southern states alike would benefit from rapid northwestern settlement. Moreover, these lands were not considered suitable for the plantation agricultural of a slave economy. 'The slavery issue,' according to Onuf, 'was only of secondary importance. Rather than being a controversial question of principle or interest separating northerners and southerners, slavery exclusion was subordinate to the overriding concern with development and union.'<sup>462</sup> The fact that Illinois, which had been an Ordinance territory and entered the Union in 1818, was convulsed by a debate over the status of slavery in 1823-1824 shows that divergent expectations quickly changed the willingness to adhere to the original agreement.<sup>463</sup>

As the example of the Ordinance suggests, the slavery debate in the US centred on containment versus expansion rather than a straightforward antinomy of pro-slavery and abolition. Containment was considered the most suitable policy by a broad coalition of moral, political and economic opponents of slavery as the assumption was that if restricted the institution would eventually wither in political and economic significance. The economic

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<sup>461</sup> There was also an enormous financial incentive in spreading the slave economy since after 1815 'cotton became the most valuable staple commodity in the Atlantic world', with production doubling between 1815 and 1820 and again in the following five years. (Wilentz 2005:221).

<sup>462</sup> Onuf (1987: 111).

<sup>463</sup> Proponents of slavery in Illinois, mostly consisting of planter settlers from the South, called for a state convention to redraft the state's constitution in order to permit bondage. Proving once again the dominance of the ideology of popular sovereignty in the US republic, the pro-slavery side argued that 'the Ordinance "compacts" could not exceed the reach of the sovereign people.' *Ibid.*, p. 124.

dynamism and social progress of the new free states would become proof of slavery's multiple baneful effects until no redoubt of slave holders could dispute this fact.

The first crisis of containment arose in 1819 over the admission of Missouri as a slave state. The period following the Louisiana Purchase in 1803, which included lands where both French and Spanish colonists had long practised slavery, had been one 'without parallel in the territorial expansion of slavery.'<sup>464</sup> Florida, purchased in 1819 from Spain, added to the list of prospective slave states. Thus containment came to the fore as soon as the new territories were considered ready for admission into the union, thereby altering the relationship between free and slave-holding states within Congress. The controversy was sparked off by James Tallmadge's proposed amendment to the enabling bill for Missouri's admission, that would have prohibited 'the further introduction of slavery and provid[ed] that slave children born after the date of admission should be free at the age of twenty-five.'<sup>465</sup> Containment was thus explicitly linked to gradual abolition. With the Senate refusing to pass this amendment, which had carried favour in the House, a compromise deal had to be put together. In return for the entry of Maine (hitherto part of Massachusetts) as a free state into the Union, no restrictions would be placed on slave-holding in Missouri; finally, except for Missouri, in territory acquired from France slavery would be "forever prohibited" north of latitude 36° 30'.

The manner in which this struggle over the rules of the game of American politics affected expectations is, in three particular aspects, highly instructive. Firstly, the passing of Tallmadge's amendment in the House of Representatives had alerted proponents of slavery to the existence of an antislavery majority in the lower house, which thus 'confirmed the southern need to maintain sectional equality in the Senate'.<sup>466</sup> Northerners and southerners alike realised that the future of slavery hinged on how the entry of new states affected the balance in the Senate, thereby making the question of a territory's policy on slavery vital. Secondly, the amendment controversy opened the door for constitutional dispute about the powers of the constitution as the anti-slavery movement's claim that Congress had the right to regulate slavery in a new state was obviously disputed by the slave interest. Although the Northwest Ordinance had previously established this right, this law had been passed during the Articles of Confederation. If the principle of determining the status of slavery in an

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<sup>464</sup> Fehrenbacher (1980: 12).

<sup>465</sup> *Ibid.*, pp. 14-5.

<sup>466</sup> *Ibid.*, p. 21.

acceding territory were accepted, the South began to worry about whether Congressional authority could be interpreted by extension as also permitting the regulation of slavery in existing states. The major effect of this new apprehension, as Don Fehrenbacher explains, was that ‘after 1820, it became increasingly difficult for a defender of slavery to support the expansion of federal power.’<sup>467</sup> Thirdly, the compromise that had been brokered showed the limits of flexibility when it came to finding a dynamic equilibrium between both camps. By rejecting ‘the possibility of gradual emancipation, even in a part of the country where it would have been neither impractical nor dangerous’,<sup>468</sup> the South had demonstrated beyond a shadow of a doubt their commitment to the permanence of slave-holding.

The second major battle over the containment of slavery occurred as the Union expanded through conquest. Following the South’s recognition of the need to maintain a pro-slavery balance in the Senate, its political leaders began agitating for expansion in the southwest, whose vast plains seemed particularly propitious for a slave-based plantation economy. Newly-independent Mexico, which had abolished slavery in 1829, refused US offers to purchase Texas, which became independent in 1836 after a revolt of American settlers. The annexation of Texas in 1845 – which had been one of the central themes of the 1844 Presidential election – was promoted by the slave interest as a way of further strengthening the permanence of slavery in the US.<sup>469</sup> Annexation itself sparked off considerable animosity between the two sectional interests, as at first opponents of slavery managed to prevent a policy of annexation leaving Texas an independent, slave-holding republic from 1836 to 1845.<sup>470</sup>

America’s Texas policy antagonised Mexico, itself in a state of turmoil, which combined with the lure of further territorial gains for the slave interest to ignite a conflict with the Union’s enormous southern neighbour in 1846. At this point the anti-slavery section realised how much they had lost control of the agenda of the federal government. A quarter of a century had elapsed since the Missouri compromise and since then three slave states (Arkansas, Florida and Texas) had entered compared to but one free state (Michigan). Although well outnumbered in the House of Representatives as population growth was much greater in the

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<sup>467</sup> *Ibid.*, p. 22.

<sup>468</sup> *Ibid.*, p. 23.

<sup>469</sup> James K Polk is said to have offered Spain \$100 million in 1848 to purchase Cuba to bring another slave-holding state into the Union. Hart, Albert (1917: 330); May (1973).

<sup>470</sup> For a lucid and full account of the importance of Texas in the politics of the American Union see Winders (2002).

free states, the South had kept control of the Presidency thanks to its dominance of the Democratic party that linked both sections – a point that will be developed in the next section on the importance of party politics. Paradoxically then, the South was dominant in American political life at a time when ‘in population, wealth, and industrial capacity, the South had fallen far behind the North and was much more conscious of its minority status than it had been before.’<sup>471</sup> It was a Virginia plantation owner, John Tyler, who annexed Texas in the last days of his presidency on the basis that the 1844 presidential election gave a mandate for doing so. His successor and fellow slave owner, who had campaigned successfully for annexation, James K. Polk, set his ambitions on purchasing Mexican territory and sent federal troops into the disputed Texas border eventually leading to an escalation into out and out conflict.<sup>472</sup>

Provoked by their evident failure to control the agenda of the federal government, at the outset of war with Mexico in 1846 the North sought to re-impose its vision of contained slavery by preventing its expansion in territories that might be acquired from America’s southern neighbour. Named the Wilmot proviso after its congressional sponsor, the proposal to ban slavery in former Mexican lands easily passed the House, proving once again the importance of controlling the Senate. It was at this moment that the slavery issue ‘took on a life of its own’ for once it had ‘entered the political arena, it proved impossible to get out.’<sup>473</sup> With the massive territory acquired by the Treaty of Guadalupe Hidalgo (1848), which practically doubled the size of the union, the west held the key to the future of slavery. If constituted as free states, then the South would lose its Senate majority, potentially enabling the anti-slavery side to reach the two-thirds necessary for amending the constitution to curtail slavery; if constituted as slave states, this majority hostile to slavery would never exist and the institution would be more firmly established than ever before.

At the same time a new slavery issue emerged: the status of fugitive slaves. Slave-holders wanted to see real enforcement of fugitive laws as a way of shoring up the existence of slavery in the southern border states. As William Freehling explains, without the tough application of these laws, ‘Yankee rescuers could raid the Border South and flout the

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<sup>471</sup> Fehrenbacher (1980: 29).

<sup>472</sup> Wilentz (2005: 585) argues that in expanding the Union the naïve Polk ‘wanted to supplant sectional jealousies with nationalist unity’ as his ‘vision of Manifest Destiny was as an emollient on sectional discord, and not a sectional ploy’. The project backfired spectacularly as it only enflamed existing tensions.

<sup>473</sup> Gienapp (1996: 83).

Constitution's fugitive slave clause. Then slaveholders in the four Border South states might sell their slaves to the Lower South.<sup>474</sup> If this were the case, the number of slave states would be reduced from fifteen to eleven, making the two-thirds majority more attainable for the north.<sup>475</sup> Fear of surreptitious northern intervention to undermine slavery in the border states was not such a fanciful idea since abolitionists had by this time set up the so-called "underground railroad", a clandestine network of routes and sympathisers (not a railway) to help slaves escape their masters.<sup>476</sup>

A complex settlement (1850), orchestrated by Henry Clay and often known as "Clay's Compromise", just about managed to preserve a dynamic equilibrium between both sectional interests. This compromise, in the words of Butler, thus represented a 'last desperate attempt to save the Union without dealing firmly and finally with the one thing which chiefly threatened it, namely, slavery.'<sup>477</sup> In return for California's admission as a free state (for the sake of sectional balance, initially one pro- and one anti-slavery senator were sent to Congress) and the abolition of the slave trade in the District of Columbia, the New Mexico and Utah territories were organised with no prohibition on slavery. The South was further mollified by the adoption of more stringent federal laws on fugitive slaves.<sup>478</sup> But the compromise unravelled quickly as southern fears of containment leading to an insidious pressure for extinction were not allayed. Equally important, Northern politics by this stage was becoming principally exercised by the question of slavery and whether it was compatible with the nature and purpose of the Union.

It was during the Wilmot proviso clash that the prospect of disunion became a reality, since the 'Unionism that had triumphed in the Lower South and Middle South was predominantly "conditional" Unionism – which is to say, conditional *disunionism*.'<sup>479</sup> The only remaining mechanism that could hold the Union together was the party system. In other words, in the sixty years following the creation of the republic, political strife in all its various

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<sup>474</sup> Freehling (1994: 195).

<sup>475</sup> Even without the reduction of slave-holding to a trifle in the border states there remained the potential of defection in peripheral slave states like Delaware. 'Only one senator or a very few need defect, perhaps just once, to forever alter the balance on the issue. The most evident example is that only eleven of the slave states seceded.' Aldrich (1995: 129-30).

<sup>476</sup> Blockston (1987).

<sup>477</sup> Butler (1939: 226).

<sup>478</sup> As Wilentz (2005: 648) points out, 'the most doctrinaire state-rights slaveholders were perfectly willing to invoke robust federal power to protect slavery.'

<sup>479</sup> Fehrenbacher (1980: 44).

manifestations (interpreting the constitution, relations between states and the federal government, party politics, foreign policy) increasingly revolved around the central cleavage of slavery. Indeed, it became the sole cleavage in the compound republic. This sectional crisis reached a paroxysm in the 1850s as both sides developed ‘conflicting sectional ideologies, each viewing its own society as fundamentally well-ordered and the other as both a negation of its most cherished values and a threat to its existence.’<sup>480</sup> As the ideological antagonism grew more bitter, and the values of the other side became more of an anathema, compromise and thus the chances of maintaining a dynamic equilibrium dwindled. The vehemence at play can be seen in Eric Foner’s classic reconstruction of the arguments of the nascent Republican party, whose critique of the South ‘focused upon the degradation of labour – the slave’s ignorance and lack of incentive, and the labouring white’s poverty, degradation, and lack of social mobility.’<sup>481</sup>

What fuelled this struggle was the notion, as shown in 5.3, that the Union was instrumental to the pursuit and realisation of certain values – a vision of what the polity was for. Both sides claimed to be defending the true version of what both founders and citizens wanted. In his recent survey of antebellum political history, Sean Wilentz has referred to this as a contest between “two distinctive democracies”. ‘The southern democracy’, he explains, ‘enshrined slavery as the basis for white men’s political equality’, while northerners ‘thought slavery a moral abomination that denied the basic humanity of blacks and whose expansion threatened white men’s political equality.’<sup>482</sup> Thus southerners argued for state sovereignty in the name of liberty, the freedom to keep the economic and social institution upon which their existence was founded; the Union existed either to respect this principle or else they could not continue to be a party to it. Northerners had an altogether different concept of American freedom for which the revolution had been fought and which was the guiding spirit of the constitution. As Foner has argued, ‘the integrity of the Union, important as an end in itself, was also a prerequisite to the national greatness Republicans felt the United States was destined to achieve.’<sup>483</sup> It was this intoxicating, hubristic understanding of freedom that Lincoln captured in his view, according to Foner, ‘that the American nation had a special place in the world, and responsibility to prove that democratic institutions were self-sustaining.’<sup>484</sup>

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<sup>480</sup> Foner (1995: 9).

<sup>481</sup> *Ibid.*, p. 50.

<sup>482</sup> Wilentz (2005: 791).

<sup>483</sup> Foner (1995: 316).

<sup>484</sup> *Ibid.*



By linking the Union to this concept of democratic freedom it was possible for a single socio-economic cleavage to evolve into a devastating and all-encompassing economic, moral and political argument against slavery. A vast camp of citizens could be mobilised for various interrelated reasons: ethical opponents of slavery, pioneer farmers attracted by land in the west and the corresponding promise of social mobility, unionists who objected to the South's quasi-aristocratic social hierarchy as a violation of liberty, northerners resentful of southern political power, industrialists who thought the expansion of inefficient slavery ruined commercial opportunities and northern workers who thought slavery depressed wages. In this way Republicans 'hammered the slavery issue home to the northern public far more emphatically than an appeal to morality alone could ever have done.'<sup>485</sup>

Eventually the escalating mutual antagonism led to a situation equivalent to a zero sum game because 'the struggle for the West represented a contest between two expansive societies, only one of whose aspirations could prevail.'<sup>486</sup> Given the neat geographical divide between both sides the cleavage was directly transferred into the system of political representation. This overlap also made it clear that one side was in the majority, meaning that in a polity increasingly moving towards a majoritarian system of popular sovereignty the territorial minority would inevitably lose out if the party system re-aligned on sectional cleavages. Once the intra-party mechanisms for depoliticising the slavery issue had failed (see below, section 5.5), the principle of the extended republic, supposed to prevent rule by faction in a compound polity, was not enough to prevent polarisation on a cleavage with a geographically differentiated majority and minority.

A similar breakdown in the conditions that favour a dynamic equilibrium – no fixed majority/minority cleavage and no antagonistic ideological struggle – seems impossible in the EU compound polity. Firstly, the struggle over the rules of the game of the integration process has been riven by multiple and overlapping cleavages. For instance, as already mentioned, countries with high social and environmental protection do not necessarily want to see the EU legislate in these areas out of a fear that their own high national standards may be diluted. Thus, as Neil Nugent explains, these sectional disputes have not 'rotated around fixed internal majority or minority power blocs or coalitions, but rather around viewpoints, alliances and

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<sup>485</sup> *Ibid.*, p. 309.

<sup>486</sup> *Ibid.*, p. 312.

coalitions that have shifted according to issues.’<sup>487</sup> Given this fact, the EU is thus closer than the US to the model of the extended republic with diluted and fluctuating factions that Publius thought necessary for preserving a compound system incorporating the legal authority of the centre with a certain autonomy for the units. It is precisely these overlapping and evolving interests and preferences that make package deals for internal reform possible. The analogical comparison reveals, therefore, that whereas EU expansion has strengthened the multiplicity of rival interests, in the US continental expansion distilled a polity of multiple factions into a bipolar sectional conflict.

A second reason why dynamic equilibrium has not been threatened is the European member states’ ability to retain control of the agenda and process of voluntary centralisation thanks to its joint federal structure. Thanks to the conferral basis of EU competences, the European states do not need to fear that the Union will become competent in an area that they have not all acquiesced to either through the consent of the government (and parliament) or by referendum. This means there cannot be a situation like that during the 1850s, where one part of the Union feared that the existing powers of the compound polity would be interpreted and used – without their consent – to pass legislation threatening their entire way of life. The veto power for pooling sovereignty exists precisely to prevent a state being confronted by a situation that could justify withdrawal. Even where the EU is competent to act through QMV, the institutional pressure for consensus described in 5.1 promotes compromise to mollify acute opposition.<sup>488</sup>

Finally, a similar kind of polarisation focused on two antithetical visions of what integration is for is highly unlikely since the EU is far more robustly anti-majoritarian. In section 5.2 I demonstrated how it was in the nature of the treaty system, notably through the use of national referendums, to hamper collective expressions of what citizens wanted the purpose of the EU to be. I also showed how the alternative projects for mobilising legitimacy (the convention method, the Europe of the regions, strengthening the Parliament, plans for European political parties) had not removed the nation-states’ stranglehold on the debate over competing visions of integration. In other words, a fundamental part of the rules of the game, the basic unit of

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<sup>487</sup> Nugent (2004: 12).

<sup>488</sup> This can be seen in the 2006 “Bolkestein” directive on liberalising services, which provoked the fury of socialist MEPs and irked several important member states. To placate these critics the final version was much watered down, notably the “country of origin” principle that would have allowed firms to offer services transnationally while being subject to only their home country’s rules and regulations rather than meeting separate national standards.

political representation in European politics, has not changed – it remains the nation-state, as referendums and the German Constitutional Court’s Maastricht decision prove, rather than European citizens in the aggregate.

Regardless of the proven pitfalls of popular mobilisation in the EU, there is a more fundamental reason for why even the two most opposed visions of integration – free-market Europe versus social Europe – cannot polarise the public in a way that renders the process of dynamic equilibrium untenable. Although supporters of either political projects may see the rival vision as contrary to their own economic interests or indeed moral values, neither competing vision, let alone both, has to regard the existence of the other as inimical to the survival of their favoured model. A compromise that allows both to co-exist is possible. This can be seen in the maintenance of higher national standards and especially in the possibility for “enhanced cooperation”: a recognition that a minority pooling sovereignty to a much greater degree amongst themselves is not incompatible with the preferences of the majority. Ideological rivalry in the US, based largely on despondent expectations of what would happen if one side expanded its socio-economic model, made exactly such a compromise impossible; the minority was the problem of the majority and *vice versa*.

The final section of this chapter now turns to the American party system. To complete the analogy, the antebellum party system is contrasted with the way in which referendum politics and member state power in the council of ministers structure the renegotiation of the rules of the game in the EU. The second American party system tried to rescue the compound system by manufacturing a compromise over slavery that would have maintained a dynamic equilibrium between both camps. This party system was spawned by the democratisation of the US in the Jacksonian period, which created a novel cross-unit form of political life, popular participation and political representation. Ultimately, in the face of continued territorial expansion that kept placing the slavery issue back on the federal agenda, the second party system failed to preserve the unity of the compound republic; instead, party politics turned into the means for keeping the union together by force, setting the American republic on the path of greater centralisation. In the EU, there exist major impediments to reconfiguring the unit of political representation from the level of the state to that of the union. This highlights how the scenario of viability for the European compound polity is different from the US and thus predisposed towards a dynamic equilibrium.

## **5.5 A Party System and Supreme Court Arbitrator v. Referendum Politics and Council Arbitration**

The American party system is a fine example of the reward for understanding the viability of a polity by looking at disputes over the rules of the game of politics. This is because the party system was conceived and developed outside the framework of the constitution, meaning that the functioning of the American political system cannot be understood solely by reference to the provisions of the constitution.<sup>489</sup> Originally it was thought that the Supreme Court, not parties, would be the arbiter in the predicted struggles over jurisdictional competences between the different levels of government in the compound system. Constitutional amendment was considered the other possibility for settling scores as the republic developed yet, as described above, in practice this device was almost never used.

The party system was very much unwanted and arose originally only as an unintended consequence of the struggle amongst the political elite to define the proper extent of federal competences. Thereafter, the story of nineteenth-century American politics is one in which disputes over the rules of the game were conducted largely outside the remit of the Supreme Court, and without recourse to amendment, leaving parties and party systems to try and resolve fractious issues by appealing to the public. Prior to the civil war, therefore, political parties attempted to mobilise a wider and wider public over the politics of the Union at the same time as sectional antagonism grew in intensity fuelled by territorial expansion. Owing to a series of changes in democratic practices in the first decades of the nineteenth century, the politics of the republic tended increasingly towards majoritarianism at the level of the union. Political representation thus gravitated around the union more so than the individual states, whilst the existence of a deep-rooted and fundamental minority/majority cleavage that re-emerged with each period of territorial expansion made it harder to reconcile both antagonists.

The first party system, which came into being during the contest for the Presidency after the departure of George Washington, consisted largely of coalitions of notables. They were not electoral parties bent on winning votes but rather organisations for providing stability to relations between the executive and the legislature. Thomas Jefferson's "Republican"

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<sup>489</sup> Ackerman (2005: 5) describes the procedural and electoral rules devised at Philadelphia as 'a complex constitutional machine aimed to encourage the selection of political notables to govern in the public interest, and to disdain the arts of faction'.

supporters favoured France in the ongoing European conflict and had a restricted understanding of federal competences based on their understanding of the conditions for individual liberty.<sup>490</sup> Alexander Hamilton and his “Federalist” acolytes were pro-British in foreign relations and sought to develop a stronger national government especially in fiscal policy. Jefferson was set on thwarting Hamilton’s effective steering of the federal government in a more national direction. The Republican ambition, however, was not to develop permanent party rule. Rather, as Shefter explains, ‘it was a temporary expedient to rout the enemies of republicanism and, thereby, to establish the preconditions for a partyless regime.’<sup>491</sup> The Republican party and its successor the Democratic-Republicans controlled the Presidency – using the Congressional Nominating Caucus to designate candidates – until Jackson won office in 1828, by which point the Federalist organisation had disappeared entirely.<sup>492</sup> Nevertheless, ‘the end of Federalism as a national power did not bring the end of fundamental political conflicts’,<sup>493</sup> for in an era of expanded and very active political participation the scope of federal competences remained highly controversial whilst, as shown in section 5.4, the slavery question came to the fore of political life as the Union expanded.

Before detailing how the party system responded to the challenge of the slavery cleavage, it is necessary to highlight some of the significant developments in the democratic practices of the American republic. These were notable for breaking up the aristocratic elite’s monopoly on office-holding and for transforming the contest for the executive into a competition for the popular vote more than an indirect election of the most suitable candidate by those who should know best. Popular sovereignty became the leitmotiv of the Union via the expansion of the franchise – states determined who could vote and in the first two decades of the new century ‘the American electorate underwent sweeping change’<sup>494</sup> thanks to the reduction and

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<sup>490</sup> The prestige as well as the size of the federal government was considered a risk to republican freedom as it was feared that the office of the President could lead to a quasi-monarchical regime. Thus Federalists caused a stir ‘even over things such as the propriety of providing the President with furniture and china.’ Aldrich (1995: 72).

<sup>491</sup> Shefter (1994: 65).

<sup>492</sup> The Federalists were discredited for their opposition to the war with Britain. In addition, as President, the supposedly Republican Madison ‘further weakened the [Federalist] party by moving to adopt positions long championed by Federalists such as support for internal improvement, a national bank, a stronger military, and a protective tariff.’ Swift (1996: 98).

<sup>493</sup> Wilentz, (2005: 178).

<sup>494</sup> Swift (1996: 99).

removal of property requirements – and through a change in the method for selecting electoral college voters.<sup>495</sup>

In 1804 eight of the seventeen states provided for the direct election of presidential electors; by 1824 only six out of a total of twenty-four did not allow for direct election.<sup>496</sup> Only Delaware and South Carolina did not follow suit by 1828.<sup>497</sup> In this way the state legislatures lost control over the selection of Presidential electors enabling politics to become both more populist and cross-unit. The demise of the congressional nominating caucus for selecting party candidates – under fire for being ‘an aristocratic intrigue, cabal and management’<sup>498</sup> and which was buried after the 1824 election – further helped transform the presidential election into a popular vote. From this moment nominations would be at the discretion of the party and its increasingly large number of adherents.

Jackson and his followers wanted to take advantage of their success in 1828 to reduce the dominance of the Virginia dynasty that had formed an oligarchical political grouping whose influence on the federal institutions was still great. Jackson had famously been a victim of their powerful hold on politics. In the 1824 election he won both the popular vote and a relative majority of electoral college votes yet the lack of an absolute majority forced the vote to be decided by the House of Representatives (voting by state), which chose John Quincy Adams. Unsurprisingly, after the 1828 victory, as Shefter explains, there was a deliberate attempt to purge the influence of the notables:

by removing the bureaucrats appointed by their predecessors, the Jacksonians sought to sever the ties between the bureaucracy and these [oligarchic] social structures; and by reorganising the bureaucracy, they sought to subject it to the control of the officeholders whom they had elected, the institutions (especially the party organisations) they commanded and the social groups for whom they spoke.<sup>499</sup>

Furthermore, as the parties in the post-Jacksonian era organised to mobilise political support they turned the election of presidential electors from one based on congressional districts to a

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<sup>495</sup> Aldrich (1995: 106) also draws attention to developments in national infrastructure that made national mass parties “technologically feasible”.

<sup>496</sup> *Ibid.*

<sup>497</sup> ‘As a result, although the percentage of white males who voted in 1828 was about double that in 1824, the absolute number of voters tripled in 1828, breaking the one million mark, up from 365,000 in 1824’. *Ibid.*, pp. 106-7.

<sup>498</sup> Wilentz (2005: 246). ‘This last vestige of the old form of national parties ended in 1824 in the face of the weak showing of its nominee.’ Aldrich (1995: 99).

<sup>499</sup> Shefter (1994: 68).

winner-take-all principle so that the winning candidate received all the electoral college votes.<sup>500</sup> This made it much easier for a candidate to win a landslide of states' electoral college votes with only a relatively small percentage of the popular vote – in 1860 'Lincoln received 98 percent of the North's electoral votes although he won only 54 percent of the popular vote in the free states.'<sup>501</sup> In addition, voter turnout was very high in the last two decades before the civil war 'over 70 percent of the eligible voters regularly cast ballots in presidential elections.'<sup>502</sup>

With these democratic developments the Presidential office therefore became the scene of hotly-contested elections pitting rival parties and candidates against one another in the race for winning enough electoral college votes across the union. Hamilton's vision of a strong executive – which some had originally considered quasi-monarchical, especially in comparison to the collegiate executive of the Articles of Confederation – was greatly enhanced in legitimacy and prestige as a consequence of these democratic changes. Under these new conditions, the leadership, platforms and organisation of the parties became crucial to the challenge of winning votes on a national basis. Given the size of the southern minority, in the second party system politicians and party leaders realised that the simplest way to win the vote meant finding a figurehead and a fluid platform that could transcend the divide between free and slave states. This can be seen from the actions of Martin Van Buren, the New York politician most credited with crafting a new party organisation – the Democratic Party – for the express purpose of winning the presidency.

Van Buren was very deliberate in his choice of party principle and its appeal to potential electors. The Democratic electoral equation he envisaged was a party linking 'the planter of the south with plains republicans of the north'.<sup>503</sup> This intersectional alliance was intended by Van Buren to counteract the political representation of sectional interests by reviving the principle of party distinctions, notably the old debate on the proper role and extent of the federal government for 'if the old [distinctions] are suppressed, geographical divisions founded on local interests, or what is worse prejudices between free and slave holding states will inevitably take their place'.<sup>504</sup> With the war hero General Andrew Jackson installed as the

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<sup>500</sup> Gienapp (1996: 87).

<sup>501</sup> *Ibid.*

<sup>502</sup> *Ibid.*, p. 91.

<sup>503</sup> Robert Remini, quoted in Aldrich (1995: 108).

<sup>504</sup> *Ibid.*, p. 108.

charismatic leader of this new party, Van Buren's project met with success since, in addition to his personal fame, Jackson cultivated an amorphous policy stance that drew together a broad church of support.<sup>505</sup> This deliberate ambiguity by the party's figurehead allowed for a great cross-unit mobilisation as this 'made it possible for those in the new party to run on whatever platform they wanted to, perhaps taking the opposite position from those running in the same party elsewhere in the nation.'<sup>506</sup>

Van Buren's idea was a triumph. Jackson won two terms of office and Van Buren himself was elected in 1836. The success of the system was based on the fact that the Democratic party did not require a coherent national platform in order to win election: state and local organisation and leadership was largely autonomous. Under the banner of a single party different policy positions could co-exist as long as no one faction dominated and provided that 'controls to keep [the] "peculiar institution" of slavery off the national agenda'<sup>507</sup> worked. So successful was this strategy that it was emulated by Jackson's opponents – who increased considerably in number following the vetoing of the re-chartering of the national bank in 1832. The paradox of the second party system, as defined by Richard McCormick, is that 'highly sectional responses in a series of presidential elections resulted in the formation of non-sectional parties.'<sup>508</sup> For when the New Yorker Van Buren ran in 1836 'the South and the West ceased to be politically monolithic, as anti-Van Buren parties quickly mobilised.'<sup>509</sup> By 1840 these anti-Jacksonians and anti-Van Burens had constituted themselves as the Whigs and won the Presidency by running a war hero candidate with a suitably flimsy platform to appeal across the Union.

Thus the second party system (Whigs v Democrats) represented a common endeavour to win the Presidency on an intersectional alliance that would keep slavery off the political agenda of the federal government. Balanced party tickets, where a northerner and southerner would share the presidential and vice presidential nomination, were the most evident manifestation of this tactic. The Democrats had one in every election between 1836 and 1860 (except in 1840); the Whigs balanced their tickets in the three elections of the 1840s. In fact, the

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<sup>505</sup> Remini described his programme as 'neo-Jeffersonian and conservative, leaning toward states' rights and the economics of laissez faire but so bland and inoffensive that those previously disposed to follow him could not seriously object to a single point.' Quoted in *ibid.*, p. 73.

<sup>506</sup> *Ibid.*, p. 109.

<sup>507</sup> *Ibid.*, p. 125.

<sup>508</sup> McCormick (1975: 112).

<sup>509</sup> *Ibid.*



Democrats went even further in their attempts to lock the South into this political alliance thereby guaranteeing that the party would not work against slave interests. The party established a national convention for electing the party ticket. Nomination was based on a two-thirds majority vote at the convention, where state delegates were proportional to each state's electoral votes – thereby over-representing the South given the Constitution's three-fifths rule. Thanks to this supramajoritarian procedure, as Aldrich explains, southern votes held the balance of power over nomination and thus 'made certain that no extremist, whether pro- or antislave, could be nominated', which 'helped produce balanced tickets and effectively attained and maintained the intersectional alliance in the Jacksonian Democratic party.'<sup>510</sup>

For their part the Whigs relied on 'the personal commitment and leadership of moderates, most of all Clay'<sup>511</sup> to maintain the intersectional alliance in Union politics. Thus 'it was no coincidence that the Whig party was torn apart and effectively collapsed the same year Henry Clay died.'<sup>512</sup> The mechanism of party organisation under the second system was, therefore, as McCormick explains, 'better designed for achieving agreement on nominations than for formulating policies.'<sup>513</sup> What mattered most was a palatable nomination rather than a pellucid platform as the first could unite sections in a way that the latter could only divide.

In the story of the demise of the US compound republic's ability to resolve the slavery problem the death of the second party system is fundamental. Expectations changed dramatically as the Whig party went into agony. In the era of the second party system, political leaders did 'everything they could to contain and deflate the slavery issue, correctly perceiving its sectional character as the single greatest threat to the constitution'.<sup>514</sup> While both parties tried to maintain a balance between the majority and the minority a dynamic equilibrium remained a viable option. 'With the break-up of the Whig Party', however, 'such calculations by ambitious politicians would change.'<sup>515</sup>

Another reason for the importance of establishing party control over electoral politics and the federal government was the difficulty states had in reining in their own representatives in the Senate. An upper house based on equal state representation was supposed to be, according to

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<sup>510</sup> Aldrich (1995: 132).

<sup>511</sup> *Ibid.*, p. 135. The standard account of Clay and the Whig party is Holt (1999)

<sup>512</sup> Aldrich (1995: 135).

<sup>513</sup> McCormick (1975: 106).

<sup>514</sup> Altschuler and Blumin (2000: 154).

<sup>515</sup> Aldrich (1995: 134).

Federalist 62, ‘a constitutional recognition of the portion of sovereignty remaining in the individual States and an instrument for preserving that residual sovereignty.’<sup>516</sup> But as William Riker has shown, state legislatures, the body originally responsible for electing senators, lacked the ability to instruct their own representatives. Whereas the Articles of Confederation allowed states to recall their delegates, meaning that instructions could be backed by effective sanction, the Constitution did not provide such a mechanism. In fact, the first Congress ‘refused by a large majority to add “the right to instruct” to the First Amendment, apparently because it seemed “too democratic” for the representative system and smacked too much of the localism of the Articles.’<sup>517</sup>

Naturally, state legislatures – especially those in the South – sought substitute sanctions against disobeying senators. The only successful alternative was forced resignation, which the states could hope to achieve by creating a furore if their senator voted against their perceived interests. Yet the divergent terms of office made such a method ineffective because ‘resignations were not easily forced when senators sat for six years, state legislators for one or two.’<sup>518</sup> Love of office generally prevailed over pride as Senators could cling on to office and await re-election knowing the composition of the legislature would have changed by then. Furthermore, in the age of Jacksonian democracy, Senators began canvassing voters rather than state legislators for support even though only the latter could elect representatives to the Senate. In effect, would-be senators were urging voters to elect state legislators who in turn backed the former in the senatorial race. This canvassing complicated the power relationship as it meant that ‘each state legislator then owed his office less to his own merit and more to the merit of the candidate for the Senate with which he was aligned. As a result, senators earned gratitude as much as they owed it.’<sup>519</sup> Thus without direct state control over the votes of senators, the centrifugal institution that was the Senate became susceptible to a centripetal tendency courtesy of party organisation. This was especially true since Whigs and Democrats were both intersectional alliances that promised to respect and maintain intact slavery and so when it came to protecting states’ interests party discipline became a substitute for state instruction.

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<sup>516</sup> Hamilton *et al.*, (1926: 316).

<sup>517</sup> Riker (1955: 456).

<sup>518</sup> *Ibid.*, p. 460.

<sup>519</sup> *Ibid.*, p. 463.

The result, as Elaine Swift has demonstrated, of these changes in the practice of popular sovereignty was ‘a democratic reconception of governmental structure that significantly recast the Senate.’<sup>520</sup> Gone was the ersatz House of Lords upper chamber, in its place there arose the notion of an “American Senate” which ‘should forge a close relationship with the people.’<sup>521</sup> Indeed, by 1820 a senator from Virginia could plausibly claim that ‘I do not consider myself the representative of the legislature of Virginia ... I consider myself the representative of the United States.’<sup>522</sup>

At this point it is important to reflect on the extent of voluntary centralisation that had occurred in the American compound republic by mid-century. It was not the powers of the US federal government that had changed dramatically, although its prestige and authority were greatly consolidated. What had been centralised was the political life of the Union itself via a change in democratic practices. Under the impulse of democratic reforms – in keeping with the notion of freedom enshrined in the republic’s foundational moment – election campaigns, political actors and, most importantly, issues, were gradually centralised around the federal capital. Institutions like the electoral college, as well as the Senate, had originally been intended to preserve the states as the dominant actors in an American political sphere inhabited by notables. Democratic populism broke the stranglehold of both the notables and the states. In doing so, the states were stripped of their control over agenda-setting and their ability to veto or frustrate legislation was greatly diminished. Thus the rules of the game changed not in terms of the competences and understanding of the role of government but thanks to a change in the procedures of political decision-making and participation, which in turn affected the unit of representation. The unit of representation both for mobilisation of the electorate and political debate became the Union as a whole rather than its separate political units.

Political parties by the 1840s increasingly organised political activity on a national scale<sup>523</sup> – allowing, of course, for a large degree of local autonomy, some of which remains to this

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<sup>520</sup> Swift (1996: 114).

<sup>521</sup> *Ibid.*, p. 111.

<sup>522</sup> William Branch Giles, quoted in *ibid.*, p. 115.

<sup>523</sup> During the notorious “log cabin and hard cider” campaign of 1840, a slogan referring to the Democrats’ slur on the predilections of the Whig candidate, ‘the union was turned into a huge fair; for months there was a continuous carnival with a whole people for actors’. Ostrogorski (1974: 33). ‘Log cabins turned up everywhere, in every imaginable form, as cheap trinkets, parade floats – and, in innumerable towns and cities, as actual edifices, surrounded by barrels of hard cider to treat all who cared to enter’. Wilentz (2005: 503).

day<sup>524</sup> – crucially controlling the agenda of politics in the Union. Paradoxically, this process of centralisation through democracy and political parties was motivated, during the second party system, by the desire to maintain a dynamic equilibrium on the slavery problem. The American case proves, therefore, that voluntary centralisation can co-exist with dynamic equilibrium in a compound polity. This was a very volatile admixture, however, as centralisation was resisted by violence when the party system failed to maintain the dynamic component and there appeared no prospect of resurrection.

Given the importance of nomination over platform or principle, the party system was brought to its knees not as a result of competition between the two parties but from internal weaknesses that spelled the end of prevarication over the slavery cleavage. This internal flaw was a function of the parties' attempt to reach out across the sections whilst also repressing sectional interests. Hence, as McCormick has shown, 'intra-party tensions were greater than the tensions between the two parties ... the inability of any national party agency to exercise firm discipline made it all but impossible to restrain the intra-party tensions.'<sup>525</sup>

The Whigs were the first to be convulsed by the inability to keep repressing the slavery issue as the Union kept expanding and the status of slavery in prospective states had to be addressed.<sup>526</sup> Presidential elections were once again decisive for political realignment. The comprehensive defeat of another military hero, Whig candidate Winfield Scott (1852), revealed the limitations of the contrived strategy of keeping an intersectional alliance at the cost of a credible platform in the aftermath of the resurgent antagonism that followed the 1850 compromise. As soon as this tactic failed to work, the South began to fret that Whiggism would not safeguard the slave interest and thus it became difficult for 'southern Whigs to remain within a party dominated by antislavery northerners,'<sup>527</sup> thereby making the Democrats a more credible guarantee for slavery. Shortly afterwards, however, the Democrat party was torn apart by the passage of the Kansas-Nebraska bill (1854) that ironically, as

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<sup>524</sup> 'A precedent of state and local party autonomy was set and became an American party tradition that was to continue and is only now eroding.' Aldrich (1995: 124).

<sup>525</sup> McCormick (1975: 112).

<sup>526</sup> 'The disruption of the second American party system started with the collapse of Whiggery in several states of the Lower South.' Fehrenbacher (1980: 48).

<sup>527</sup> *Ibid.* The Whigs also lost credibility in the North by not taking seriously the issue of nativism, that is, hostility to new catholic immigrants from Europe. Freehling (1994: 205-6).

Fehrenbacher argues, ‘could never have been accomplished if the Democrats had not held such large majorities in both houses of Congress.’<sup>528</sup>

The Kansas-Nebraska bill transferred the decision over the status of slavery in these territories to their inhabitants and was the Democrats’ attempt to make good on their ‘credible commitment to attempt to reinstate balance at the first available opportunity’<sup>529</sup> following the 1850 Compromise. However, this principle of “popular sovereignty” ran counter to the established and expected practice, dating back to the Northwest Ordinance, which granted Congress alone the power to decide on the status of slavery when organising a territory prior to statehood. Many northern Democrats balked at this measure, which by also deliberately repealing the 36° 30’ restriction of the Missouri Compromise (both Kansas and Nebraska lie above the famous line of demarcation) clearly spelt the end of the policy of containing slavery in an expanding union. Thus the method chosen by the Democrats to restore their intersectional credibility in the eyes of the South resulted in the Democrats losing so much ground in the North that they ‘lost the ability to reinstate the sectional balance.’<sup>530</sup>

Northern opponents of the Kansas compromise felt compelled finally to organize the first major party founded on antislavery principles, the Republican party.<sup>531</sup> Although inauspiciously weak at its origins in 1854, the Republicans took succour from the mess in Kansas, where pro- and anti-slavery factions established rival governments and fought pitched battles, and adopted some of the nativist rhetoric of anti-Catholicism. Republican success was striking; in 1856 they carried ‘all but five free states and finished second in the national totals’<sup>532</sup>, thereby hammering the final nail in the coffin of the second party system.

It was at this point that the other institution for settling scores between the states and the union, the Supreme Court, also revealed its limitations for promoting a dynamic equilibrium despite its supposed status as un beholden to parties or popular passions. Seized by the slave Dred Scott, who had been taken by his master to a free state, the Court had to determine, besides whether Scott was in fact a citizen, whether ‘the Missouri Compromise [was]

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<sup>528</sup> Fehrenbacher (1980: 49).

<sup>529</sup> Weingast (1998: 158).

<sup>530</sup> *Ibid.*

<sup>531</sup> The Republicans also managed to appeal to northern fears of immigration by linking the threat of wage competition from new citizens and the supposedly anti-republican proclivities of Irish and German immigrants’ Catholicism to the economic and political threat coming from the South. Freehling (1994: 205-6).

<sup>532</sup> Gienapp (1996: 102).

constitutionally valid in prohibiting slavery north of 36° 30' and whether 'the Scotts' [his wife was also a litigant] prolonged residence in a free state and a free territory earned them their freedom.'<sup>533</sup> The Dred Scott decision confirmed not only the extent to which the institutions of the Union set the rules of the game of politics – the Court was in effect deciding whether the states or the Union had sovereignty over the status of slavery. It also confirmed what the South had known for a long time, namely that since the states had little authority to defy, counteract or prevent the authority of the Union, it was necessary to have southern men in all the nooks and crannies of power. With five southern justices out of a total of nine, the South already had a majority and only needed 'one northern Democrat to sign on in order to give the comprehensive ruling some bisectional protective coloration.'<sup>534</sup>

Not surprisingly, the Court ruled in favour of the slave interest. Indeed, it went so far as to deny Congress the authority to rule on the status of slavery in territories, suggesting the Missouri Compromise was unconstitutional from the start. More egregiously still, the ruling stated that, since the Fifth Amendment constituted an absolute protection for property, slavery was thus lawful throughout the US. With this far-reaching verdict the Supreme Court had failed utterly in managing its political role in the compound republic. It had overruled the legal basis of existing compromises over slavery and left only a vacuum of uncertainty. Additionally, the justices had alienated most of the northerner population, thereby making it imperative to succeed in efforts to win control of the executive in order to reverse the pernicious dominance of the slave interest.

By 1860 the sectional struggle degenerated as the Republican party mobilized to defeat the slave power. This defeat was made possible by the schism of the Democrats as northern and southern factions could no longer adhere to the "popular sovereignty" compromise for the status of slavery in acceding states.<sup>535</sup> Lincoln won an easy victory, carrying a clear majority in the electoral college with only 39.9% of the popular vote. At this point southerners expected that the game of contesting the status of slavery according to the rules and institutions of the US constitution was up. Even before Lincoln's inauguration, seven states of the Deep South had seceded. Not wishing to dwell on the 1860 election and the Republican campaign, the fact that secession occurred as a result of expectations that Lincoln and

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<sup>533</sup> Wilentz (2005: 710-11).

<sup>534</sup> *Ibid.*, p. 711.

<sup>535</sup> In 1857-8 the South sought Kansas' admission as a slave state despite a majority of its citizens having voted to enter as a free state. Kansas entered the Union as a free state in 1861.

southern slavery would be incompatible shows that by this stage the American union was no longer viable. It could no longer find a dynamic equilibrium to reconcile the interests of northerners and southerners alike. It is at this point, therefore, that I close my analysis of the contest over the rules of the game of American politics.

Since the struggle over the rules of the game in the EU has already been discussed in great detail in the previous chapter I will restrict myself here to only a few broad remarks pertinent to the contrast with the US party system. Against the backdrop of European integration, party systems aggregating European citizens on the basis of Eurocentric political debates have not developed to negotiate struggles over the rules of the game of the EU. Rather, these struggles have taken place during treaty negotiations, where the member states have retained control of the political agenda, notably when it comes to the attribution of competences and understanding of the purpose of integration. National referendums on treaties have not, as might have been expected, functioned as democratic devices either for transcending the nation-state as the basic unit of political representation or for opening up a pan-European debate on what the EU is for.

In the day-to-day exercise of power, the Council of Ministers has also been vigilant not to lose the ability to contest the rules of the game, either by retaining the veto or else thanks to the consensus-building pressure inherent in the institutional design. This can be seen *a negativo* by the absence of disputes like nullification or secession, which obviously signal the frustration born of the impotence of those who feel they cannot otherwise influence the rules of the game of politics. Finally, the system of national representation in the Council of Ministers and the European Council has not withered like the representation of state interests via the Senate in the US. The sanctioning mechanism of domestic politics ensures ministers and governments do not forsake the preferences of national parliaments and public opinion in favour of stances considered too pro-European. The member states and their citizens have thus retained a strong prerogative with regards to the contest over the rules of the game, both at the foundational level (treaty amendment) and in the process of EU government.

### 5.6 Conclusion: Recognising What Makes the EU Viable

The pay-off that comes from making an analogy between the EU and the way the US compound polity functioned is that it has revealed something important about what makes the

EU viable and explained why. The US failed despite the fact that the contest over the rules of the game became more centralised as the agenda and practices of political life migrated from the states to cross-unit, mass parties. Individual states and their citizens could not veto policies and found it nearly impossible to set the agenda of union politics thus there was a great incentive to aggregate, which also fitted neatly with the American creed of popular sovereignty. Yet the party system could not maintain a dynamic equilibrium between the single cleavage – which polarised the compound republic into a clear majority and minority – that divided the member states geographically and which was therefore translated into political representation at the union level.<sup>536</sup> Conversely, the EU appears to have remained viable as a compound polity capable of evolving according to a logic of dynamic equilibrium precisely because it has avoided the centralisation of the contest over the rules of the game, *viz.* by remaining resolutely anti-majoritarian.

Tocqueville had predicted that the American federal government's legitimacy would be a by-product of its ability to uphold the constitutional order outlined in the founding document of the union. The "idea" that Tocqueville saw behind the Union, as Donald Maletz explains, was a "moral force" derived from the federal government's constitutional objectives of liberty and justice; it was this force, and not physical might, that was supposed to unify the 'diverse democracies of the past into a larger union'.<sup>537</sup> According to Tocqueville, the supremacy of the union could only be maintained if the national courts 'defend the union by using the formalities of the judicial process'.<sup>538</sup> The strength of the union lay, therefore, in its legal order – the embodiment of the principles enshrined in the constitution – rather than in its ability to mobilise political support throughout the population of the various states. Yet as this chapter has shown, the US remained a viable polity thanks to the party system's efforts to maintain a minimal consensus over the slavery question as much as a result of its constitutional and legal order. Ultimately, the Union prevailed because Lincoln drew on the promise of freedom that the Union inherited from the Revolution in order to mobilise popular support for his government and its campaign against secession.<sup>539</sup>

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<sup>536</sup> Foner (1995: 9) takes this as proof that 'government by majority rule works best when political issues involve superficial problems, rather than deep social divisions.'

<sup>537</sup> Maletz (1998: 610).

<sup>538</sup> *Ibid.* p. 611.

<sup>539</sup> Greenstone (1993); McPherson (1991).



This analogy suggests that the strength of the EU compound polity does not necessarily lie in its courts or constitutional order, as many suppose. Faced by multiple interest and identity cleavages, it is hard to see how the ECJ could function as the arbiter to solve these disputes in a way that would be accepted by all parties. Indeed, it has consistently forborne to address the political questions raised by the introduction of the principle of subsidiarity. The Dred Scott case demonstrates well the inherent risk in using courts to settle political issues in a compound polity. Thus it is the inter-governmental system of bargaining and treaty negotiation that has played the determining role in maintaining the dynamic equilibrium upon which EU viability depends. Further, the analogy also suggests that – despite the commonplace received wisdom that thinks a pan European party system is a natural solution to Europe’s integration ills – it is important to query this nostrum. The US example shows the partisan politics was far from an ideal way of finding a settlement to disputes over the rules of the game in a compound system.

This conclusion implies that the EU should be cautious with its strategy of finding proxies to shift politics away from the domestic level to a supposedly more democratic pan-European one. The American case shows that the centralisation of the contest over the rules of the game is hardly a successful method for finding the dynamic equilibrium necessary when faced by an important ideological or interest cleavage. It has already been shown that the EU has many such cleavages that are unlikely to disappear. This means that a reorganisation of the EU polity to make the contest over the rules of the game take place at the European level – by reinforcing the parliament and turning the Council into an upper chamber and sponsoring EU-wide parties, as is often mooted – is in all likelihood a blunt instrument for negotiating the dynamic equilibrium necessitated by the existence of these deep cleavages. The following chapter examines in more detail the consequences this analysis has for understanding how the EU can best remain viable.

## Chapter Six

### Elements of a Viable Compound Europe: The Implausibility of Voluntary Centralisation

*“Any federal arrangement likely to have long-term survival prospects is predicated on representation as a necessary condition.”*

Heinz Eulau

#### Introduction

This concluding chapter has three aims. Firstly, I will discuss in greater depth the implications arising from the fact that viability in the scenario of dynamic equilibrium requires that the central tension between supranationalism and intergovernmentalism not be resolved (section 6.1). To defuse this tension may require that certain policy questions are better shelved from treaty renegotiation or at least never settled definitively. The exemplar here will be the EU’s competence over social policy. In Europe this is a perennial policy question mark that has dogged integration.<sup>540</sup> Compared even to the questions of enlargement and foreign policy, social policy is also the one which potentially stands to most reconfigure the balance between supranationalism and intergovernmentalism in favour of the former.

The blockage of a “social Europe” has led many to call for a change in Europe’s system of democratic representation in order to produce the possibility of a mandated social Europe that intergovernmentalism stymies. Thus my second aim is to show that reconfiguring the nature of political representation in Europe is not necessarily a better way of managing the inherent overlapping tensions about EU competences and the objectives of integration, like that over social policy. To do this, I return to the example of the process of voluntary centralisation in the US prior to the civil war (section 6.2). The American experience, I argue, clearly demonstrates the limitations of creeping majoritarian democracy when it comes to defusing crises over the rules of the game in a compound polity. Most notably, the ability to achieve a dynamic equilibrium regarding a central ideological cleavage (slavery) was compromised.

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<sup>540</sup> Moravcsik (2006: 229) calls the paucity of social welfare legislation ‘the most widespread substantive criticism of the EU’.

During the course of the nineteenth century the United States' system of political representation was transformed from an elite-based union of states into a mass, cross-unit party system. This gradual erosion of the individual states' role in contesting and constructing the rules of the game meant that it was the court of cross-unit democratic opinion that had to pronounce on the unresolved question of slavery. This change was not universally welcomed as certain actors attempted to reaffirm the autonomy of the states and proposed an interpretation or sought amendment of the constitution to this end. A democratized compound polity representing individual citizens rather than states, without new features to safeguard the units, proved unable to find a viable dynamic equilibrium that could balance the competing ideological forces dividing the American polity.

Thirdly, in the light of this analysis, I will make some tentative and somewhat pessimistic conclusions concerning the extent to which the democratization of the EU, that is, a voluntary centralisation of European politics promoting the representation of individuals directly rather than via states, is viable. As Fabbrini has recently remarked, it is now commonly assumed by integrationist critics of the democratic deficit 'that the parliamentary model is the only viable solution to the question of the democratization of the EU.'<sup>541</sup> I argue that it is too simplistic to expect that such a move, or other attempts to engender a pan-European debate, sometimes under the slogan of "politicization", to allow a democratic majority to decide the future policy objectives of the EU, will inevitably have positive consequences for a compound polity. Trying to endow the *rapport de forces* between federalists and eurosceptics with democratic legitimacy by reinforcing the parliament, creating cross-national constituencies or holding pan-European referendums and turning the Council into an upper chamber goes against the anti-majoritarian tendency that has contributed greatly to EU viability.<sup>542</sup>

Instead of manufacturing a contest between competing visions of integration to be settled by cross-unit majority, I suggest that European construction is better served through an anchorage in national democratic representation (section 6.3). When confronted with proposals for voluntary centralization, member states and their citizens have to demonstrate acquiescence or objection, which, drawing on Pitkin's concept of representation, I show to be a fundamental component of representative politics. Without this testimony of non-objection,

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<sup>541</sup> Fabbrini (2005d: 188).

<sup>542</sup> Already in the mid 1990s Dehousse (1995) recognized the importance of anti-majoritarian design in Europe's institutional balance.

voluntary centralization of the rules of the game in what is fundamentally a “voluntary association”<sup>543</sup> would simply be impossible. However, a rebalancing of the principle of representation in European institutions resulting in a shift towards the representation of European citizens collectively, which I take to be constitutive of voluntary centralization, is only possible under strictly limited conditions. Such a fundamental change could only be justified by redefining the purposes of integration, which I show to be an extremely difficult exercise given the EU’s normative path-dependence. Moreover, in order for the compound polity to remain viable, it is likely that renegotiating the rules of the game in this manner is likely to require certain new modes of *ex post facto* intergovernmental – rather than judicial – control that currently do not exist. Nullification, as an *ex post facto* political mechanism for states to control the pace of integration, could prove far more suitable for this task than the stillborn judicial principle of subsidiarity. Moreover, the Confederate constitution’s amendment procedure constitutes a possible mechanism for linking a change in the political objectives of the EU with domestic representation, thereby enabling a mandate for substantive change in the political objectives of union to originate within the states rather than from the EU.

### 6.1 The EU as a Means to an End: The Problem of Incorporating Social Policy into the Rules of the Game

Oakeshott claimed that the modern concept of the state was confounded by two competing forms of human association: *societas* and *universitas*. The first consists of an agreement ‘not to act in concert but to acknowledge the authority of certain conditions in acting’,<sup>544</sup> the second is a ‘joint enterprise of seeking the satisfaction of some common substantive want’.<sup>545</sup> When looked at through this lens, debates over European integration seem to match this conceptual tension. Some regard the EU primarily as a good thing in itself (as shown in section 5.3) insisting on rule-observance above discussion of the content, whilst others consider that it ought to be a means for certain ends. Among the latter, social policy is typically the preferred substantive purpose behind integration, largely because the national capacity for the provision of social rights is now considered greatly diminished. The problem of formulating a more comprehensive European social policy, namely one that would open up

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<sup>543</sup> Boucher (2005).

<sup>544</sup> Oakeshott (1975: 201).

<sup>545</sup> *Ibid.*, p. 205.

the Pandora's box of redistributive politics,<sup>546</sup> is that such a purposive transformation of the EU is incompatible with the existing dynamic equilibrium regarding supranationalist and intergovernmental principles.

Social policy is a favourite topic for the growing literature in transatlantic comparisons. One of the commonest observations in this field is the tardy and incomplete establishment of a welfare state in the US compared with European nation-states. This phenomenon is usually explained in terms of a different trajectory of state-building<sup>547</sup> and a dominant political ideology regarding the benefits of a *laissez faire* approach to government intervention in the economy.<sup>548</sup> Whatever the precise explanation – they are in any case complementary arguments – the result is that the paucity of federal welfare programmes ‘does not question the legitimacy of the American federal state’.<sup>549</sup> The same cannot be said of the EU's member states, whose national welfare systems, sometimes dubbed “social models”, are an intrinsic part of the legitimacy of their political institutions: the twentieth-century European state ‘incorporat[ed] social rights in the status of citizenship’.<sup>550</sup>

The crucial role these welfare systems play in under-girding political legitimacy can be gauged from the increasingly frantic calls by the centre-left for greater EU intervention in the economy to secure citizens' social rights.<sup>551</sup> At its most extreme, the argument is that integration can only become legitimate in the eyes of its citizens if it delivers substantively on social policy issues: whence the call to complement negative integration (market making) with positive integration (market correcting)<sup>552</sup>. This supposed urgency is said to be the result of the dwindling possibility of providing a certain level of social protection in national isolation; European legislation – not least the Stability and Growth Pact – and the pressures of global economic competition sap states' room for autonomy.<sup>553</sup> Thus it is no coincidence that the majority of the European left, which was originally quite hostile to integration, has now converted itself to the euro-cause in order to transform the EU into a social-democratic project

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<sup>546</sup> Caporaso (2005: 66) highlights the distinction between “efficiency politics” aimed ‘at improvements for all concerned’ and “redistributive politics” that ‘involve[s] winners and losers from the start’.

<sup>547</sup> See Fabbrini (2005b).

<sup>548</sup> ‘There was, and continues to be, a consensus on basic liberal premises that state intervention should remain limited in economic and social spheres.’ Della Sala (2005: 134).

<sup>549</sup> Fabbrini (2005b: 130).

<sup>550</sup> Marshall (1992: 28).

<sup>551</sup> See for instance, Habermas (2000).

<sup>552</sup> Bartolini, (2005: 177-247) drawing on the work of Stein Rokkan, prefers to conceptualise this antinomy as boundary-removing and boundary-building.

<sup>553</sup> For a survey of the factors leading to welfare retrenchment see Scharpf (2000).

whose realisation at the purely national level now seems less feasible. ‘The left’, as David Marquand has neatly put it, ‘is now condemned to be European in a sense which does not apply to the right.’<sup>554</sup>

On the basis of the welfarist tradition of the European state and its party politics, it seems fair to say, therefore, that European citizens expect more from government in terms of social policy than has historically been the case of their US counterparts.<sup>555</sup> However, with this expectation now beginning to be transferred to the EU-level, it is necessary to explore whether this stands to jeopardise the EU’s ability to promote a dynamic equilibrium. Of all the unresolved and sublimated policy issues that have dogged the course of integration, the pooling of sovereignty in the arena of social policy, which I take to include taxation and social transfers,<sup>556</sup> would most reconfigure the balance between supranationalism and intergovernmentalism in favour of the former. As shown in the two previous chapters, it is precisely this balanced cohabitation – maintained during periodic recalibration of the rules of the game – that has so far ensured the viability of the EU compound polity. A contrast with the two other great policy cleavages, territorial boundaries and foreign policy, which have also been successfully left unanswered will illuminate this argument further.

A geographic definition of Europe has never been specified in the treaties, leaving the list of potential new member states an open question. According to the classic literature of political development weak territoriality implies a feeble state.<sup>557</sup> It might have been expected then that the ongoing process of extending membership – meaning long-term territorial ambiguity – would enfeeble the European polity. Certainly, this was the assumption of those who, like de Gaulle, believed that deepening and widening were naturally antagonistic. Yet the survey of the vicissitudes of the rules of the game of European politics in chapter four revealed that widening did not necessarily undermine the supranational advances established before accession. More importantly, I showed how widening was used as a tool for removing

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<sup>554</sup> Marquand (1997: 121).

<sup>555</sup> This has prompted Majone (2006: 622) to argue that ‘only a withering away of the European welfare state ... could facilitate the popular acceptance of a European federal state by drastically reducing the difference between what can legitimately be done at the national and at the European level.’

<sup>556</sup> I follow Majone’s (1996: 52-4) distinction between social policy, which provides “merit goods” that could also be supplied although perhaps inadequately by the market like pensions or unemployment benefit, and social regulation, which delivers “public goods” that markets cannot provide like environmental protection or consumer safety.

<sup>557</sup> As Bartolini (2005: 65) explains: ‘the *internal* sovereignty of the modern state was therefore mainly the result of the *external* consolidation of its borders in terms of military-administrative, economic and cultural transactions.’

stumbling blocks amidst existing members as well as a means of launching new projects for pooling sovereignty. Thus widening neither paved the way for the triumph of intergovernmentalism nor for the ascendancy of supranationalism. Instead, territorial expansion is a flexible instrument for maintaining a dynamic equilibrium between the competing principles of federalism and confederalism.

In other words, were Europe's frontiers forever fixed at the current EU borders, there is little evidence to suggest that deepening, implying an increase in supranationalism at the expense of intergovernmentalism, would automatically take place.<sup>558</sup> With the expansion to twenty-seven members, the obstacle to deepening is much less the uncertainty caused by not knowing the future geographic limits of the union even if this uncertainty can be discomfiting as when current members fear a potential member's ability and willingness to meet European commitments. Rather, it is the discord amongst current members over what kind of integration to accept that constitutes the main barrier to a supranational breakthrough. Thus in the IGC that finalised the Constitutional Treaty's modest ambitions apprehension towards possible Turkish admission was not used to justify a dilution of supranationalism. On the contrary, the desire was – and remains – to consolidate integration before potentially increasing the heterogeneity of the EU once more.<sup>559</sup>

As a compound polity faced by recurrent tension over the rules of the game, Europe nevertheless finds itself in the enviable position where neither settling territorial ambiguity once and for all nor leaving it unresolved will force member states to make a definitive choice between the principles of confederalism and federalism. Dynamic equilibrium would still be possible once Europe's boundaries are known. Admittedly, however, a settling of the boundary issue would remove one of the devices which has helped favour the scenario of dynamic equilibrium. A device, moreover, which also provided a diversion from the more fundamental question of what kind of integration is desirable privileging instead support for integration as an end in itself. The fixing of frontiers would, therefore, not immediately rewrite the rules of the game but it would change expectations as member states would find it

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<sup>558</sup> Bartolini (2005: 386), however, argues that boundary fixing is a necessary if not sufficient condition for reconfiguring the EU by pooling more sovereignty: 'the environment of the EU does not welcome internal political structuring without the development of fixed boundaries'.

<sup>559</sup> Although there is a perfectly legitimate thesis arguing that this discord is a product of expansion it is anachronistic to rail now against this *fait accompli*, especially since there is a mechanism for enhanced cooperation that in a sense was tailor-made for the original six though they are yet to make use of it.

harder to keep avoiding the question – so far skillfully evaded – of the endpoint of ever closer union.

The second great EU policy fudge against which to contrast the implications of inaugurating a “social Europe” is the common foreign and security policy (CFSP). This has always been a long-term objective of the integrationists despite the early EDC setback. So far a dynamic equilibrium has been achieved by balancing, on the one hand, the establishment of foreign policy joint actions and common positions, while, on the other, providing safeguards by opt-outs (notably for Denmark) and unanimity requirements, whilst also ensuring compatibility with the NATO umbrella. Yet there are good reasons for believing that a more consolidated CFSP based on QMV would involve symbolic more than substantive changes in the rules of the game concerning supranationalism and integration. Nor would such a change create obvious spillover pressure or solidarity so as to increase supranationalism throughout the EU architecture.

A QMV-organised CFSP would not overhaul Europe’s joint federal architecture and its concomitant pressure for consensus-building. Joint federalism means that the EU relies on the resources of its members to put into effect its policies. In CFSP this entails using the self-financed military capacity of the members, which not only suggests that ultimately a state could choose to defy QMV and withhold its co-operation but also that, for the sake of credibility, the EU is always obliged to find a line that curries favour with a plurality of big-hitters. In addition, CFSP has deliberately been subtracted from the “Monnet Method” – in which the Commission enjoys a monopoly of initiative – whilst the ECJ is denied the power of judicial review over CFSP legislation. This special status is designed to prevent the emergence of policy choices that privilege the aggrandizement of the EU’s competences.<sup>560</sup>

Equally important, the extent of the overlap between CFSP objectives and NATO’s novel post-cold war priorities such as crisis management, fighting the spread of WMD and combating terrorism, implies that NATO stalwarts would, in principle, find little objectionable about further European integration in CFSP based on its current agenda.<sup>561</sup> In fact, this is demonstrated in practice by the United Kingdom’s lead since the late 1990s in

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<sup>560</sup> Majone (2005: 163-4).

<sup>561</sup> The American doctrine of pre-emption and support for Israel are the most likely causes of future transatlantic discord but the likelihood of turmoil also depends greatly on the makeup of the Washington administration at any one time.



promoting EU defence cooperation, notably a rapid reaction force. Transatlantic compatibility between the respective objectives of NATO and CFSP, as shown by German and French participation in NATO's Afghanistan mission, means CFSP deepening need not entail an antinomy between Atlantic alliance and European security. Hence this kind of integration is unlikely to be a significant building block for a putative common European identity.

Since the limitations of joint federalism for foreign policy are well known, many commentators have called for the EU to fund military ventures directly in order to develop capacities that member states may never contribute or even develop. Glyn Morgan is one of those who believes that if the EU grasps the nettle and develops military capacity the result will be a more robust foreign policy and a strengthened political bond between states.<sup>562</sup> Morgan also agrees with Robert Cooper in arguing that the EU has a strong security justification for building up military strength since the international system contains a variety of threats meaning that order is ultimately still founded on an element of force.<sup>563</sup>

Yet in the EU architecture the decision-making procedure for CFSP is a thing wholly separate from the budget-allocating mechanism. A landmark decision to abandon unanimity in all CFSP decision-making would do nothing to remove the myriad obstacles lying in the path of any move to use the European budget for military spending. Since the budget is capped in advance for a period of several years there is little flexibility for suddenly increasing its size, which in any case would trigger the usual squabbling; entrenched interests also mean that any change in resource allocation within the existing budget would be bitterly contested.

Furthermore, the EU lacks a political constituency it could use to support the militaristic ambitions of security theorists like Morgan and Cooper, as when early-modern kings and emperors tied the aristocracy to their state-building projects by incorporating them into standing armies. The EU has no such political resource, which makes convincing its citizens of the merits of military spending rather problematic. EU citizens, perhaps with the exception of a small French political clique who advocate a multipolar world in the face of American

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<sup>562</sup> Morgan (2005: 133-57).

<sup>563</sup> Cooper (2000: 38) uses starker language: 'among ourselves, we keep the law but when we are operating in the jungle, we also must use the laws of the jungle. In the coming period of peace in Europe, there will be a temptation to neglect our defences, both physical and psychological.'

hegemony,<sup>564</sup> are likely to question that a militarily strong Europe is a sound vision of future integration or even a priority. The massive pacifist demonstrations against intervention in Iraq in 2003 highlighted the aversion European public opinion has towards conflict *per se*.<sup>565</sup> The dwindling military budgets of the post Cold War and the continued reliance on NATO protection (for which the 2004 accession countries are particularly grateful<sup>566</sup> suggest that the development of European military hegemony is not a serious vote-winning project.<sup>567</sup>

Finally, the relationship between defence and civil society is no longer what it was under the era of mass conscription armies. Armed forces used to be a means of socialization – of integrating different communities into a larger whole, as Eugen Weber has shown of French conscription in the late nineteenth century.<sup>568</sup> Conscription proved one of the best ways of fostering national sentiment amongst generations of men, greatly buttressing the authority of the state. In addition, these armies projected, for better and for worse, the power of their respective states across the globe, often turning this might into prestige, becoming powerful agents of identity-building.

Yet the coordination and integration of today's streamline, modern professional armed services hardly constitute a guarantee of identity-building spillover effects inexorably leading to supranationalism in other competence areas. Since Europe's current plans include integrating command structures and battalions to allow for a rapid reaction force of 60,000 troops, the scale of socialisation through fraternity of arms is obviously tiny in comparison to the era of conscription. Moreover, the kind of military deployment envisaged by CFSP, peacekeeping and crisis-management, is simply not analogous to those iconic moments in

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<sup>564</sup> Admittedly, the United States has at times played an active role in emasculating European security and foreign policy independence. After the proposed creation of a Eurocorps the US 'extracted an agreement from France and Germany that any such force would, in practice, be under NATO command.' Watkins (2005: 12). Likewise during the discussion of the Constitutional Treaty the UK government watered down a reference to mutual self-defence to preserve the primacy of NATO as Europe's security guarantee.

<sup>565</sup> These irenic qualms give some credence to Rober Kagan's (2003) claim that Europe and America diverge radically on questions of power and the use of force.

<sup>566</sup> 'The EU accession countries are security maximisers, seeing the value in more general security guarantees through EU membership and the harder forms of security guarantee being offered through NATO'. Duke (2004: 4).

<sup>567</sup> Even in the UK, with its potent armed forces who also remain politically powerful, the replacement of its independent nuclear deterrent is subject to contestation. While cost is one factor, doubt has also been cast on how independent this deterrent is, both in terms of procurement and operation, from the US nuclear umbrella. See Plesch (2006).

<sup>568</sup> Weber, Eugen (1976: 292-302).

military history – notably reverses within a larger struggle like the US Maine, Masada, Gallipoli – that have often become central to the construction of a national narrative.<sup>569</sup>

Indeed, it was the demands of modern warfare, including the resulting transformation of the apparatus of modern government, that Oakeshott believed made it most plausible to define a polity as an enterprise association whose members pursued a substantive common goal.<sup>570</sup> However, at a time when preparation to wage war is no longer a serious priority in Europe, martial spirit is not a means for establishing a common supranational sense of purpose. EU citizens may have become accustomed to the participation of their troops in multinational operations but the pay-off in terms of supranational solidarity has been slight. Thus Morgan's idea of a European military force 'akin to the French foreign legion' as an exemplar of 'nonduplicative but parallel social and political organisations'<sup>571</sup> necessary for a sovereign Europe is unlikely to revolutionise the rules of the game.

CFSP integration is thus compatible with a continued dynamic equilibrium since a stronger foreign policy stance by itself seems unlikely to unbalance the relationship between supranationalism and intergovernmentalism in the rules of the game. Deepening in CFSP entails surrendering powers member states can barely exercise individually for missions lacking a "rally round the flag effect" for the EU; whilst the problem of the EU's frontiers does not impact directly on existing competence allocations, expectations and the representation of citizens. However, irrevocably accepting the possibility of being outvoted in tax policy and social rights would tip the scales once and for all in favour of supranationalism: it would amount to a significant voluntary centralisation of the rules of the game. Besides the obvious impact on the autonomy of macro-economic policy – extending well beyond existing constraints like the Stability and Growth Pact – the introduction of QMV to tax and social transfers would constitute an unprecedented vote of faith in the shared priorities of government in Europe. The ability to set harmonized tax rates would also generate new expectations about increasing the EU budget since the ability to decide tax without controlling spending too would seem quite incongruous.

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<sup>569</sup> Renan (1992: 54) best realised the importance of defeat and struggle in the construction of a national bond: 'la souffrance en commun unit plus que la joie. En fait de souvenirs nationaux, les deuils valent mieux que les triomphes, car ils imposent des devoirs, ils commandent l'effort en commun'.

<sup>570</sup> Oakeshott (1975: 272-4).

<sup>571</sup> Morgan (2005: 167). His other idea concerning a college of higher education 'designed to operate Europe's administrative agencies' (168) is already somewhat redundant given the importance of two such existing EU-funded institutions. Alumni from the College of Europe and the European University Institute already provide a significant bulk of eurocrat recruitment.

The importance of eliding, for the sake of dynamic equilibrium, a policy problem that has so many implications for the *finalité politique* of pooled sovereignty can be judged by indirect analogy with the US for it too had to avoid finding a final answer to a fundamental political tension. In the US the policy issue that by definition implied dramatic reconfiguration of union/unit relations was slavery.<sup>572</sup> There the crucial device for keeping slavery off the official agenda of federal politics (even if it often bubbled away under the surface) was the sectional balance of representation in the Senate, which endowed the South with a veto power over federal intervention in the status of slavery.<sup>573</sup> The accession of new states in the 1850s, which tilted the sectional balance in favour of the North and wreaked havoc in the second party system, enabled the slavery cleavage to come to the fore. By transforming the rules of the game in this way – notably by destroying the expectation that the South could block anti-slavery legislation – the viability of the polity was acutely threatened. Yet the American polity did not falter simply because of the change in one (federal) institutional rule of the game of politics after the admission of California without slavery in 1850 produced a free state majority in the upper house.<sup>574</sup> Intra-party mechanisms for keeping slavery off the agenda and party norms of credible commitment to intersectional alliances were other means by which the South could protect the status of slavery.

Hence the ability to stymie unwanted legislation is not simply conditional on having veto power to insulate a policy taboo since the system of political representation may provide an alternative barrier. Thus it is vital to understand how changes in the nature of representation are liable to affect viability in a compound system trying to maintain a dynamic equilibrium. How political representation is constituted determines expectations whilst its performance in practice – particularly when trying to renegotiate the objectives of the polity – allows the relationship between unit and union to evolve. Hence in the next section I examine how changes in the system of representation were contested and what this entailed for the viability of the American republic. More precisely, I show that constitutive changes in the compound system of dual representation (of states as well as the individuals) that led to a more

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<sup>572</sup> See sections 5.4 and 5.5.

<sup>573</sup> As Weingast (1998: 170) explains, ‘the balance rule underpinned a series of political phenomena in antebellum America: the federal character of the Union with a national government strongly limited in scope, a party system that suppressed slavery as an issue, and the lack of sustained political attention to slavery.’

<sup>574</sup> Since California originally opted to send a pro-slavery senator to Congress alongside an anti-slavery one, the sectional balance was artificially maintained. With the blockage of Kansas’ admission into the Union, it was the entry of Minnesota in 1858 that first produced a free state senate majority.

majoritarian polity did not facilitate the resolution of the major cleavage issue the polity was not originally designed to solve.

## 6.2 Compound Polities and the Problem of Representing Both States and Individuals: The Theory and Practice of Antebellum Resistance to Party-Based Majoritarianism

Europe's stalled social policy embodies the fear prevalent amongst advocates of greater integration that the current institutional arrangement permits only a niggardly pooling of sovereignty. Hence the desire to shift the debate over what policies the EU should pursue from IGCs and European Council meetings, where national vetoes prevail, to an alternative European level of representation based on an aggregation of individual citizens. This is the common theme that runs through calls to increase the EP's competences, to replace IGCs with the convention method of treaty reform, to construct European political parties, to introduce Europe-wide referendums, or waive the unanimity requirement for treaty amendment.<sup>575</sup> The shared assumption is that such a move could create the conditions under which a policy of high social protection would automatically have the legitimising sanction of democratic procedure rather than inter-state bargaining. Shifting the unit of representation away from the states<sup>576</sup> to the representation of individuals is also the core of theoretical attempts to describe a condition of "post-national democracy" supposed to allay fears about the plausibility of such a radical experiment.<sup>577</sup>

I do not wish to explore the veracity of claims about the possibility of post-national democracy or determine the conditions under which such a transformation in representation is possible. Instead, in this section I seek to explore the significance of the EU's dual system of political representation (described in section 3.1). To show the relationship between viability and representation I now turn to investigate what impact a move away from the representation of states to one based more on an aggregation of individual citizens *unaccompanied by any explicit and unanimously accepted transformation in the objectives of the union* has on the viability of a compound polity. To do this, I re-examine the American experience of the centralization of the mechanism for contesting and constructing the rules of the game.

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<sup>575</sup> See respectively, Andersen and Eliassen (1996); Pollak and Slominski (2004); Sarkozy (2006); Weiler (1997); Trechsel (2005).

<sup>576</sup> I take states to be synonymous with peoples, where representation via states is mediated by democratically elected governments representing a majority of a given voting population.

<sup>577</sup> This has provoked a lively debate. Prototypical is that between Grimm (1995) and Habermas (1995).

Following the Jacksonian era, there was a reduction in both the influence of individual states and an attenuation of the anti-majoritarian safeguards of the constitutional system. Crucially, this constitutive change in representation was not accompanied by any new agreement or expectation that the US now had to settle the slavery issue once and for all. As the rules of the game evolved in this way, the threat of withdrawal was first voiced, accompanied by an ideological affirmation of the constitution's original anti-majoritarianism and new mechanisms were proposed to safeguard this. Thus although the units initially agreed to abide by the changed rules, it soon became obvious that there were inherent limits to their commitment to allow their autonomy to be overruled by an external majority.

The tension produced by the change in representation as states proved unable to control their senators, who also became linked to national parties, whilst the presidency became a cross-unit vote of popularity, can be characterized as the clash between Daniel Webster and John Calhoun. Whereas the first welcomed the advent of greater majoritarianism, holding democracy to be the cardinal virtue of republicanism, the second denounced this as a betrayal of the federal principle of the republic. Political theory, however, was not the alpha and omega of this debate since opponents of the slide towards a 'merge[r] into one great community or nation'<sup>578</sup> proposed measures to attenuate the implications of democratization at the union level.

The great nullification controversy over the 1832 protectionist tariff, which manufacturing-poor South Carolina thought unfairly targeted plantation states, is often noted purely for that state's advocacy of its right to nullify federal legislation. More important, perhaps, is the fact that this doctrine – which the Hartford Convention of northeastern states had earlier raised in the context of conscription during the 1812 war – was explicitly linked to the threat of secession. Under the terms of the Ordinance of Nullification, South Carolina promised that if the Union attempted to use coercion to make the state toe the line, it would 'forthwith proceed to organize a separate government, and do all other acts and things which sovereign and independent states may of right do.' Thus a recalcitrant state not only claimed the dubious right to refrain from obeying federal law, it also proclaimed the right of unilateral exit. Secession thus entered the contest over the rules of the game in reaction to a policy decision

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<sup>578</sup> Calhoun (1992: 102).

stemming from a democratic majority even though ‘there was no ambiguity about the tariff’s constitutional correctness.’<sup>579</sup>

This threat of secession re-emerged less than two decades later as the introduction of the Wilmot Proviso, which would have outlawed slavery in lands conceded by Mexico, led to the establishment of the Nashville Convention to discuss southern rights.<sup>580</sup> Whereas the Kentucky and Virginia Resolutions of 1798 merely claimed that states had the residual right to interpret the constitutionality of federal law, the second meeting at Nashville proclaimed a general right of withdrawal. Although the convention met after Congress had approved the acts constituting the 1850 Compromise, the delegates declared that ‘we have a right, as states, there being no common arbiter, to secede.’<sup>581</sup> State conventions in Mississippi and South Carolina in 1851 explicitly reiterated this right. At this point the nature of the constitution itself rather than the constitutionality of federal legislation, as with the Alien and Sedition Acts, the conscription bill of 1812 and the tariff controversy, became the fundamental focus of political debate.

Given the centralization and democratization of federal politics that had taken place during the Jacksonian period it was a matter of crucial importance as to whether the constitution had been enacted by a united and indissoluble people or else by independent states. The first interpretation implied acquiescence to a majoritarian solution to the problem of slavery. The second indicated that even if the South lost its veto power in the Senate and was deprived of its ability via the party system to designate a poodle president there remained other means for resisting an attack on slavery.

Thus both Calhounians and Websterians recognized that, following developments in the nature of democratic political representation, the rules of the game needed to adapt in order to accommodate the existing ideological cleavage. Expectations as well as institutional rules had to be renegotiated, which entailed a re-examination of founding intentions. One side insisted that, despite the elitist leanings of the founders and attempts to prevent rule by majority faction, from the outset the constitution, as the work of a single community, could not be

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<sup>579</sup> Wilentz (2005: 380).

<sup>580</sup> ‘Many came to despair of being able to block the Wilmot proviso by regular legislative methods or by the veto of the president; they therefore considered it bad policy to wait till the dreaded and final blow was struck by Congress before a finger should be raised by way of warning or defense.’ Cole (1914: 376).

<sup>581</sup> *Ibid.*, p. 385.

undone and that federalism was therefore compatible with majoritarianism. Their opponents spoke of the right to secede, leaving open the possibility of future withdrawal if a minority of states (or even a single one) could not accept what the majority deemed constitutional. It was precisely this need for compromise – over a cleavage that the compound system was not designed to resolve – that Calhoun placed at the centre of his discussion of the nature of the US constitution. His analysis revealed that Publius’ design to impede the emergence of a ruling faction by extending the republic to ‘make it less probable that a majority of the whole will have a common motive to invade the rights of other citizens’<sup>582</sup> was a failure. As well as delivering the definitive compact interpretation of the constitution, he developed a theory of “concurrent majorities” as the cornerstone of federalism and set forth anti-majoritarian proposals to counterbalance the development of a system of representation more centralized and majoritarian than at its origin.<sup>583</sup>

As the central protagonist in the 1832 nullification crisis, Calhoun was well-placed to articulate a cogent defence of the role of a state’s veto in the federal constitution. This was not merely an attempt to justify the actions of his native state. In the light of the centripetal development of American politics, Calhoun fundamentally ‘thought that it was essential to revise republican theory and constitutional arrangements to fit these new circumstances.’<sup>584</sup> The American union had to adapt to a novel situation in which despite the size of the republic and the founders’ constitutional devices the federal government was now potentially the instrument of a partisan majority. According to Calhoun, nullification served not merely to protect the autonomy of a particular state: it also played a positive and mediating role in negotiating the relationship between the states and the union.

Hence nullification was more than just a residual prerogative of sovereignty. A state veto was an essential part of the rules of the game because Calhoun associated it with an amendment procedure in reverse to determine questions of constitutionality. Instead of amending the constitution to limit or expand federal competences thereafter, Calhoun envisaged that nullification of an existing law would stand ‘unless and until three-fourths of the states, acting in sovereign convention, overrode the veto of the nullifying state and established beyond

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<sup>582</sup> Hamilton *et al.* (1926: 47).

<sup>583</sup> I take this theory of concurrent majorities and his proposal for a dual presidency to be the work of a profound reflection on the nature of the American compound system and what made it viable rather than a crude scheme for preserving slavery by a disgruntled southerner. For a survey of Calhoun’s political philosophy see Lerner (1962).

<sup>584</sup> Ford (1994: 45).



dispute the constitutionality of the law in question.’<sup>585</sup> The constitutional principle at work here was what Calhoun termed concurrent majority, whereby the federal government was based on the accumulated acquiescence of majorities in the individual units rather than a numerical majority of the whole. In other words, he advocated the consolidation of the representation of states rather than an aggregate of individual American citizens. This system of concurrent support from the states was necessary, he argued, to halt the unwanted accretion of power that would occur if the federal government was left to judge the extent of its own authority. It was not simply the legislature that could not be relied upon because, as Ford explains, ‘neither the Supreme Court through judicial review nor the president through his veto could be trusted to determine the extent of federal power since they were themselves branches of the federal government.’<sup>586</sup>

Thus the compact reading of the constitution, which asserted that ‘the constitution was ordained and established by the several States, as *distinct, sovereign communities*’,<sup>587</sup> was not simply a paean to state sovereignty to be used as they pleased. Nullification and its concomitant of concurrent majorities was a political instrument essential for preserving the unique compound American republic. Faced by the spectre of a national majority that could decide the powers of the federal branch, it was necessary to invent a remedy because ‘the duration and stability of our system depends on maintaining the equilibrium between the States and the General Government – the reserved and delegated powers.’<sup>588</sup>

Originally, the Constitution had enshrined a principle of concurrent majorities when it came to the election of the president and his deputy, at least so thought Calhoun. This was how he understood the electoral college’s rule whereby each elector proposed two candidates, without specifying for which position, and where the House of Representatives, voting by state, would select the candidates for office in the case of a tie or when none had a majority.<sup>589</sup> Yet this

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<sup>585</sup> *Ibid.*, p. 48.

<sup>586</sup> *Ibid.*, p. 49.

<sup>587</sup> Calhoun (1992: 94). Emphasis in original.

<sup>588</sup> Calhoun (1978).

<sup>589</sup> The text of Article II.I reads: ‘The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then from the five highest on the list the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each state having one vote; A quorum for this purpose shall consist of a member or members from two thirds of the states, and a majority of all the states shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the

practice had been dismantled by the democratic presidential election circus pioneered by Van Buren and Jackson, which left the electors tied to popular votes and party tickets.<sup>590</sup> In this way, Calhoun explained, the balance between the representation of states and individuals, designed to complement each other by nurturing a concurrent majority, was disrupted:

Had these provisions been left unaltered, and not superseded, in practice, by caucuses and party conventions, their effect would have been to give to the majority of the people of the several States, the right of nominating five candidates; and to the majority of the States, acting in their corporate character, the right of choosing from them, which should be President, and which Vice-President. The President and Vice-President would, virtually, have been elected by the concurrent majority of the several States, and of their population.<sup>591</sup>

Calhoun's fear for the viability of the compound polity as majoritarian party politics became a permanent feature heightened as the sectional crisis erupted in 1850. As it became obvious that the North would eventually become the national majority, which could then constitute a party based around northern interests, Calhoun proposed a dual presidency. Each section would elect a president (one for foreign relations the other for domestic policy) with both required to approve the legislative acts of Congress. This veto system was designed to constitute a guarantee of concurrent majority in a system heading towards centripetal numerical majority. If implemented a dual executive would mean that

as no act of Congress could become a law without the assent of the chief magistrates representing both sections, each, in the elections, would choose the candidate, who, in addition to being faithful to its interests, would best command the esteem and confidence of the other section. And thus, the presidential election, instead of dividing the Union into hostile geographical parties, the stronger struggling to enlarge its powers, and the weaker to defend its rights – as is now the case – would become the means of restoring harmony and concord to the country and the government.<sup>592</sup>

Calhoun's theory of concurrent majorities can be illuminated further by turning to the theory of political representation. Hannah Pitkin classically argued that 'the substance of the activity of representing seems to consist in promoting the interests of the represented, in a context where the latter is conceived as capable of action and judgment, but in such a way that he

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Vice President.' Following the hotly contested election of Jefferson in 1800, the twelfth amendment was passed which made electors nominate the candidates for one office or the other.

<sup>590</sup> See section 5.5.

<sup>591</sup> Calhoun (1992: 128).

<sup>592</sup> *Ibid.*, p. 277.

does not object to what is done in his name.’<sup>593</sup> This “non-objection criterion”, as David Runciman calls it, is necessary to escape from the independence/mandate controversy that has tended to dominate theoretical discussions of representation.<sup>594</sup> Thus representative democracy is based on allowing groups and individuals to judge the actions (and perhaps even the private lives) of those who claim to speak and act on their behalf. ‘Political representation is best understood,’ Runciman argues, ‘not in the language of veto but of competition. Objections to the actions of representatives can prove decisive when they constitute a plausibly competing claim to speak in the name of the person or thing being represented.’<sup>595</sup>

In a compound system, however, matters are fundamentally more complicated given the existence of groups, i.e. territorial units, which have the right to object in their own name and not merely as a part of a wider aggregation that must be mobilised. Calhoun’s insistence on understanding the US republic as based on concurrent majorities and compromise can thus be explained as an attempt to safeguard the possibility of state objection in a system of dual representation of states and individuals. In theory, this compound mixture does not preclude any action in the name of the aggregation of individual citizens but this has to be balanced against the need to take seriously objections from the units, which eventually equates to some kind of veto power. Indeed, several commentators have described the EU’s consensual model of decision-making in terms of concurrent majorities.<sup>596</sup>

The purpose of this section has been to show that changes in the nature of political representation in a compound polity did not make the resolution of fundamental tensions, which the polity was not designed to solve, any easier. Although the American compound system provided a framework in which the rules of the game could be renegotiated, it did not constitute an *a priori* guarantee that an enduring consensus would be maintained. In particular, foundational changes to the system of representation were acquiesced to as long as the fundamental compromise juxtaposing federalism and confederalism, as well as the slavery problem which impinged on this balance, were not called into question. By the time of the breakdown of the second party system in the 1850s, not only was the Union trying to resolve a policy problem it had originally sought to elide but the means of doing so went against the

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<sup>593</sup> Pitkin (1972: 155).

<sup>594</sup> ‘The practice of representation does not need to become bogged down in the independence/mandate controversy: genuine representation is possible in the absence of explicit instructions from the voters, so long as it coincides with the absence of explicit objections from the voters.’ Runciman (2005: 10).

<sup>595</sup> *Ibid.*, p. 22.

<sup>596</sup> Moravcsik (2002: 620); Katz (2000).

grain of the original principle of representation.<sup>597</sup> The result was a mounting contestation over the changes to the system of representation. The American union, therefore, remained viable despite a radical departure from its original model of representation until partisan democratic politics was used to try to solve a problem the compound system was designed to avoid.

Returning to the EU, it is important to reiterate the significance of both the original objectives behind the integration project and its character as a voluntary association. Integration is a solution to a set of problems but from the outset there were others that were deliberately set aside.<sup>598</sup> The four founding objectives of integration were: a peace project, security against German resurgence, economic growth and strengthening domestic liberal democracy (introduction, chapter 4). Hence “ever closer union”, as a result of the failure of EDC, did not include the expectation that its members would have to choose between Atlantic security and European independence. Moreover, the hybrid intergovernmental and supranational structure of government was testimony to the fact that whilst no *finalité politique* was excluded, integration promised only a potential for voluntary centralization. Member states are thus engaged in a process that tries to combine both principles of intergovernmentalism and supranationalism rather than eliminate one of them. Likewise, integration is supposed to reconcile a growth-oriented free market<sup>599</sup> with social protection rather than engender a competition and eventual winner between competing visions of economic versus social integration.

Furthermore, as members of a voluntary association, EU member states are free ‘in that they can choose to associate or not depending upon approval of the substantive purpose imposed’.<sup>600</sup> This approval is the rigorously anti-majoritarian criterion against which mandates for policy change stemming from the representation of the aggregate of individuals have to be balanced. Whatever the claims made by those speaking in the name of European

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<sup>597</sup> Madison made this latter point clear. In 1787 he explained that it was incorrect to consider the US ‘as analogous to the social compact of individuals: for if it were so, a Majority would have a right to bind the rest, and even to form a new Constitution for the whole.’ Koch (1969: 141).

<sup>598</sup> The comparative federalism literature has shown the usefulness of constitutional ambiguity for defusing conflict. See Erk and Gagnon (2000).

<sup>599</sup> As Bartolini (2005: 266) explains, integration ‘was driven by the growing pressure deriving from the slow but significant economic peripheralisation of Europe in the post-Second World War world economy and the corresponding perception of the inadequacy of the European state as a unit of economic organization in world competition.’

<sup>600</sup> Boucher (2005: 104).

citizens, the representative function of objection or non-objection is institutionally safeguarded (especially through the veto and unanimous treaty amendment) to remain with the member states and their own citizens *qua* national citizens. It was precisely this possibility of objection via withdrawal or non-participation that was denied to the recalcitrant southern US states even though, and unlike the Articles of Confederation, the Constitution made no mention of perpetuity whilst secession could also be implied from the reserved powers granted by the tenth amendment.

Thus EU viability, when understood in the context of these purposes and omissions, is not simply a matter of causal preconditions for consolidation or pious pleas for legitimacy through “democratization” as the dominant binary paradigm suggests. Instead, viability is the ability to successfully renegotiate the rules of the game, in a way that is either faithful to these purposes and omissions (dynamic equilibrium) or else that establishes clear-cut acquiescence to new expectations and objectives for integration (voluntary centralization). In previous chapters I explained in some detail how the EU’s viability has hitherto been linked to its ability to maintain a dynamic equilibrium. The current section complemented this analysis by showing that a constitutive change in political representation that reduces the influence of the territorial units is likely to run foul of the objections of the sub-units *when used as a proxy to redefine the political objectives of the compound polity*. From this I conclude that viable voluntary centralization requires that a change in the purposes of the union precede a shift in favour of the representation of individuals and not *vice versa*. This is because a normative change in the objectives of the compound polity, which pre-supposes non-objection by the member states, is needed in order to justify representing and legislating for citizens *qua* individuals and not nationals of particular member states.

In the final section I explore what potential exists in the EU for elements of voluntary centralization, which in the light of the above analysis must stem from a unanimous revision of the objectives of political union in order to be viable. To be at all possible, such a renegotiation of the rules of EU politics would, I argue, have to proceed from national political representation. However, even the limited options of possible voluntary centralization are likely to require new safeguards for member state autonomy in order to respect the compound nature of a union that represents both individuals in the aggregate and member states separately. Since the EU already contains a strong pluralist model of

concurrent majorities, that safeguard is likely to have to take the form of nullification rather than a recalibration of concurrent majorities as Schmitter has recently suggested.<sup>601</sup>

### 6.3 How Could Voluntary Centralisation be Justified and Managed?

The above analysis suggests by indirect analogy that the democratization model, which calls for a significant strengthening of parliamentary democracy in the EU to reduce the deficit of democracy, will not necessarily render the EU more viable. This conclusion lends support to Morgan's argument that the EU is hampered less by the inadequacies of its particular institutional architecture than by the lack of a convincing and well-argued justification for pooling further sovereignty. Building on this insight, combined also with the theory of representation outlined above, in this concluding section I argue that whatever voluntary centralization is viable depends on the involvement of national channels of political representation. Yet even with explicit acquiescence from the member states for greater supranationalism, I conclude that managing the resulting new tensions will require innovations to maintain a certain dynamic element of member state control.

Two ways of linking national representation to EU reform seem necessary for managing a change in the nature of EU representation. The first concerns the need for states and their citizens to be able to object in their own name to competence accretion; the second regards the mechanism that enables a mandate for substantive change in the political objectives of union to originate within the states rather than from the union. I underscore this argument by outlining the stringent conditions under which domestic representation could provide a platform for such voluntary centralization. However, these conditions are so demanding that it seems unlikely, *ceteris paribus*, that the EU will embark on a scenario of voluntary centralization. Hence my conclusion perhaps differs little from that of the "no demos" camp, although the reasons advanced are markedly different since they pertain not to missing causal preconditions but to the great difficulty the EU faces in changing the nature of its political goals.

The EU compound system is characterised by far stronger anti-majoritarian institutions than was the case in the early American republic. These are recognised as playing a crucial role in

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<sup>601</sup> Schmitter (2000: 84-106).

making integration politically palatable.<sup>602</sup> It is precisely such institutions that proposals for democratising the EU are intended to attenuate. Yet it would be naïve to think that enhanced supranational decision-making and the creation of transnational political representation would be possible without offering the member states at least some new safeguard to control the course of integration. Since the analysis of the evolution of the rules of the game in chapter four showed that new safeguards were placed in the course of dynamic equilibrium there is reason enough to believe the same will hold for voluntary centralisation. Here the American analogy provides a valuable insight into the kind of device necessary for managing a fundamental reconfiguration of European political representation.

Most significant is the initial attempt to rely on the doctrine of nullification, as a way of reforming the system, rather than threaten secession. Without questioning the nature of the political association – was it compulsory or not? – Calhoun argued, as shown above, that creeping majoritarian representation had to be counter-balanced by an *ex post facto* anti-majoritarian safeguard. Nullification and its automatic triggering of a convention of all the states to settle, by a three-quarters majority, whether a disputed law was constitutional was intended as a potent yet politically savvy means of balancing the dynamic relationship between the states and the union. Savvy because it bypassed the use of the Supreme Court – deemed biased towards federal self-aggrandizement<sup>603</sup> – to resolve issues of constitutional authority and denied the federal government the right to interpret the limits of its own authority.<sup>604</sup>

This point highlights one of the fundamental complications concerning judicial politics in a compound system. As John Kincaid points out, ‘the acceptance and legitimacy of an independent judiciary in democratic nation-states is premised on the existence of a constitution or fundamental law grounded in popular sovereignty.’<sup>605</sup> Yet in the EU this link between judicial independence – crucial when judges are to rule on sovereignty issues – and popular sovereignty is entirely indirect. EU treaties are ratified by the representatives (and

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<sup>602</sup> Dehousse (1995); Schmitt and Thomassen (1999: conclusion).

<sup>603</sup> In Pennsylvania’s 1809 dispute with the federal government (see above p. 73), the state legislature suggested the creation of a special court to adjudicate sovereignty disputes that would incorporate state appointees. Tipton (1969: 48).

<sup>604</sup> The infamous Dred Scott decision is a dramatic example of what may go wrong when an utmost political problem of constitutional authority is dealt with through the judicial branch (see above pp. 194-5).

<sup>605</sup> Kincaid (1999: 51).

sometimes the people) of each member state whilst decision-making undertaken in accordance with treaty powers requires complex consensual negotiation between different institutions with different principles of political representation. As a result, the ability to respond politically to judicial judgments is nugatory, a fact well recognised by the member states which have increasingly resorted to pre-empting ECJ activism by circumscribing the scope of their potential verdicts through the use of anti-harmonisation clauses, the pillar system and treaty protocols.<sup>606</sup> In the US context, when the sovereignty crisis erupted, nullification was proposed as a way of accepting a stronger representation of citizens in the aggregate by designing a novel form of political oversight for the units and their citizens.

Certainly this solution to the problem of clashing constitutional authority appears far more appropriate than the EU's own stillborn mechanism of *ex post facto* control over the accretion of European competences. The "subsidiarity" principle announced with fanfare in 1992, albeit as a concession to sceptics, was supposed to introduce a judicially enforceable efficiency criterion to uphold democracy by ensuring that policy decisions 'are taken as closely as possible to the citizen' (TEU Preamble). The difficulty with the subsidiarity principle is precisely that it does not establish a division of competences for the present and even less for the future given its insistence on efficiency (see 4.3.1). Moreover, the special constitutional protection afforded the *acquis communautaire* also prevents the clawing back of competences to the domestic level even if it this were proved to be more efficient at some later time.<sup>607</sup> Not surprisingly, therefore, this lack of an effective principle of limited government leaving open competence accretion has caused consternation<sup>608</sup> and has done virtually nothing to settle the question of the division of powers.<sup>609</sup>

The nullification debate in US political development suggests that democratisation is liable to provoke constitutional conflicts. To resolve these conflicts requires robust anti-majoritarian devices for limiting competence expansion at the union level. Above all, such a mechanism should be political – that is, based on the will of the units or their citizens – rather than purely judicial. At present the EU's highly proceduralist, consensus-building system does away with

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<sup>606</sup> The lack of anything resembling an integrated EU public sphere also hampers the court's ability to gauge public opinion on a matter, whereas the US Supreme Court has seldom remained at odds with public consensus on important issues. Miller and Howell (1956: 3).

<sup>607</sup> Wind (2001: 176).

<sup>608</sup> Bartolini (2005: 132-6).

<sup>609</sup> Magnette (2005: 53).



the need for a nullification device. However, since a move to transnational representation would challenge this consensual order, it appears more than likely that a new element of flexibility will be necessary to accompany such a change.

Existing instruments of flexibility – notably policy “opt outs” – negotiated to render integration palatable give further credence to this claim. Understanding that framework treaties can produce many unintended consequences, member states willing to countenance voluntary centralization would still seek to retain control over the progress of integration to avoid becoming locked in to a process without guarantees or an emergency brake.<sup>610</sup> Thus it seems likely that the EU would adopt a mechanism, presumably applied to a restricted set of sensitive policy areas, akin to Calhoun’s nullification principle, whereby legislation could be blocked by either one or a certain threshold of member states until a specified majority (or unanimity) of the total units agreed the original law was constitutional. This argument respects, therefore, the claim made in section 3.1 that in a compound polity struggles over sovereignty will not be resolved by a single fixed rule of competence demarcation, least of all one overseen by a supranational judicial body. A nullification mechanism could thus be one way of reconciling further integration with avoiding merely reconstituting sovereignty at the European level. Indeed, the tendency amongst Europhiles to revere the EU as a “post-sovereign” entity suggests that support for a nullification device designed to promote flexibility, dialogue and ultimately compromise could span the pro- and anti-integration divide.<sup>611</sup>

Notwithstanding this putative exploration of how a change in representation could be managed at the EU level, it is important to remember that such radical reforms would be parasitic on the successful justification of an integration project demanding more supranational decision-making and representation. Thus the question squarely remains: how could a supranational project amounting to voluntary centralisation be justified? To be at all plausible, and on the evidence of the previous failure of both an ambitious project like the EP’s 1984 Draft Treaty on European Union as well as the timid Constitutional Treaty, I argue that a strong supranational project would have to involve a profound re-negotiation of the

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<sup>610</sup> Another tool would be the exit, or threat of withdrawal, option. It is important to note that the Constitutional Treaty for the first time creates a legal possibility of withdrawal from the EU although this is obviously not a flexible instrument.

<sup>611</sup> MacCormick (1997).

objectives of integration. Furthermore, this change in the rules of the game would have to emerge at the level of national representation.

Some scholars have noted the fundamental lack of change in the objectives of integration since the EEC,<sup>612</sup> which is fully consistent with the analysis of Europe's process of dynamic equilibrium outlined in chapter four. Nevertheless, there is no *ex ante* reason for dismissing evolution in the purposes of integration as impossible<sup>613</sup> – I have argued that the compound polity provides a framework for such change conditional on the non-objection of the component units. Yet there has been little attention paid to specifying the conditions under which this could occur. In fact, it has even been argued that indirect legitimization via national representation is only possible for inter-governmental decision-making and not supranationalism.<sup>614</sup> This is because Majone claims that the *raison d'être* of supranationalism is to protect the rights and interests of individuals against member states' trespasses. However, this thesis is contradicted by the fact that supranational protection is plainly a derivative of the objectives of integration to which all member states gave their assent, as seen from the justifications given for the doctrines of primacy and direct effect (4.2.1). If the objectives change courtesy of member state agreement, therefore, so too does the scope of supranationalism.

Economists have a straightforward theoretical model for distributing competences in a compound polity. There should be a centralization of authority where 'economies of scale and externalities are important, and for which heterogeneity of preferences among European citizens and member countries is low.'<sup>615</sup> This model shares the assumptions of the theory of subsidiarity. Yet as I have shown, subsidiarity has not had a transformative impact on structuring the politics and policies of the EU (section 4.3.1), nor has it shaped citizens' understanding of the justification for integration; all it has done is serve to signal that member states seek to maintain a broad range of autonomous decision-making.

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<sup>612</sup> Majone is probably the most explicit, when he ????????????

<sup>613</sup> In the same vein, Majone (2006: 608) explains, the democratic deficit could be eliminated 'if the majority of European voters desired to be governed by a full-fledged European federal state, they could use the electoral process to force their national leaders to transfer sufficient powers and resources to a democratic and federal union.'

<sup>614</sup> Majone (1998).

<sup>615</sup> Alesina and Spolaore (2003: 206).

The failure of the subsidiarity principle to produce a new understanding of the role of the EU reflects the fact that there is a relatively stable consensus concerning the purposes and institutional balance of the integration project, as Moravcsik argues,<sup>616</sup> or at least no consensus for dramatic change. Even those who would take issue with Moravcsik would find it impossible to point to an avowed and successful pro-superstate party or movement.<sup>617</sup> Thus the oft-raised question of *quo vadis Europa* is in fact primarily a question about the extent to which the purposes of integration can be reconfigured in a viable manner.

Most studies reveal that ordinarily European citizens tend largely to be underwhelmed by the process of integration. Neither what Bartolini calls constitutive (competences and rules) nor isomorphic (policy preferences) issues concerning the EU are a day-to-day priority.<sup>618</sup> As a treaty-based political system, however, the periodic revision of the treaties produces in-built critical junctures<sup>619</sup> concerning the fate and purpose of integration. At these moments the European compound polity re-examines its rules of the games, including the purposes behind integration itself. This constitutes a rare opportunity for national politics to tackle squarely the political issues surrounding integration in a way that EP elections, with their abysmal turnout and low exposure, and national elections, where domestic priorities dominate, do not. Moreover, treaty moments also have profound effects on domestic political parties. These parties often find it difficult to contain the debate over the merits and demerits of integration and during the course of ordinary politics are liable to agree to disagree internally. In this way the cleavage over integration is not structured through ordinary party competition<sup>620</sup> and emerges with a vengeance during treaty ratification.

Evidence from political science suggests referendums on treaties afford perhaps the best means of engaging a wider public in a debate on EU politics.<sup>621</sup> The most recent studies reveal

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<sup>616</sup> 'The EU has quietly reached a "European Constitutional Settlement": an enduring set of substantive competences and procedures embodied in the amended Treaties of Rome, which define the scope of the EU's mandate, the respective competences of Brussels and the member states, and the institutional form of EU decision-making.' Moravcsik (2006: 235).

<sup>617</sup> Majone (2006: 610-2) suggests there is rather a tendency to use EU legislation, supposedly designed to meet the objective and neutral needs of governance, to advance the unstated political end of deeper integration. He labels this practice "cryptofederalism".

<sup>618</sup> Bartolini (2006: 34).

<sup>619</sup> In my use of this concept I draw on Mahoney (2000).

<sup>620</sup> 'The lack of any party thematization of EU issues leaves the mass public attitudes towards the EU largely unstructured'. Bartolini (2005: 385).

<sup>621</sup> Gallagher *et al.*, (1995: 119).

that direct democracy increases citizens' understanding of and participation in politics<sup>622</sup> and that in referendums on European integration issue-voting will tend to prevail over second-order voting given an effective campaign.<sup>623</sup> Since political elites in most countries have been found to be more pro-European than their electorates,<sup>624</sup> referendums also force the political class to confront and respond to arguments over Europe that are often marginalized in ordinary circumstances. However, the debate over referendums has largely focused on vaunting the merits of allowing the peoples of Europe to decide. Considerably less explored is how referendums can be moments for changing the rules of the game by establishing new political objectives for the EU.

Traditionally, referendums on treaty reforms are ratificatory moments in which the public is asked to approve or disapprove of a reform in which political elites obviously had a quasi-monopoly on constructing the consensus necessary for a dynamic equilibrium. Hence, as Runciman argues, hitherto these have been plebiscitary referendums whereby the electorate 'can put an issue to bed, but only if they vote with their political masters.'<sup>625</sup> Moreover, these referendum debates have proved deficient for articulating a clear debate about what the EU is for, let alone allowing the public to choose between different conceptions of pooled sovereignty. Rather, the debate concerns how the various treaty changes are (mis)interpreted. Often, therefore, the struggle over ratification is marked by a campaign where the differences are 'largely of interpretation rather than principle'<sup>626</sup> sidelining substantive discussion of the objectives of political union and requisite institutional design.

The example of France in 1992 is illuminating here. With voters being called upon to ratify a treaty that launched an ambitious new economic project, EMU, as well as a framework for policy initiatives in CFSP and JHA, it might have been expected that the debate would centre on the need for such evolution in integration. In reality, French citizens were given the usual assurances by supporters of Maastricht that national sovereignty and identity were safeguarded, a claim obviously disputed by their opponents.<sup>627</sup> Indeed, it was the spectre of

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<sup>622</sup> Benz and Stutzer (2004); Smith, Daniel and Tolbert (2004).

<sup>623</sup> Garry et al. (2005).

<sup>624</sup> Van der Eijk and Franklin (2004).

<sup>625</sup> Runciman (2003). The Constitutional Treaty debacle proves his point since the member states are currently engaged in a rescue exercise trying to salvage certain institutional and competence reforms.

<sup>626</sup> Hayward (2003: 128).

<sup>627</sup> 'Mitterrand contended that national governments would always be able to safeguard national interests... Mitterrand played the sovereignty card well and emerged from the exchange [a TV debate with Philippe Séguin] the clear winner'. Criddle (1993: 234).

German resurgence that provided one of the best means of justifying this new project. Demonstrating the enduring power of Europe's initial objectives of containing German might and strengthening its own democratic trajectory, newly-reunified Germany played a central role in the referendum debate. A host of political leaders from across the spectrum urged voters to ratify the treaty as a means of securing peace and democracy in Europe. Former prime minister Michel Rocard spoke of the need 'to preserve Germany from its demons', the then premier prophesied that the collapse of the treaty would break the Franco-German axis, leaving Germany eastern-looking and 'probably encouraging an anti-democratic ferment', former president Giscard D'Estaing warned of Germany going it alone, meaning that 'a no [vote] would ensure the German preponderance over Europe'.<sup>628</sup> Finally, during the live television debate between Mitterrand and the leader of the no campaign, Helmut Kohl intervened via satellite precisely to dispel fears of German domination.

Statistics from the French vote show how nugatory the discussion of competing visions of what the EU is actually for turned out to be. Among Yes voters, 72% voted to assure a lasting peace in Europe, 63% as an indispensable means for building Europe and 21% through fear of German domination in Europe. Among No voters, 57% were motivated by fears of a loss of sovereignty whilst 40% feared German domination.<sup>629</sup> In other words, both sides were more preoccupied with debating the evolution of the rules of the game in relation to questions of peace, identity and sovereignty than trying to justify the merits and demerits of different kinds of polity *per se*.

A similar tale can be told about subsequent referendums. In Ireland's two referendums on the Nice treaty, which tweaked institutional design and paved the way for dramatic eastern enlargement, arguments over whether this new project was justified took second place to bland general preferences for or against integration. As Richard Sinnott has shown, in the two Nice referendums, more than forty percent and fifty percent of yes voters, respectively, declared they supported the treaty because of a belief that integration 'is generally a good thing' compared to the 22% and 29% of voters who thought enlargement 'was a good thing'.<sup>630</sup>

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<sup>628</sup> Quoted in *ibid.*, pp. 234-5.

<sup>629</sup> *Ibid.*, p. 238.

<sup>630</sup> Sinnott (2003: 47).

A major impediment to discussing the EU compound polity in terms of why it is justifiable to pool certain elements of sovereignty is the fact that from the outset integration has been considered as a project with an undefined end, an end in itself, rather than a means to an end (sections 4.2.2 and 5.3). This is a peculiar state of affairs since federation, like other projects of union between states, is ordinarily ‘conceived as a means toward an end’.<sup>631</sup> As a result, integration has been supported somewhat surreptitiously, as a federalism that dare not speak its name. Majone calls this phenomenon “cryptofederalism”,<sup>632</sup> which prefers to focus on the momentum of the process – the metaphor of riding a bicycle – rather than fixing a determinate end goal with a clear justification. With proponents of integration assuming that this project is *ipso facto* desirable and couching their support in abstract terms relating to peace and prosperity (section 4.2.1), it is not surprising that critics of the EU respond with equally vague ideological counter-claims. Moravcsik portrays this paucity of justificatory debate well, explaining that the integration debate ‘inevitably comes to be dominated by “symbolic extremists” of a Euro-enthusiastic or Eurosceptic persuasion’,<sup>633</sup> leaving little middle ground for re-evaluating the purposes behind the process itself.

Thus European integration is marked by a notable path-dependency regarding the nature of the debate over justifying the process in terms of political objectives. Not only do European political issues lack national salience as well as an overlap with domestic cleavages, the normative framework for pursuing integration has hardly budged since the launch of the EEC: perpetual peace and economic growth.<sup>634</sup> Moreover, these two objectives are difficult to interpret as substantive purposes entailing a certain form of political organization. Peace, as Terry Nardin explains, ‘is better regarded as a constraint rather than as a purpose, for to respect the value of peace is not to achieve as an end the avoidance of all force’.<sup>635</sup> Whereas the pursuit of economic growth is constitutive of what Oakeshott calls a *societas cupiditatis*, wherein although mutual benefit ‘may be common to many or even to all, there is no common substantive want the satisfaction of which they may all be supposed to be seeking’.<sup>636</sup> Neither peace nor economic growth, therefore, necessarily implies supranational integration rather

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<sup>631</sup> De Vree (1972: 28).

<sup>632</sup> Majone (2006: 610-12).

<sup>633</sup> Moravcsik (2006: 237).

<sup>634</sup> Another factor involves which states or indeed politicians are politically powerful enough to spark off a continent-wide debate. Historically the impetus for new projects has come from the Franco-German tandem. However, here I am interested in the normative path-dependency of the debate rather than the problem of agency.

<sup>635</sup> Nardin (1983: 13).

<sup>636</sup> See the discussion in Oakeshott (1975: 287-95).

than intergovernmentalism. Indeed, as Craig Parsons has shown, the emergence of the supranational community method for achieving these twin goals was a very contingent event that hinged on precarious political coalitions in France, which more often than not united for pragmatic domestic reasons rather than enthusiasm for supranationalism.<sup>637</sup>

Hence normative path-dependency makes it increasingly difficult to refocus public debate on what the EU is actually for and what kind of institutional structure and competence regime is necessary to accomplish its tasks. Whilst the narrow yet abstract basis for justifying the EU is certainly no barrier to dynamic equilibrium – indeed it constitutes an asset for this scenario of evolution of the rules of the game – this is not the case for voluntary centralization. Without a clearly justified project for greater integration voluntary centralization cannot emerge from within national politics to play a role in treaty renegotiation and subsequent ratification.

In addition, the same path-dependency makes the task of defining a strong vision of what Europe is for more difficult for those seeking a *Sozialstaat* Europe compared to proponents of limited integration. This is because supporters of a circumscribed compound polity can build on the founding purposes of integration, for which there exists a solid permissive consensus. Thus Majone’s call to shift EU policy focus away from vicarious attempts at self-aggrandizement to negative integration is a plea to return to a strictly regulatory form of compound polity trying to solve common economic problems.<sup>638</sup> Likewise, Tony Blair’s attempt to reach out to “practical sceptics” by calling for policy innovation to address four key areas of concern for citizens<sup>639</sup> – economic reform to modernize social models, crime, security and immigration – represents a modernization project that largely freezes the current supranational and intergovernmental balance. Conversely, those seeking the development of an EU parliamentary democracy would be obliged to refound the purposes of integration in a manner largely hostile to one of its original goals: the strengthening of domestic liberal democracy. The burden of justification for such a transfer of competences can safely be assumed to be very high indeed.

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<sup>637</sup> Parsons (2003).

<sup>638</sup> Majone (2006: 622-5).

<sup>639</sup> In the aftermath of the two failed referendums on the Constitutional Treaty, Blair explained this ‘is not a crisis of political institutions, it is a crisis of political leadership’. Speech to the European Parliament, 23 June, 2005; cf Tony Blair, Future of Europe Speech, 2 February, 2006.

Furthermore, there is also a strong institutional constraint affecting any proposed shake-up of European integration. The existing reform mechanism via IGCs and unanimous treaty renegotiation is an onerous method of forging new objectives. The presence of multiple veto actors, particularly the powerful UK that has a well-articulated set of integration “red lines”, gives rise to the power game described by Bacharach and Baratz whereby one actor tries to ‘limit the scope of the political process to public consideration of only those issues that are relatively innocuous’.<sup>640</sup> As a result, the discussion of radical new objectives or institutional design is greatly circumscribed, as shown by the UK’s hostility to even the mention of the word federalism.

Under present conditions, therefore, it is unreasonable to expect the successful emergence of a project for ambitious voluntary centralization based on a new understanding of the purposes of integration. However, there could be another means by which this scenario of viability could be realised. Currently the rules of the game of EU politics evolve almost exclusively through treaty reform, a largely intergovernmental, elite process. Electorates are sometimes asked to assent to or reject the new treaty. Nevertheless, referendums need not be *ex post* devices since they can also be used to initiate policy on the basis of popular mobilisation, as occurs in Swiss and Italian politics.<sup>641</sup> Given that the Constitutional Treaty introduced the right of “citizen’s initiative” it is not too far-fetched to imagine the future use of referendum initiatives to debate new EU projects. Potentially, this method represents a better way of grounding justification of a new integration project in national politics as it would link normative change in the purposes of union with a mechanism for engendering non-objection by the citizens of member states.

In fact, there is a precedent for a bottom-up initiative procedure originating within the units (dependent on reaching a certain threshold of states) that would then trigger discussion an extraordinary convention to discuss this proposal. This unusual device can still be found in the US constitution as an alternative to Congressional amendment<sup>642</sup> but was in fact better spelled out, and with a much lower threshold than the two-thirds required in the US, in the

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<sup>640</sup> Bacharach and Baratz (1962: 948).

<sup>641</sup> These are the exceptions in Europe; in other countries that allow for referendums the parliament (or President in France) controls access to the referendum arena.

<sup>642</sup> This mechanism has never been used although the threat of calling such a convention to impose union-wide direct election of senators encouraged Congress to pass the seventeenth amendment. See Wirls (1999: 4).



Constitution of the Confederate States of America (1861). Amongst the confederated states, amendment worked thus:

Upon the demand of any three States, legally assembled in their several conventions, the Congress shall summon a convention of all the States, to take into consideration such amendments to the Constitution as the said States shall concur in suggesting at the time when the said demand is made; and should any of the proposed amendments to the Constitution be agreed on by the said convention, voting by States, and the same be ratified by the Legislatures of two-thirds of the several States, or by conventions in two-thirds thereof, as the one or the other mode of ratification may be proposed by the general convention, they shall thenceforward form a part of this Constitution.. 643

A similar mechanism in the EU, whether ratified eventually by unanimity or a supramajority, would at least have spared European citizens from the top-down process of treaty reform which culminated in the needlessly grandiloquent Treaty Establishing a Constitution for Europe. Significantly, one of the few EU-specialists who warned that ‘the moment for a dramatic act of “self-constitutionalisation” has long since passed’<sup>644</sup> is also an advocate of using a bottom-up referendum procedure to ascertain expectations about integration. Indeed, even if reform initiatives originating from within the member states were unsuccessful they could have the important function of introducing new arguments into the integration debate as well as indicating to party elites (often internally divided) voter preferences. Existing research on referendum initiatives shows that this procedure favours the introduction of proposals that ‘seek policy changes that the government refuses to provide’.<sup>645</sup> Thus national initiative referendums on integration projects could begin to engender a popular debate about the EU as a means to certain ends, that is, as a mandated project for the pursuit of certain objectives.

In other words, it seems possible to introduce politicization in the sense of a mandate for certain broad policy objectives through an amendment procedure anchored in domestic political representation rather than in transnational processes. National politicization of the foundational principles of the EU could thus represent an alternative to the transnational politicization of day-to-day governance suggested by Hix.<sup>646</sup> This national method of politicisation would not only respect the character of the EU as a voluntary association of member states whose objectives are determined on the basis of national not supranational representation. This discussion of mandated objectives would increase the salience of

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<sup>643</sup> Article V. Since originally there were only seven confederate states the threshold for an amendment convention was nearly fifty per cent of states; by the end of 1861 thirteen states had seceded.

<sup>644</sup> Schmitter (2000: 118).

<sup>645</sup> Lupia and Matsusaka (2004: 475).

<sup>646</sup> Hix (2006).

European debates in the domestic arena and also overcome the problem of sustaining partisan alignments across the Commission, Council and Parliament assumed by Hix's model.<sup>647</sup> Equally important, this kind of political debate would reverse the perverse trend in European politics, where the institutionalisation of the EU is contested more during EP elections than in national representation even though only the latter is competent to determine such matters.<sup>648</sup>

Nevertheless, the conditions for viable voluntary centralization in the EU are very demanding. It would require more than simply the introduction of initiative referendums advocating a greater pooling of sovereignty in order to render the existing institutions effective, as Schmitter has advocated.<sup>649</sup> This is because in order to succeed in advancing voluntary centralization, these referendums would have to be capable of changing the normative framework for justifying integration since, as this thesis has consistently shown, the existing consensus over the purposes of integration suits only dynamic equilibrium. Finally, any new treaty agreement conceding new powers of sovereignty based on a new justification for integration would still necessitate the construction of complex safeguards on reserved policy areas or *ex post facto* means of oversight as member states try to control for unintended consequences. Given these three necessary conditions, therefore, it seems highly implausible to expect voluntary centralization in the EU even in the medium term.

## Conclusion

This chapter showed that the transfer of competence over social policy would destroy the rules of the game supporting a dynamic equilibrium between the units and the union in the EU compound polity. Next, drawing again on an indirect analogy with the early US, I argued that a change in the dual system of representation, privileging the representation of individuals rather than the prerogatives of the units, did not make the solution of a long-standing issue cleavage any easier. This is because the shift in the principle of representation was unaccompanied by a new consensus over the political goals the compound polity was designed to achieve. Finally, I examined briefly how the member states could potentially manage a substantive change in the nature of political representation before outlining the conditions under which a transformation in the objectives of integration, stimulating a project

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<sup>647</sup> See the criticism in Bartolini (2006: 40).

<sup>648</sup> Mair (2004).

<sup>649</sup> Schmitter (2000: 120-3).

of voluntary centralization, could occur. These latter conditions were shown to be so stringent as to make this scenario of viability implausible.

This thesis has consistently pointed out the need to understand that the EU is viable because it follows a process of dynamic equilibrium when negotiating the rules of the game of European politics. To maintain this dynamic equilibrium means, amongst other things, retaining the idea of the EU as a neutral arbiter between different models of a national *Sozialstaat* – as demonstrated by the open method of coordination<sup>650</sup> – in the field of social policy. Hence the conclusion differs significantly from the usual shrill pleas for democratizing or politicizing the EU. A union of peoples, or a union with multiple *demoi*, does not mean that a parliamentary democracy Europe or a welfare-state Europe is by definition impossible. Yet the voluntary centralization required for these kinds of political projects can only be accomplished by the legitimacy furnished through domestic politics. However, before this can even be contemplated the EU would have to be considered a means to an end rather than an end in itself. Likewise, member states would have to experience a revolution in the debate over integration – integration would have to be justified in terms of radical new purposes, which the nation-state alone could be shown not to be in a position to accomplish. In reality, we are a long way from such a normative transformation.

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<sup>650</sup> This alternative to the Monnet or Community method is non-binding, involving only benchmarking and the identification of best practices in a certain policy field; OMC does not transfer competences to the EU. See Borrás and Jacobsson (2004).

## Conclusions

### Implications for Theory and Practice

*“This is the worst possible Europe, apart from all the other Europes that have been tried from time to time.”*

Timothy Garton Ash

Rather than review the analytical conclusions, covered in depth in the last chapter, I propose to concentrate here on the political and theoretical implications stemming from this study. This thesis began with two assertions about the nature of the research problem. I first claimed that the question of EU viability ought to be studied in earnest given what is at stake in its success or failure. Hopefully the subsequent analysis has not disproved this assertion, proving neither hysterical nor over-optimistic nor, perhaps worst of all, redundant. Secondly, partly as a result of the research problem but mostly because of the methodology, I also made a bolder statement that this study would contribute to the production of knowledge useful for political praxis. It seems more appropriate to finish by examining this latter, stronger claim on the basis of recommendations made by Alexander George for generating what he calls “usable knowledge”.<sup>651</sup>

As opposed to studying viability from the perspective of necessary and sufficient causation, I championed from the outset the merits of using a concept-driven approach; hence this thesis makes no predictions about the probability of the EU’s continued viability. Understanding EU viability, it was claimed, required a conceptual clarification of the type of polity under consideration as well as the political and historical context in which it is located. To suit this research design, I put forward the concept of a compound polity as a means of understanding “what the EU was an instance of” so as to explain why it is not something else. In order to accomplish this conceptualization, I referred to the “rules of the game of politics” as constituted by decision-making rules, competences, expectations about the purposes of political union and the system of political representation. The defining characteristic of a compound polity was not the constitution of the rules themselves but their subjection to

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<sup>651</sup> George, Alexander (1997).

permanent contestation and renegotiation; other forms of political authority have a much more stable consensus over the rules of the game.

The use of the concept of a compound polity, which did not treat the EU as *sui generis* as often happens, then enabled an analogical comparison of viability with another instance of a compound polity: the early American republic, for which the very concept had been devised. This analogical comparison proved fruitful by establishing that, once coercion is excluded, there are two different scenarios of viability in a compound polity: dynamic equilibrium and voluntary centralization. In particular, this contrast made it possible to identify five crucial differences between both compound systems, which I argued explain why the EU has stuck much closer to a logic of dynamic equilibrium than did the antebellum US.

More importantly, with respect to the criterion of “usable knowledge”, the analysis revealed that changes in the nature of political representation had a profound impact on the viability of the compound polity, namely when representation of the units was diluted in favour of the aggregation of individual citizens. The US case demonstrated clearly that this generated a new form of contestation, especially since the objectives of the project of union had not changed in the meantime. Drawing on the counterproposals put forward to retain the compound fabric of the US system, I proposed a framework for understanding how voluntary centralization could be introduced and how the new disputes this would create might be managed. However, I also suggested that the prospect of the EU embarking on a course of even moderate voluntary centralization was unlikely, notably because of the paucity of available justifications for more supranationalism.

Thus I would argue that this thesis has met three of the criteria proposed by George regarding knowledge useful for political praxis. Firstly, there is the diagnostic component. By specifying that the EU is a compound polity faced with two alternative scenarios of viability, this study has contributed to identifying the ‘specific problematic situation with which decision makers must deal’.<sup>652</sup> Secondly, the outcome of the research is a “conditional generalization”<sup>653</sup> rather than a strict policy prescription or spurious general law. Not only did I show that political representation – often the subject of bold proposals to democratize the EU – will, if altered, make EU viability more precarious. I also demonstrated that dramatic

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<sup>652</sup> *Ibid.*, p. 51.

<sup>653</sup> *Ibid.*, p. 50.

change in the objectives of integration, on which any hopes of a more supranational project depend, is conditional on some anchorage in national representation, most likely a form of bottom-up referendum initiative across member states. From this analysis I concluded that dynamic equilibrium is set to remain the dominant model for resolving conflict over the rules of the game in the EU.

Finally, the research design included ‘variables over which policymakers have some leverage’.<sup>654</sup> The implications of this study would be strictly limited if they did not refer to anything that political actors can concretely affect or alter. Since competences and the system of representation are part of the rules of the game on which viability depends, this study can therefore plausibly provide some guidance, for those able to influence such decisions, concerning the impact of EU reform.

Having dwelt sufficiently on the political implications, it is worthwhile reviewing what consequences for theoretical reflection can be drawn from this study. Given the scarcity of polities that could be said to fit the compound model it seems inappropriate to laud this as a conceptual innovation with wide applicability. Instead, the conceptualization of viability in terms of “contesting the rules of the game of politics” seems to merit further attention and use. Amongst the advantages of drawing on the concept of the rules of the game to understand the managing of political conflict is both the inclusion of institutionalized rules alongside ideational concepts and the absence of an *a priori* specification of which component of these rules is most influential. The game metaphor also does away with the assumption that a polity requires a single locus of sovereignty as a *sine qua non* of its viability. Hence this approach permits an in-depth understanding of how the rules of the game matter within cases and across cases before conducting an explanatory analysis of why exactly they affect viability.<sup>655</sup>

It was precisely the use of indirect historical analogy that enabled this reconciliation of understanding with explanation – notably by elaborating the difference between dynamic equilibrium and voluntary centralization – within the framework of the game metaphor. This suggests one way of resolving the hoary problem of integrating historical study into political

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<sup>654</sup> *Ibid.*, p. 51.

<sup>655</sup> On the problem of reconciling understanding and explanation in political science research methodology, see Wendt (1998).

science<sup>656</sup> when abstaining from theory-testing whereby a range of supposedly similar historical cases, selected according to *ex ante* conceptualizations, generate causal findings capable of prediction. A good example of the intractable difficulties associated with the latter method can be seen in the democratic peace controversy. By trying to establish that democracy is a causal condition of peaceful international relations, scholars skirmish over borderline cases as the thesis depends on both coding states as democratic and specifying what constitutes a case of war.<sup>657</sup> To avoid exactly such frustrating and ultimately fruitless debate over operationalised concepts and cases, this study explored historical context in order to probe the nature of the cases. Explanatory comparison was thus conducted on the basis of understanding differences within the cases (how the rules of the game were contested) and not on the assumption that presumed causal conditions necessary for a certain outcome – in this study, viability – had to be replicated in the other.

When used in this fashion, history is no longer treated as an experimental laboratory for theory-testing but as a means of understanding the interplay of a range of variables that account for particular outcomes: ‘why a particular historical instance was *so* and not *otherwise*’.<sup>658</sup> It is this account of particular outcomes that allows for comparison in order to generate “conditional generalizations”. The incorporation of this kind of historical analysis in comparative political research could well prove a productive complement to conceptual finessing through the elaboration of diminished subtypes.<sup>659</sup> Comparing subtypes, for instance illiberal democracy and limited democracy,<sup>660</sup> to understand why a case belongs to one conceptual category and not the other does more than refine conceptualization. It renders possible an explanation of cross-case differences and their consequences in terms not captured by measuring the causal impact of independent variables. Thus it had been claimed that the EU’s hybrid intergovernmentalism and supranationalism is an untenable form of political authority because it does not meet certain causal conditions for a stable federal order. However, thanks to the analogy with the US, this study recast the problem of EU viability as the difficulty of maintaining a dynamic equilibrium and, certain conditions permitting, the highly demanding task of managing new conflicts that would result from moves towards voluntary centralization.

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<sup>656</sup> For how this problem affects IR in particular, see Smith, Thomas (1999).

<sup>657</sup> Davis (2005: 77)

<sup>658</sup> *Ibid.*, p.60.

<sup>659</sup> Collier and Levitsky (1997: 430-51).

<sup>660</sup> *Ibid.*, pp. 437-42.

Furthermore, this game metaphor as I have conceptualized it can be extended beyond international politics and applied to the domestic level, wherever the hierarchical framework of unitary state sovereignty and fixed consensus over the rules of the game do not apply. In fact, this makes it particularly useful for situations of mutual interaction between domestic and international politics, which are becoming increasingly frequent. Thus an historically-informed analysis via the rules of the game of other forms of regional integration as well as international institutions and cooperation, such as the transatlantic partnership, seems a warranted extension of the research agenda pursued in this thesis.





## **BIBLIOGRAPHY**

- ABRAMS, Richard (1996) 'The Relevance of American Federalism to the European Union: From Confederation to Federal Union to Nation-State', in Richard Herr and Steven Weber (eds), European Integration and American Federalism: A Comparative Perspective (Berkeley: University of California Press), pp. 14-18.
- ACKERMAN, Bruce (1991) We the People: Foundations (Cambridge, MA: Belknap).
- (1998) We the People: Transformations (Cambridge, MA: Belknap).
- (2005a) The Failure of the Founding Fathers: Jefferson, Marshall and the Rise of Presidential Democracy (Cambridge, MA: Belknap).
- (2005b) 'The Art of Stealth', London Review of Books, 17 February.
- ALDRICH, John (1995) Why Parties? The Origin and Transformation of Political Parties in America (Chicago: University of Chicago Press).
- ALESINA, Alberto and Enrico Spolaore (2003) The Size of Nations (Cambridge, MA: MIT Press).
- ALTER, Karen (1998) 'Who Are the "Masters of the Treaties"? European Governments and the European Court of Justice', International Organization, 52 (1), pp. 121-47.
- (2001) Establishing the Supremacy of European Law: The Making of an International Rule of Law in Europe (Oxford: Oxford University Press).
- ALTSCHULER, Glenn and Stuart Blumin (2000) Rude Republic: Americans and their Politics in the Nineteenth Century (Princeton: Princeton University Press).
- ANDERSEN, Svein and Kjell Eliassen (eds) (1996) The European Union: How Democratic is it? (London: Sage).
- ARISTOTLE (1982) The Poetics (Cambridge, MA: Harvard University Press).
- ARON, Raymond (1991) Main Currents in Sociological Thought (Harmondsworth: Penguin).
- BAAKLINI, Abdo and Helen Defosses (eds) (1997) Designs for Democratic Stability: Studies in Viable Constitutions (Armonk, N.Y.: M.E. Sharpe).
- BACHARACH, Peter and Morton Baratz (1962) 'Two Faces of Power', American Political Science Review, 56 (4), pp. 947-52.
- BAGEHOT, Walter (1963) The English Constitution (London: Fontana).
- BAILYN, Bernard (1971) The Ideological Origins of the American Revolution (Cambridge, MA: Belknap).
- BAKER, Leonard (1974) John Marshall: A Life in Law (New York: Macmillan).

- BARRAS, Susana and Kerstin Jacobsson (2004) 'The Open Method of Co-Ordination and New Governance Patterns in the EU', Journal of European Public Policy, 11 (2), pp. 185-208.
- BARSOTTI, Vittoria (1999) L'Arte di tacere: strumenti e tecniche di non decisione della Corte Suprema degli Stati Uniti (Turin: G. Giappichelli).
- BARTOLINI, Stefano (2004) 'Tra formazione e trascendenza dei confini. Integrazione europea e stato-nazione', Rivista Italiana di Scienza Politica, 34 (2), pp. 167-96.
- (2005) Restructuring Europe: Centre Formation, System Building and Political Structuring Between the Nation-State and the European Union (Oxford: Oxford University Press).
- (2006) 'Should the Union Be Politicised? Prospects and Risks', in S. Hix and S. Bartolini, 'Politics: The Right or the Wrong Sort of Medicine for the EU?', Notre Europe Policy Paper, n. 19, pp. 29-50.
- BELOFF, Max (1963) The United States and the Unity of Europe (Westport: Greenwood Press).
- BELZ, Herman (1969) 'The Constitution in the Gilded Age: The Beginnings of Constitutional Realism in American Scholarship', American Journal of Legal History, 13 (2), pp. 110-25.
- (2000) (ed.) The Webster-Hayne Debate on the Nature of the Union: Selected Documents (Indianapolis: Liberty Fund).
- BENZ, Matthias and Alois Stutzer (2004) 'Are Voters Better Informed When They Have a Larger Say in Politics? Evidence from the EU and Switzerland', Public Choice, 119 (1-2), pp. 31-59.
- BLAIR, Tony (2005) Speech to the European Parliament, 23 June.
- (2006) Future of Europe Speech, delivered at St Anthony's College, University of Oxford, 2 February.
- BLIGHT, David W. (2001) Race and Reunion: The Civil War in American Memory (Cambridge, MA: Harvard University Press).
- BLOCKSTON, Charles L. (1987) The Underground Railroad (New York: Macmillan).
- BOBBIO, Norberto (1987) The Future of Democracy: A Defence of the Rules of the Game (Oxford: Polity Press).
- BOOM, Steve J. (1995) 'The European Union After the Maastricht Decision: Is Germany the Virginia of Europe?', Jean Monnet Working Paper, No. 5/95 (New York University School of Law).

- BOUCHER, David (2005) 'The Rule of Law in the Modern European State', European Journal of Political Theory, 4 (1), pp. 89-107.
- BRYCE, James (1995) The American Commonwealth (Indianapolis: Liberty Fund).
- BUITER, William (2005) 'The "Sense and Nonsense of Maastricht" Revisited: What Have We Learnt About Stabilization in EMU?', CEPR Discussion Paper no 5405 (London: Centre for Economic Policy Research).
- BURCA, Gráinne de (1998) 'The Principle of Subsidiarity and the Court of Justice as an Institutional Actor', Journal of Common Market Studies, 36 (2) pp. 217-35.
- BUTLER, David and Uwe Kitzinger (1976) The 1975 Referendum (London: Macmillan).
- BUTLER, Nicholas Murray (1939) Building the American Nation: An Essay of Interpretation (New York: C. Scribner's Sons).
- CALDER, Jenni (1977) Heroes: From Byron to Guevara (London: Hamilton).
- CALHOUN, John C. (1978) 'Letter to Governor James Hamilton Junior', in Clyde Wilson (ed.) The Papers of John Calhoun (Columbia: University of South Carolina Press), vol. xi.
- (1992) 'A Discourse on the Constitution and Government of the United States', in Ross M. Lence (ed.), Union and Liberty: The Political Philosophy of John C Calhoun (Indianapolis: Liberty Fund), pp. 79-284.
- CAPORASO, James (1996) 'The European Union and Forms of State: Westphalian, Regulatory or Post-Modern?', Journal of Common Market Studies, 34 (1), pp. 29-52.
- (2005) 'The Emergence of the EU Supranational Polity and its Implications for Democracy', in Sergio Fabbrini (ed.) Democracy and Federalism, pp. 57-75.
- CASSESE, Sabino and Giacinto della Cananea (1992) 'The Commission of the European Economic Community: the Administrative Ramifications of its Political Development', Jahrbuch für europäische Verwaltungsgeschichte Gemeinschaft, 4, pp.75-94.
- CECCHINI, Paolo, Michael Catinat and Alexis Jacquemin (1988) The European Challenge 1992: The Benefits of a Single Market (Aldershot: Gower).
- COLE, Arthur C. (1914) 'The South and the Right of Southern Secession in the 1850s', Mississippi Valley Historical Review, 1 (3), pp. 376-99.
- COLLIER, David and Steven Levitsky (1997) 'Democracy with Adjectives: Conceptual Innovation in Comparative Research', World Politics, 49 (3), pp. 430-51.
- CONNOLLY, William (1983) The Terms of Political Discourse (Princeton, Princeton University Press).

- COOPER, Robert (2000) The Post-Modern State and World Order (London: Demos).
- CORBETT, Richard (1993) The Treaty of Maastricht. From Conception to Ratification: A Comprehensive Guide (Harlow: Longman).
- CORWIN, Edward S (1934). The Twilight of the Supreme Court (Princeton: Princeton University Press).
- CRIDDLE, Byron (1993) 'The French Referendum on the Maastricht Treaty September 1992', Parliamentary Affairs, 46 (2), pp. 228-38.
- CRONIN, Bruce (2002) 'The Two Faces of the United Nations: The Tension Between Intergovernmentalism and Transnationalism', Global Governance, 8, pp. 53-71.
- DAHL, Robert and Edward Tufte (1973) Size and Democracy (Stanford: Stanford University Press).
- DAVIES, Norman (1999) The Isles: A History (London: Macmillan).
- DAVIS, James W. (2005) Terms of Inquiry: On the Theory and Practice of Political Science (Baltimore: Johns Hopkins University Press).
- DEHOUSSE, Renaud (1994) 'Community Competences: Are There Limits to Growth?', in Dehousse (ed.), Europe After Maastricht. An Ever Closer Union? (Munich: Beck), pp. 103-25.
- (1995) 'Constitutional Reform in the European Community: Are there Alternatives to the Majoritarian Avenue?', West European Politics, 18 (3), pp. 118-36.
- (ed.) (1997) Europe: The Impossible Status Quo (Basingstoke: Macmillan).
- (2005) 'We the States: Why the Anti-Federalists Won', in Nicolas Jabko and Craig Parsons (eds), With Us or Against US? European Trends in American Perspective (New York: Oxford University Press), pp. 105-21.
- DELLA SALA, Vincent (2005) 'European Polity-Building: Searching for Legitimacy Between Economic and Social Europe', in Sergio Fabbrini (ed.) Democracy and Federalism, pp. 133-47.
- DENTON, Geoffrey (1984) 'Re-Structuring the EC Budget: Implications of the Fontainebleau Agreement', Journal of Common Market Studies, 23 (2), pp. 117-40.
- DERTHICK, Martha (2001) Keeping the Compound Republic: Essays on Federalism (Washington D.C.: Brookings Institution).
- DEUDNEY, Daniel (1995) 'The Philadelphian State System: Sovereignty, Arms Control, and Balance of Power in the American State System', International Organization, 49 (2), pp. 191-229.

- (2004) 'Publius Before Kant: Federal-Republican Security and Democratic Peace', European Journal of International Relations, 10 (3) pp. 315-56.
- (2005) and Nicole Suveges 'First in Freedom: American Martial Liberal Exceptionalism and International Context', Paper presented at the Annual Conference of the American Political Science Association, Washington DC, 1-4 September.
- DE VREE, Johan (1972) Political Integration: The Formation of Theory and its Problems (Mouton: The Hague).
- DIAMOND, Jared (2004) Collapse: How Societies Choose to Fail or Succeed (London: Allen Lane).
- DONAHUE, John D. and Mark A. Pollack (2001) 'Centralization and its Discontents: The Rhythms of Federalism in the United States and the European Union', in Kalypso Nicolaidis and Robert Howse (eds), The Federal Vision. Legitimacy and Levels of Governance in the United States and the European Union (Oxford: Oxford University Press), pp. 73-117.
- DOYLE, Don H. (2002) Nations Divided: America, Italy and the Southern Question (Athens, GA: University of Georgia Press).
- DRAKE, Helen (2005) (ed.) French Relations with the European Union (Abingdon: Routledge).
- DRULAK, Petr (2004) 'Metaphors Europe Lives By: Language and Institutional Change of the European Union', EUI Working Paper, SPS 04/15, (San Domenico di Fiesole: European University Institute).
- DUFF, Andrew (1994) 'Ratification', in Andrew Duff, John Pinder and Roy Pryce (eds), Maastricht and Beyond. Building the European Union (London: Routledge), pp. 53-70.
- DUKE, Simon (2004) 'The Enlarged EU and CFSP', Reports and Analyses, 2/04/A (Center for International Relations: Warsaw).
- DUNN, John (1996) 'Is There a Contemporary Crisis of the Nation State?', in John Dunn, The History of Political Thought and Other Essays (Cambridge: Cambridge University Press), pp. 196-210.
- EC (1993) European Council in Edinburgh, 11-12 December, 1992: Conclusions of the Presidency (Luxembourg: Office for Official Publications of the European Communities).
- ECKSTEIN, Harry (1992) Regarding Politics: Essays on Political Theory, Stability and Change (Berkeley: University of California Press).

- EEC (1981) Bulletin of the European Communities (Luxembourg: Office for Official Publications of the European Communities).
- (1987) Documents concerning the accessions to the European Communities of the Kingdom of Denmark, Ireland and the United Kingdom of Great Britain and Northern Ireland, the Hellenic Republic, the Kingdom of Spain and the Portuguese Republic, (Luxembourg: Office for Official Publications of the European Communities).
- van der EIJK, Cees and Mark Franklin (2004) 'Potential for Contestation on European Matters at National Elections in Europe', in Gary Marks and M. R. Steenbergen (eds), European Integration and Political Conflict (Cambridge: Cambridge University Press), pp. 32-50.
- ELAZAR, Daniel J. (1962) The American Partnership (Chicago: University of Chicago Press).
- (1984) American Federalism: A View From the States (New York: Harper & Row).
- (1985) and Ilan Greilsammer 'Federal Democracy: The USA and Europe Compared. A Political Science Perspective', in Mauro Cappelletti, Monica Secombe and Joseph Weiler (eds), Integration Through Law. Europe and the American Federal Experience (Berlin: Walter de Gruyter).
- (1991) 'Federalism Will Preserve Yugoslavia', Jerusalem Post, 18 July.
- ELLIOT, Jonathan (1836) Elliot's Debates (Washington D.C.: Taylor & Mauray).
- ERK, Jan, (2003) 'Federalism and Mass Media Policy in Germany', Regional and Federal Studies, 13 (2), pp. 107-127
- (2000) and Jean-Alain Gagnon 'Constitutional Ambiguity and Federal Trust: The Codification of Federalism in Belgium, Canada and Spain', Regional and Federal Studies, 10 (1), pp. 92-111.
- (2004) 'Austria: A Federation without Federalism', Publius: The Journal of Federalism, 34 (1), pp. 1-20.
- ETZIONI, Amitai (2001) Political Unification Revisited. On Building Supranational Communities (Oxford: Lexington).
- FABBRINI, Sergio (2001) 'The Puzzle of the Compound Republic: The US, EU and the Implications of Federalism', in Sergio Fabbrini (ed.), Nation, Federalism and Democracy. The EU, Italy and the American Federal Experience (Bologna: Editrici Compositori), pp. 55-65.

- (2003) 'A Single Western State Model?: Differential Development and Constrained Convergence of Public Authority in Europe and America', Comparative Political Studies, 36 (6), pp. 653-78.
- (2004) and Daniela Sicurelli, 'The Federalisation of the EU, the US and "Compound Republic Theory": the Convention's Debate', Regional and Federal Studies, 14 (2), pp. 232-54.
- (2005a) 'Is the EU Exceptional? The EU and the US in Comparative Perspective', in Sergio Fabbrini (ed.), Democracy and Federalism in the European Union and the United States. Exploring Post-National Governance (Abingdon: Routledge), pp. 3-24.
- (2005b) 'Building a Market without a State: The EU in an American Perspective', in Sergio Fabbrini (ed.), Democracy and Federalism in the European Union and the United States. Exploring Post-National Governance (Abingdon: Routledge), pp. 119-32.
- (ed.) (2005c) Democracy and Federalism in the European Union and the United States. Exploring Post-National Governance (Abingdon: Routledge).
- (2005d) 'Madison in Brussels: The EU and the US as Compound Democracies', European Political Science, 4 (2), pp. 188-98.
- FEHRENBACHER, Don E. (1980) The South and Three Sectional Crises (Baton Rouge: Louisiana State University Press).
- FERGUSON, Niall (2001) Colossus: the Price of America's Empire (London: Penguin).
- FERRERA, Maurizio (2003) 'European Integration and National Citizenship. Changing Boundaries, New Structuring?', Comparative Political Studies, 36 (6), pp. 611-52.
- FERRY, Jean-Marc (2000) La Question de l'Etat Européen (Paris: Gallimard).
- FILIPPOV, Mikhail, Peter Ordeshook and Olga Shvetsova (2004) Designing Federalism: A Theory of Self-Sustainable Federal Institutions (Cambridge: Cambridge University Press).
- FIORINA, Morris, Samuel J. Adams and Jeremy C. Pope (2004) Culture War? The Myth of a Polarised America (New York: Longman).
- FONER, Eric (1995) Free Soil, Free Labour, Free Men: The Ideology of the Republican Party Before the Civil War (New York: Oxford University Press).
- (2001) Book Review, New York Times, 4 March.



- FORD, Lacy K. Jnr. (1994) 'Inventing the Concurrent Majority: Madison, Calhoun, and the Problem of Majoritarianism in American Political Thought', Journal of Southern History, 60 (1), pp. 19-58.
- FORSYTH, Murray (1981) Unions of States: The Theory and Practice of Confederation (Leicester: Leicester University Press).
- FOSSUM, Eric (2006) 'Conceptualising the European Union through Four Strategies of Comparison', Comparative European Politics, 4 (1), pp. 65-93.
- FRANCK, Thomas M. (ed.) (1968) Why Federations Fail: An Inquiry into the Requisites for Successful Federalism (New York: New York University Press).
- FRANKLIN, Mark, Michael Marsh and Lauren McLaren (1994) 'Uncorking the Bottle: Popular Opposition to European Unification in the Wake of Maastricht', Journal of Common Market Studies, 32 (4), pp. 455-72.
- FREEHLING, William W. (1994) The Reintegration of American History: Slavery and the Civil War (New York: Oxford University Press).
- FRIEDMAN, Barry (1998) 'The History of the Countermajoritarian Difficulty, Part One: The Road to Judicial Supremacy', New York University Law Review, 73 (2), pp. 333-433.
- FURSDON, Edward (1992) 'The Role of the European Defence Community in European Integration', in Francis Heller and John Gillingham (eds), NATO: The Founding of the Atlantic Alliance and the Integration of Europe (Basingstoke: Macmillan).
- GALLAGHER, Michael, Michael Laver and Peter Mair (1995) Representative Government in Modern Europe (New York: McGraw Hill).
- GARRY, John, Michael Marsh and Richard Sinnott (2005) "'Second-Order" Versus "Issue-Voting" Effects in EU Referenda. Evidence from the Irish Nice Treaty Referendums', European Union Politics, 6 (2), pp. 201-22.
- GEORGE, Alexander (1997) 'Knowledge for Statecraft', International Security, 22 (1), pp. 44-52.
- GEORGE, Stephen (1998) An Awkward Partner: Britain in the European Community (Oxford: Oxford University Press).
- van GERVEN, Walter (2005) The European Union: A Polity of States and Peoples (Oxford: Hart Publishing).
- GEYL, Pieter (1951) 'The American Civil War and the Problem of Inevitability', The New England Quarterly, 24 (2), pp. 147-68.
- GIENAPP, William E. (1996) 'The Political System and the Coming of the Civil War', in Gabor S. Boritt (ed.), Why the Civil War Came (New York: Oxford University Press).

- GILLINGHAM, John (1991) Coal, Steel, and the Rebirth of Europe, 1945-1955. The Germans and French from Ruhr Conflict to Economic Community (Cambridge: Cambridge University Press).
- (2003) European Integration, 1950-2003. Superstate or New Market Economy? (Cambridge: Cambridge University Press).
- GOLDSTEIN, Leslie (2001) Constituting Federal Sovereignty: The European Union in Comparative Context (Baltimore: Johns Hopkins University Press).
- GREENBERG, Stanley B. (2004) The Two Americas: Our Current Political Deadlock and How to Break it (New York: Thomas Dunne Book).
- GREENFELD, Liah (1992) Nationalism: Five Roads to Modernity (Cambridge, MA: Harvard University Press).
- GREENSTONE, J. David (1993) The Lincoln Persuasion: Remaking American Liberalism (Princeton: Princeton University Press).
- GRIMM, Dieter (1995) 'Does Europe Need a Constitution?', European Law Journal, 1 (3), 282-302.
- GUIZOT, François (1985) Histoire de la civilisation en Europe (Paris : Hachette).
- HAAS, Ernst (1964) Beyond the Nation-State: Functionalism and International Organisation (Stanford: Stanford University Press).
- (1968) The Uniting of Europe: Political, Social and Economic Forces, 1950-1957 (Stanford: Stanford University Press).
- HABERMAS, Jürgen (1995) 'Remarks on Dieter Grimm's "Does Europe Need a Constitution?"', European Law Journal, 1 (3), 303-7
- (2000) 'Why Europe Needs a Constitution', New Left Review, 11 (September-October), pp. 5-26.
- HACKING, Ian (1999) The Social Construction of What? (Cambridge MA: Harvard University Press).
- HALDEN, Peter (2006) Compound Republics as Viable Political Systems: A Comparison of the Holy Roman Empire of the German Nation and the European Union PhD Thesis, European University Institute.
- HAMILTON, Alexander, John Jay and James Madison (1926) The Federalist (London: Everyman).
- (1993) 'Conjectures about the New Constitution', in Bernard Bailyn (ed.), The Debate on the Constitution: Federalist and Anti-Federalist Speeches, Articles and Letters

- during the Struggle over Ratification (New York: Library of America), vol. 1, pp. 9-11.
- HARRISON, Michael (1981) The Reluctant Ally: France and Atlantic Security (Baltimore : Johns Hopkins University Press).
- HART, Albert Bushnell (1917) New American History (New York: American Book Company).
- HART, Henry M. (1955) 'The Relations Between State and Federal Law', in Arthur MacMahon (ed.), Federalism: Mature and Emergent (Garden City: Doubleday).
- HAYWARD, Katy (2003) 'If at First You Don't Succeed: The Second Referendum on the Treaty of Nice', Irish Political Studies, 18 (1), pp. 120-32.
- HECKLY, Christophe and Eric Oberkamp (1994) La Subsidiarité à l'Américaine: quels enseignements pour l'Europe? (Paris: L'Harmattan).
- HENDRICKSON, David (2003) Peace Pact: The Lost World of the American Founding (Lawrence: University Press of Kansas).
- HESSE, Mary (1964) 'Aristotle's Logic of Analogy', Philosophical Quarterly, 15 (61), pp. 328-40.
- HIRSCHMAN, Albert O. (1970) Exit, Voice and Loyalty. Responses to Decline in Firms, Organisations and States (Cambridge, MA: Harvard University Press).
- HIX, Simon (1999) 'Dimensions and Alignments in European Union Politics: Cognitive Constraints and Partisan Responses', European Journal of Political Research, 35 (1), pp. 69-106.
- (2005) and Andreas Follesdal 'Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik', European Governance Papers (EUROGOV), No. C-05-02.
- (2006) 'Why the EU Needs (Left-Right) Politics? Policy Reform and Accountability are Impossible Without It', in Simon Hix and Stefano Bartolini, 'Politics: The Right or the Wrong Sort of Medicine for the EU?', Notre Europe Policy Paper, no. 19, pp. 1-28.
- HMG (1971) The United Kingdom and the European Communities (London: HMSO).
- HMG (2003) A Constitutional Treaty for Europe. The British Approach to the European Union Intergovernmental Conference 2003 (London: HMSO).
- HOFFMANN, Stanley (1966). 'Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe', Daedalus, 95 (3), pp. 862-915.
- (2005) Book Review, Foreign Affairs, 84 (1), pp. 189-90.

- HOFSTADTER, Richard (1970) The Idea of a Party System. The Rise of Legitimate Opposition in the United States, 1780-1840 (Berkeley: University of California Press).
- HOLMES, Stephen (1988). 'Gag Rules or the Politics of Omission', in John Elster and Rune Slagstad (eds), Constitutionalism and Democracy (Cambridge: Cambridge University Press, 1988), pp. 19-58.
- HOLT, Michael F. (1999) The Rise and Fall of the American Whig Party: Jacksonian Politics and the Onset of the Civil War (Oxford: Oxford University Press).
- HOOGE, Liesbet, and Gary Marks (1997) 'The Making of a Polity: The Struggle over European Integration', EUI Working Paper, RSC 97/31 (San Domenico di Fiesole: European University Institute).
- (2002) with Gary Marks and Carol Wilson. 'Does Left/Right Structure Party Positions on European Integration?', Comparative Political Studies, 35 (8), pp. 965-89.
- HUME, David (1994) Political Essays (Cambridge: Cambridge University Press).
- HUNTER, James Davison (1992) Culture Wars: the Struggle to Define America (New York: Basic Books).
- JABKO, Nicolas and Craig Parsons (eds) (2005) With Us or Against US? European Trends in American Perspective (New York: Oxford University Press).
- JUDT, Tony (2005) Postwar: A History of Europe since 1945 (London: Heinemann).
- KAGAN, Robert (2003) Of Paradise and Power: America and Europe in the New World Order (New York: Alfred Knopf).
- KAMMEN, Michael (1986) A Machine that Would Go of Itself. The Constitution in American Culture (New York: Alfred Knopf).
- KASSIM, Hussein (2005) 'Le Royaume-Uni et le Traité constitutionnel européen', Critique Internationale, 29 (Oct-Dec), pp. 113-33.
- KATZ, Richard (2000) 'Models of Democracy: Elite Attitudes and the Democratic Deficit in the European Union', Paper presented at the ECPR Joint Sessions, Copenhagen, 14-19 April.
- KELEMEN, Daniel (2003) 'The Structure and Dynamics of EU Federalism', Comparative Political Studies, 36 (1-2), pp. 184-208.
- KELLEY, Judith (2004) 'International Actors on the Domestic Scene: Membership Conditionality and International Institutions', International Organization, 58 (3), pp. 425-58.
- KEOHANE, Robert and Lisa Martin (1995) 'The Promise of Institutional Theory', International Security, 20 (1), pp. 39-51.

- KHANNA, Parag (2004) 'The Metrosexual Superpower', Foreign Policy, (July/August).
- KINCAID, John (1999) 'Confederal Federalism and Citizen Representation in the European Union', in Joanne Brzinski et al. (eds), Compounded Representation in Western Europe (London: Frank Cass), pp. 34-58.
- KOCH, A. (ed.) (1969) Notes of Debates in the Federal Convention of 1787 (New York: Norton).
- KOSLOWSKI, Rey and Friedrich Kratochwil (1994) 'Understanding Change in International Politics: the Soviet Empire's Demise and the International System', International Organization, 48 (2), pp. 215-47.
- KRATOCHWIL, Friedrich (1978) International Order and Foreign Policy: A Theoretical Sketch of Post-War International Politics (Boulder: Westview Press).
- (1991) Rules, Norms, and Decisions: On the Conditions of Practical and Legal Reasoning in International Relations and Domestic Affairs (Cambridge: Cambridge University Press).
- (2006) 'Global Governance and the Emergence of "World Society": International Relations Analysis Meets Sociology', in Peter Wagner and Natalie Karagiannis (eds), Varieties of World-Making: Beyond Globalization (Liverpool: Liverpool University Press).
- LAFFAN, Brigid (ed.) (1996) Constitution-Building in the European Union (Dublin: Brunswick Press).
- LEHMAN, Edward W. (1988) 'The Theory of the State Versus the State of the Theory', American Sociological Review, 53 (6), pp. 807-823.
- (1992) The Viable Polity (Philadelphia: Temple University Press).
- LEIGH, Michael (1975) 'Linkage Politics: The French Referendum and the Paris Summit of 1972', Journal of Common Market Studies, 14 (2), pp. 157-70.
- LEMCO, Jonathan (1991) Political Stability in Federal Governments (New York: Praeger).
- LEONARD, Mark (2005) Why Europe Will Run the Twenty-First Century (London: Fourth Estate).
- LERNER, Ralph (1963) 'Calhoun's New Science of Politics', The American Political Science Review, 57 (4), pp. 918-32.
- LESLIE, Peter (2000) 'The European Regional System: A Case of Unstable Equilibrium?', Journal of European Integration, 22 (3), pp. 211-36.

- LIESHOUT, Robert, Mathieu Segers and Johanna Maria van der Vleuten (2004) 'De Gaulle, Moravcsik and The Choice for Europe. Soft Sources: Weak Evidence', Journal of Cold War Studies, 6 (4), pp. 89- 139.
- LIJPHART, Arend (1975) 'Comparable-Cases Strategy in Comparative Research', Comparative Political Studies, 8 (2), pp. 158-77.  
(1977) Democracy in Plural Societies: A Comparative Exploration (New Haven: Yale University Press).
- LINCOLN, Abraham (1991) Great Speeches (New York: Dover).
- LINDBERG, Leon and Stuart Scheingold (1970) Europe's Would-Be Polity: Patterns of Change in the European Community (Englewood Cliffs: Prentice Hall).  
(eds) (1971) Regional Integration. Theory and Research (Cambridge, MA: Harvard University Press).
- LINZ, Juan and Alfred Stepan (eds) (1978) The Breakdown of Democratic Regimes (Baltimore: Johns Hopkins University Press).
- LIVELY, Robert (1955) 'The American System: A Review Article', Business History Review, 29 (1), pp. 81-96.
- LUKACS, John (1976) Decline and Rise of Europe. A Study in Recent History, with Particular Emphasis on the Development of a European Consciousness (Westport: Greenwood Press).
- LUPIA, Arthur and John Matsusaka, (2004) 'Direct Democracy: New Approaches to Old Questions', Annual Review of Political Science, 7, pp. 463-82.
- LUSTICK, Ian, (1996) 'History, Historiography and Political Science: Multiple Historical Records and the Problem of Selection Bias', American Political Science Review, 90 (3), pp. 605-18.
- MACCORMICK, Neil (1995) 'The Maastricht-Urteil: Sovereignty Now', European Law Journal, 1 (3), pp. 259-66.  
(1997) 'Democracy, Subsidiarity, and Citizenship in the "European Commonwealth"', Law and Philosophy, 16 (4), pp. 331-56.  
(1999) Questioning Sovereignty: Law, State and Nation in the European Community (Oxford: Oxford University Press).
- MACHIAVELLI, Niccolò (1961) The Prince (Harmondsworth: Penguin).
- MADISON, James (1840) The Papers of James Madison (Washington D.C.: Langtree and O'Sullivan).

- (1962) 'Letter to Thomas Jefferson, 4 February 1790', in William T. Hutchinson et al. (eds), Papers of James Madison (Chicago: University of Chicago Press), vol. 13, pp. 19-21.
- MAGNETTE, Paul (2005) What is the European Union? Nature and Prospects (Basingstoke: Macmillan).
- (forthcoming) 'Perspectives d'un modèle institutionnel: vers un changement de régime?', in Giuliano Amato, Hervé Bribosia and Bruno de Witte (eds), Genèse et destinée de la Constitution Européenne
- MAHONEY, James (2000). 'Path Dependence in Historical Sociology', Theory and Society, 29, pp. 507-48.
- MAIR, Peter (2004) 'Popular Democracy and the Construction of the European Union Political System', Paper presented at the ECPR Joint Sessions, Uppsala, 13-18 April.
- MAJONE, Giandomenico (ed.) Regulating Europe (London: Routledge).
- (1998) 'Europe's "Democratic Deficit: The Question of Standards', European Law Journal, 4 (1), pp. 5-28.
- (2005) Dilemmas of Integration: The Ambiguities and Pitfalls of Integration by Stealth (Oxford: Oxford University Press).
- (2006) 'The Common Sense of European Integration', Journal of European Public Policy, 13 (5), pp. 607-26.
- MALETZ, Donald J. (1998) 'The Union as Idea: Tocqueville on the American Constitution', History of Political Thought, 19 (4), pp. 599-620.
- MANENT, Pierre (1997) 'Democracy Without Nations?', Journal of Democracy, 8 (2), pp. 92-102.
- MARCH, James and Johan Olson (1989) Rediscovering Institutions: The Organizational Basis of Politics (New York: Free Press).
- MARCUSSEN, Martin et al., (1999) 'Constructing Europe? The Evolution of French, British and German Nation-State Identities', Journal of European Public Policy, 6 (4), pp. 614-33.
- MARKS, Frederick W. (1993) Independence on Trial: Foreign Affairs and the Making of the Constitution (Baton Rouge: Scholarly Resources).
- MARKS, Gary and M. R. Steenbergen (eds) (2004) European Integration and Political Conflict (Cambridge, Cambridge University Press).
- MARQUAND, David (1979) Parliament for Europe (London: Jonathan Cape).
- (1997) Book Review, Political Quarterly, 68 (1), pp. 120-1.

- MARSHALL, T.H. (1992) Citizenship and Social Class (London: Pluto).
- MATSON, Cathy and Peter Onuf (1985) 'Toward a Republican Empire: Interest and Ideology in Revolutionary America', American Quarterly, 37 (4), pp. 496-531.
- MAY, Robert E. (1973) The Southern Dream of a Caribbean Empire, 1854-1861 (Louisiana: Baton Rouge).
- MCCORMICK, Richard (1975) 'Political Development and the Second Party System', in William Nisbet Chambers and Walter Dean Burnham (eds), The American Party Systems: Stages of Political Development (New York: Oxford University Press), pp. 90-116.
- MCKAY, David (2001) Designing Europe. Comparative Lessons from the Federal Experience (Oxford: Oxford University Press).
- (2004) 'The EU as a Self-Sustaining Federation', in Lynn Dobson and Andreas Follesdal (eds), Political Theory and the European Constitution (London: Routledge), pp. 43-71.
- (2005) 'Economic Logic or Political Logic? Economic Theory, Federal Theory and EMU', Journal of European Public Policy, 12 (3), pp. 528-44.
- MCPHERSON, James (1991) Abraham Lincoln and the Second American Revolution (New York: Oxford University Press).
- (1994) What They Fought For, 1861-1865 (Baton Rouge: Louisiana State University Press).
- MELVILLE, Herman (1991) 'Misgivings', in Selected Poems (New York: Fordham University Press), p. 3.
- MILLER, Arthur and Ronald Howell (1956) 'Interposition, Nullification and the Delicate Division of Power in a Federal System', Journal of Public Law, 5 (1), pp. 2-48.
- MILLER, David, (1998) 'The Left, the Nation-State and European Citizenship', Dissent (Summer), pp. 47-51.
- MILLION-DELSOL, Chantal (1992) L'Etat subsidiaire (Paris: Presses Universitaires de France).
- MILWARD, Alan (2000) The European Rescue of the European Nation-State (London: Routledge).
- MINICUCCI, Stephen (2001) 'The Cement of Interest: Interest-Based Models of Nation-Building in the Early Republic', Social Science History, 25 (2), pp. 247-74.
- MONNET, Jean (1962) 'A Ferment of Change', Journal of Common Market Studies, 1 (3), pp. 203-11.



- MORAVCSIK, Andrew (1997) 'Does the European Union Represent an *n* of 1?', ECSA Review, 10 (3), pp. 1-5.
- (1998) The Choice for Europe: Social Purpose and State Power from Messina to Maastricht (Ithaca: Cornell University Press).
- (2002) 'In Defence of the "Democratic Deficit": Reassessing Legitimacy in the European Union', Journal of Common Market Studies, 40 (4), pp. 603-24.
- (2005) 'Europe Without Illusions: A Category Error', Prospect, 112.
- (2006) 'What Can We Learn from the Collapse of the European Constitutional Project?', Politische Vierteljahresschrift, 47 (2), pp. 219-41
- MORGAN, Glyn (2005) The Idea of a European Superstate: Public Justification and European Integration (Princeton: Princeton University Press).
- MORGENTHAU, Hans (1985) Politics Among Nations. The Struggle for Power and Peace (New York: Alfred Knopf).
- MORRIS, Richard (1974) 'The Forging of the Union Reconsidered: A Historical Refutation of State Sovereignty over the Seabeds', Columbia Law Review, 74 (6), pp. 1056-93.
- MURIRIN, John M. (1987) 'A Roof without Walls: The Dilemmas of American National Identity', in Richard Beeman, Stephen Botein and Edward Carter (eds), Beyond Confederation: Origins of the Constitution and American National Identity (Chapel Hill: University of North Carolina Press), pp. 333-48.
- NARDIN, Terry (1983) Law, Morality and the Relations of States (Princeton: Princeton University Press).
- NICHOLS, Roy F. (1972) The Invention of the American Political Parties (New York: Free Press).
- NICHOLSON, Frances and Roger East (1987) From the Six to the Twelve: The Enlargement of the European Communities (Harlow: Longman).
- NICOLAIDIS, Kalypso (2004) 'We the Peoples of Europe...', Foreign Affairs, 83 (6), pp. 97-119.
- NOVICK, Peter (1988) That Noble Dream: The "Objectivity Question" and the American Historical Profession (Cambridge: Cambridge University Press).
- NUGENT, Neil (ed.) (2004) European Enlargement (Basingstoke: Palgrave).
- OAKESHOTT, Michael (1975) On Human Conduct (Oxford: Clarendon Press).
- (1977) Rationalism in Politics and Other Essays (London: Methuen).
- ONUF, Peter (1987) Statehood and Union. A History of the Northwest Ordinance (Bloomington: Indiana University Press).

- (1989) 'Reflections on the Founding: Constitutional Historiography in Bicentennial Perspective', William and Mary Quarterly, 46 (2), pp. 341-7.
- (1991) 'Sovereignty', in Jack Greene and J.R. Pole (eds), Blackwell Encyclopedia of the American Revolution (Oxford: Blackwell, 1991), pp. 661-8.
- (1993) and Nicholas Onuf Federal Union, Modern World. The Law of Nations in an Age of Revolutions, 1776-1814 (Madison: Madison House).
- ORREN, Karen and Stephen Skowronek (2004) The Search for American Political Development(Cambridge: Cambridge University Press).
- OSTROGORSKI, Moisei (1974) Democracy and the Party System in the United States (New York: Arno).
- OSTROM, Vincent (1987) The Political Theory of a Compound Republic. Designing the American Experiment (Lincoln: University of Nebraska Press).
- PAPADOPOULOS, Yannis (2005) 'Implementing (and Radicalizing) art. I-47.4 of the Constitution: Is the Addition of Some (Semi-) Direct Democracy to the Nascent Consociational European Federation Just Swiss Folklore?', European Journal of Public Policy, 12, (3), pp. 448-467.
- PARSONS, Craig (2003) A Certain Idea of Europe (Ithaca: Cornell University Press).
- PIERSON, Paul (1998) 'Social Policy and European Integration', in Andrew Moravcsik (ed.), Centralization or Fragmentation? Europe Facing the Challenges of Deepening, Diversity and Democracy (New York: Brookings Institution, 1998), pp. 124-58.
- PINDER, John (1963) Europe Against De Gaulle (London: Pall Mall).
- PITKIN, Hannah (1972) The Concept of Representation (Berkeley: University of California Press).
- PLATTNER, Marc (2003) 'Competing Goals, Conflicting Perspectives', Journal of Democracy, 14 (4), pp. 42-56.
- PLESCH, Dan (2006) 'Trident: We've Been Conned Again', The New Statesman, 27 March.
- POCOCK, J. G. A. (1975) The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition (Princeton: Princeton University Press).
- (1999) 'Enlightenment and Counter-Enlightenment, Revolution and Counter-Revolution; A Eurosceptical Enquiry', History of Political Thought, 20 (1), pp. 125-39.
- POLLACK, Mark A. (1994) 'Creeping Competence: The Expanding Agenda of the European Community', Journal of Public Policy, 14 (2), pp. 95-145.

- (2001) 'International Relations Theory and European Integration', Journal of Common Market Studies, 39 (2), pp. 221-44.
- POLLAK, Johannes and Peter Slominski (2004) 'The Representative Quality of the EU: A Comparison Between the IGC and the Convention', Journal of European Integration, 26 (3), pp. 201-26.
- PUTNAM, Robert (1994) Making Democracy Work: Civic Traditions in Modern Italy (Princeton: Princeton University Press).
- RABUN, James (1956) 'Documents Illustrating the Development of the Doctrine of Interposition', Journal of Public Law, 5 (1), pp. 49-89.
- RAKOVE, Jack (1984) Book Review, Journal of American History, 71 (1), pp. 113-4.  
(1996) Original Meanings: Politics and Ideas in the Making of the Constitution (New York: Alfred Knopf).
- RANSOM, Roger L. (1999) 'Fact and Counterfact: The "Second American Revolution" Revisited', Civil War History, 45 (1), pp. 28-60.
- RASMUSSEN, Hjalte (ed.) (1983) Greenland in the Process of Leaving the European Communities (Copenhagen: Forlaget Europa).
- REMINI, Robert V. (1998) Andrew Jackson (Baltimore: Johns Hopkins University Press).
- RENAN, Ernest (1992) Qu'est-ce qu'une nation? et autres essais politiques (Paris: Presses Pocket).
- RIFKIN, Jeremy (2004) The European Dream: How Europe's Vision of the Future is Quietly Eclipsing the American Dream (Oxford: Polity Press).
- RIKER, William, H. (1955) 'The Senate and American Federalism', American Political Science Review, 49 (2), pp. 452-69.  
(1964) Federalism: Origin, Operation, Significance (Boston: Little)  
(1996) 'European Federalism: the Lessons of Past Experiences', in Joachim Jens Hess and Vincent Wright (eds), Federalizing Europe? The Costs, Benefits, and Preconditions of Federal Political Systems (Oxford: Oxford University Press), pp. 9-24.
- ROBERTSON, Andrew (2001) 'Look on This Picture ... And on This! Nationalism, Localism, and Partisan Images of Otherness in the United States, 1787-1820', American Historical Review, 106 (4), pp.1263-1280.
- ROBIN, Ron (1992) Enclaves of America. The Rhetoric of American Political Architecture Abroad, 1900-1965 (Princeton: Princeton University Press).

- ROSANVALLON, Pierre (2006) Democracy Past and Future (New York: Columbia University Press).
- ROUSSEAU, Jean-Jacques (1715) The Political Writings of Jean-Jacques Rousseau (Cambridge: Cambridge University Press).
- RUGGIE, John (1998) Constructing the World Polity: Essays on International Institutionalisation (London: Routledge).
- RUNCIMAN, David (2003) David Runciman, 'Politicians in a Fix', London Review of Books, 4 September.
- (2004) 'The Precautionary Principle', London Review of Books, 1 April.
- (2006) 'The Paradox of Political Representation', Paper presented at the Princeton Political Philosophy Consortium, 30 March 2006.
- SARKOZY, Nicolas (2006) Discours devant les Amis de l'Europe et la Fondation Robert Schuman, Brussels, 8 September.
- SBRAGIA, Alberta, (ed.) (1992) Euro-Politics: Institutions and Policy Making in the "New" European Community (Washington D.C.: Brookings Institution).
- (2000) The European Union as Coxswain: Governance by Steering', in Jon Pierre (ed.), Debating Governance (Oxford: Oxford University Press, 2000), pp. 219-240.
- (2005) 'Post-National Democracy as Post-National Democratization', in Sergio Fabbrini (ed.), Democracy and Federalism (London: Routledge), pp. 167-182.
- SCHARPF, Fritz (1999) Governing in Europe: Effective and Democratic? (Oxford: Oxford University Press).
- (2000) 'The Viability of Advanced Welfare States in the International Economy: Vulnerabilities and Options', Journal of European Public Policy, 7 (2), pp. 190-228.
- SCHIMMELFENNIG, Frank (2003) The EU, NATO and the Integration of Europe: Rules and Rhetoric (Cambridge: Cambridge University Press).
- SCHLESINGER, Arthur (1977) 'America: Experiment or Destiny', American Historical Review, 82 (3), pp. 505-22.
- SCHMITT, Hermann and Jacques Thomassen (eds) (1999) Political Representation and Legitimacy in the European Union (Oxford: Oxford University Press).
- SCHMITTER, Philippe (1996) 'Imagining the Future Euro-Polity with the Help of New Concepts', in Gary Marks et al. (eds), Governance in the European Union, (London: Sage).
- (2000) How to Democratize the European Union – And Why Bother? (Lanham: Rowman & Littlefield).

- SCHWARTZ, Barry (1982) 'The Social Context of Commemoration: A Study In Collective Memory', Social Forces, 61 (2), pp. 372-402.
- SCHWARTZ, Bernard (1993) A History of the Supreme Court (New York: Oxford University Press).
- SEDLEY, Stephen (2001) 'Settlers v. Natives', London Review of Books, 8 March.
- SEWELL, William H., Jr. (1967) 'Marc Bloch and the Logic of Comparative History', History and Theory, 6 (2), pp. 208-18.
- SHEFTER, Martin (1994) Political Parties and the State: The American Historical Experience (Princeton: Princeton University Press).
- SIDJANSKI, Dusan (1992) L'Avenir fédéraliste de l'Europe. La communauté européenne, des origines au traité de Maastricht (Paris: Presses Universitaires de France).
- SIEDENTOP, Larry (2000) Democracy in Europe (London: Allen Lane).
- SINNOTT, Richard (2003) 'Attitudes and Behaviour of the Irish Electorate in the Second Referendum on the Treaty of Nice', University College Dublin Democratic Participation and Political Communication in Systems of Multi-level Governance Working Paper.
- SIOTIS, Jean (1983) 'Characteristics and Motives for Entry', in José Luis Sampedro and Juan Antonio Payno (eds), The Enlargement of the European Community: Case Studies of Greece, Portugal and Spain (London: Macmillan).
- SKOCPOL, Theda and Margaret Somers (1994) 'The Uses of Comparative History in Macrosocial Inquiry', in Theda Skocpol, Social Revolutions in the Modern World (Cambridge: Cambridge University Press), pp. 72-98.
- SMITH, Daniel and Caroline Tolbert (2004) Educated by Initiative: The Effects of Direct Democracy on Citizens and Political Organisation in the American States (Ann Arbor: University of Michigan Press).
- SMITH, Julie (1998) 'The 1975 Referendum', Journal of European Integration History, 5 (1), pp. 41-56.
- SMITH, Thomas (1999) History and International Relations (Abingdon: Routledge).
- SOULE, Yves-Pierre (1958) 'Comparaison entre les dispositions institutionnelles du Traité CECA et du Traité CEE', Revue du Marché Commun, 1 (2), pp. 95-102, and 1 (4), pp. 208-16.
- SPINELLI, Altiero (1966) The Eurocrats: Conflict and Crisis in the European Community (Baltimore: Johns Hopkins University Press).

- SPRUYT, Hendrik (1994) The Sovereign State and Its Competitors: An Analysis of Systems Change (Princeton: Princeton University Press).
- STAMPP, Kenneth (1978) 'The Concept of a Perpetual Union', Journal of American History, 65 (1), pp. 5-33.
- STEED, Michael (1977) 'Landmarks of the British Referendum', Parliamentary Affairs, 30 (1), pp. 130-3.
- STEIN, Eric (1981) 'Lawyers, Judges and the Making of a Transnational Constitution', American Journal of International Law, 75 (1), pp. 1-27.
- (1986) 'Uniformity and Diversity in a Divided-Powers System: The United States' Experience', Washington Law Review, 61, pp. 1081-1102.
- STEPAN, Alfred (1999) 'Federalism and Democracy: Beyond the U.S. Model', Journal of Democracy, 10 (4), pp. 19-34.
- STONE SWEET, Alec (2004) The Judicial Construction of Europe (New York: Oxford University Press).
- (2005) 'The Constitutionalisation of the EU: Steps Towards a Supranational Polity', in Sergio Fabbrini (ed.), Democracy and Federalism, pp. 44-56.
- STRATH, Bo (2005) 'Methodological and Substantive Remarks on Myth, Memory and History in the Construction of a European Community', German Law Journal, 6 (2), pp. 255-271.
- STRAUSS, Leo (1987) Entry on Machiavelli, in Leo Strauss and Joseph Cropsey (eds), History of Political Philosophy (Chicago: Rand McNally), pp. 247-76..
- SWIFT, Elaine K. (1996) The Making of an American Senate: Reconstitutive Change in Congress, 1787-1841 (Ann Arbor: University of Michigan Press).
- TAYLOR, Charles (1983) 'Political Theory and Practice', in Christopher Lloyd (ed.), Social Theory and Political Practice (Oxford: Clarendon Press).
- THATCHER, Margaret (1988) Speech to the College of Europe, Bruges, 20 September.
- TILLY, Charles (1984) Big Structures, Large Processes, Huge Comparisons (New York: Russell Sage Foundation).
- (1992) Coercion Capital, and European States, AD 990-1992 (Cambridge, MA: Blackwell).
- TINDEMANS, Leo (1998) 'Dreams Come True, Gradually', in Martin Westlake (ed.), The European Union Beyond Amsterdam: New Concepts of European Integration (London: Routledge).

- TIPTON, Diane (1969) Nullification and Interposition in American Political Thought (Albuquerque: University of New Mexico Press).
- TOCQUEVILLE, Alexis de (1990) De la démocratie en Amérique, édition historico-critique, revue et augmentée par Eduardo Nolla (Paris: J. Vrin).  
(1994) Democracy in America, trans. Henry Reeve (London: David Campbell).
- TORBIORN, Kjell (2003) Destination Europe: The Political and Economic Growth of a Continent (Manchester: Manchester University Press).
- TRECHSEL, Alexander H. (2005) 'How to Federalize the EU...and Why Bother', Journal of European Public Policy, 12 (3), pp. 401-18
- TSOULAKIS, Loukas, (1981) The European Community and Its Mediterranean Enlargement (London: Allen and Unwin).  
(1997) The New European Economy Revisited: The Politics and Economics of Integration (Oxford: Oxford University Press).
- WAGNER, Peter (2004) 'Formes d'état et formes de savoir social. Les traditions nationales en sciences sociales et la pluralité d'interprétations de la modernité', in Benedicte Zimmermann (ed.), L'Etat et les sciences sociales (Paris: Seuil).
- WARREN, Charles (1913) 'Legislative and Judicial Attacks on the Supreme Court', American Law Review, 47 (1), pp. 1-34.
- WATKINS, Susan. (2005) 'Continental Tremors', New Left Review, 33 (May-June), pp. 5-21.
- WEAVER, Ole (1996) 'Europe, State and Nation in the New Middle Ages', in Jaap de Wilde and Håkan Wiberg (eds), Organized Anarchy in Europe. The role of States and Intergovernmental Organisations (London: Taurius, 1996), pp. 107-28.
- WEBER, Eugen (1976) Peasants into Frenchmen: The Modernization of Rural France, 1870-1914 (Stanford: Stanford University Press).
- WEBER, Max (1983) Economy and Society: An Outline of Interpretive Sociology (Berkeley: University of California Press).
- WEBSTER, Daniel (1833) Speech In Reply to Mr Calhoun's Speech on the Bill "Further To Provide for the Collection of Duties on Imports" (Washington: Gales & Seaton).
- WEILER, Joseph (1982) 'Community, Member States and European Integration: Is the Law Relevant?', Journal of Common Market Studies, 21 (2), pp.39-56.  
(1988) 'Parlement Européen, Intégration Européenne et Légitimité', in Jean-Victor Louis and Denis Waelbroeck (eds), Le Parlement Européen dans l'évolution institutionnelle (Bruxelles: Editions de l'Université de Bruxelles), pp. 325-48.

- (1994) 'Fin-de-siècle Europe', in Renaud Dehousse (ed.), Europe After Maastricht. An Ever Closer Union? (Munich: Beck), pp. 203-16.
- (1997) 'The European Union Belongs to its Citizens: Three Immodest Proposals', European Law Review, 22 (2), pp. 150-6.
- (2001) 'Federalism Without Constitutionalism: Europe's Sonderweg', in Kalypso Nicoladis and Robert Howse (eds), The Federal Vision. Legitimacy and Levels of Governance in the United States and the European Union (Oxford: Oxford University Press), pp. 54-70.
- WEINGAST, Barry R. (1998) 'Political Stability and Civil War: Institutions, Commitment and American Democracy', in Robert Bates *et al.*, Analytic Narratives (Princeton: Princeton University Press), pp. 148-193.
- WENDT, Alexander (1998) 'On Constitution and Causation in International Relations', Review of International Studies, 24 (5), pp. 101-17.
- WHITE, Hayden (1975) Metahistory: The Historical Imagination in Nineteenth-Century Europe (Baltimore: Johns Hopkins University Press).
- WILDAVSKY, Aaron (1998) Federalism and Political Culture (New Brunswick: Transaction).
- WILENTZ, Sean (2005) The Rise of American Democracy: Jefferson to Lincoln (New York: Norton).
- WIND, Marlene (2001) Sovereignty and European Integration: Towards a Post-Hobbesian Order (Basingstoke: Palgrave).
- WINDERS, Richard (2002) Crisis in the Southwest: The United States, Mexico, and the Struggle Over Texas (Wilmington: Scholarly Resources).
- WIRLS, Daniel (1999) 'Regionalism, Rotten Boroughs, Race and realignment: The Seventeenth Amendment and the Politics of Representation', Studies in American Political Development, 13 (Spring), pp. 1-30.
- WITTE, Bruno de (2003) 'Entry into Force and Revision', in Bruno de Witte (ed.), Ten Reflections on the Constitutional Treaty for Europe (San Domenico di Fiesole: European University Institute), pp. 203-19.
- (2004) 'Treaty Revision in the European Union: Constitutional Change Through International Law', Netherlands Yearbook of International Law, 35, pp. 51-84.
- WOOD, Gordon S. (1969) The Creation of the American Republic, 1776-1787 (New York: Newton).



