

Chapter 13

The European Republic Utopia or logical necessity?

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Introduction

Fifty years after its foundation, the European Union is in crisis. Public support for the Union is waning. The 'permissive consensus' which allowed the gradual deepening of European integration for the first three decades, has turned into 'blocking dissent' by veto players. Governments can score higher points with their electorates by 'drawing red lines in the sand'¹ than by promoting benefits from European policies. Voter turn-out at European parliament elections is falling and negative referenda on European Treaties are becoming more frequent. For some observers, European integration has gone too far, while, for others, it is not going far enough, but evidence points to the fact that voters often reject '*this* Europe', not 'Europe' as such.² The rejection of the Constitutional Treaty by the French and

¹ This was the formula used by the British prime minister in the negotiations of the Constitutional Treaty and then in the Treaty of Lisbon, see <<http://www.independent.co.uk/news/uk/politics/pm-draws-his-lines-in-thesand-before-debate-starts-on-eudraft-treaty-541276.html>>.

² M. Gauchet and R. Rémond, 'Comment l'Europe divise la France. Un échange', (2005) 136 *Le débat*, Paris, Gallimard; M. Larhant, 2005, 'La crise institutionnelle de l'UE: Au fait... qu'en pensent les nouveaux Etats membres?', *Notre Europe - Etudes*

Dutch referenda in 2005 has put European constitution-making on hold, but it does not prevent the gradual improvement of the governance of the European Union. The Treaty of Lisbon is a step towards more efficient policy-making, but it does not necessarily solve the problem of democracy in Europe, which many see at the root of *Euro-malaise*. There are structural reasons behind the legitimacy issues of EU institutions. They cannot be solved by 'explaining Europe better', or by finding 'more European-minded leaders'.³ The slow and timid reaction to the financial crisis in 2008⁴ or the regularly laborious negotiations about the Union's budget prove not only how difficult it is to come to a decision among 27 countries, but also that the present system starves the European Union of the resources needed to pursue its common objective of prosperity. Under these circumstances, how can the EU do what citizens expect and gain support for what it does?

Many researchers have observed that democratic procedures could improve the legitimacy of European policy-making. Some have asked whether a democratically viable institutional framework can still rely on state-based democratic theory, or whether it is necessary to reconstitute democracy in Europe and reconfigure a new theory of democracy suitable for the transnational character of the EU.⁵⁶ Three models compete for recognition. The first, intergovernmental, model posits representative democracy at the member state level and sees national governments as delegating policy-making competences to the EU. In this model, the EU is conceived as a functional organisation set up to solve the problems which the member states

et Recherches, *Compte rendu du séminaire Notre Europe*, 9 December 2005; A. Alesina and R. Wacziarg, 'Is Europe Going Too Far?', National Bureau of Economic Research Working Paper Series, NBER, Cambridge, 1999; and S. Collignon, 'Is Europe Going Far Enough? Reflections on the Stability and Growth Pact, the Lisbon Strategy and the EU's Economic Governance', (2003) 1 *European Political Economy Review*, pp. 222-247.

³ These are proposals that are frequently heard in the public debate. See, also, J. Klabbers' book review of F. Chalties, 'Naissance du peuple européen', (2009) 15 *European Law Journal*, pp. 142-150.

⁴ International Monetary Fund (IMF), *World Economic Outlook*, 2008, Washington DC, IMF, 2009; IMF, *World Economic Outlook*, October 2009, Washington DC, IMF.

⁵ E. O. Eriksen and J. E. Fossum, 'Europe's Challenge. Reconstituting Europe or Reconfiguring Democracy?', in E. O. Eriksen and J. E. Fossum (eds), *RECON – Theory in Practice*, ARENA Report No 2/09, Oslo, ARENA, 2009.

⁶ This is the focus of the RECON Research Project.

cannot resolve by acting independently. Thus, European institutions act as government agents, and governments are their principal. Controlling the agents by the principal requires some form of *audit democracy* to prevent *agency slack*.⁷ In this perspective, member states should strengthen the role of their national parliaments in monitoring European policies.⁸ The second model seeks to establish the EU as a multinational federal state. It emulates existing democratic constitutional states in which legitimacy for European policy-making is founded in the people, who have a sense of common destiny. We may distinguish between 'old style' European federalism, as first advanced by A. Spinelli, and 'new style' regionalist federalism, as described by Eriksen and Fossum.⁹ The old model sought to overcome nationalism by integrating European nations into a European people. If a common pre-political European identity does not exist, it needs to be 'created'.¹⁰ Federalists insist on common values. The regionalist version of federalism preserves the different nations as the cultural base-unit, but integrates nation states into a federation, which generates legitimacy through democratic mechanisms. Old style federalism never really got very far, because national allegiances remained stronger than the idea of a European identity.¹¹ New style federalism stands in the long tradition of the anarcho-communitarianism that has shaped German and Swiss federalism.¹² It resembles the intergovernmental model of agency, because nation states, rather than citizens, are seen as the sovereign. The federation is the result of a *constitutional Treaty* in which states agree to cooperate, and not of a *social contract*, in which the individual citizens are the sovereign and agree to manage their common affairs

⁷ D. G. Hawkins, D. A. Lake, D. L. Nielson and M. J. Tierney, *Delegation and Agency in International Organizations*, Cambridge, Cambridge University Press, 2006.

⁸ Bundesverfassungsgericht, *Entscheidung zum Lissaboner Vertrag*; BVerfG, 2 BvE 2/08 vom 30.6.2009, Absatz-Nr. (1-421), 2009, available at <http://www.bverfg.de/entscheidungen/es20090630_2bve_000208.html>.

⁹ Eriksen and Fossum, *supra*, note 5.

¹⁰ Reference is often made to the famous sentence ascribed to Massimo d'Azeglio, one of the founders of Italian unification: 'Abbiamo fatto l'Italia, si tratta adesso di fare gli italiani.'

¹¹ S. Collignon, 'Three Sources of Legitimacy for European Fiscal Policy', (2007) 28 *International Political Science Review*, pp. 155-184.

¹² S. Collignon, *The European Republic. Reflections on the Political of a Future Constitution*, London, Kegan Press, 2003, available at <<http://www.stefanollignon.de/PDF/The%20European%20Republic-text1.pdf>>.

jointly.¹³ The third model reconfigures the European Union as a post-national Union with cosmopolitan characteristics. It assumes that European citizens are able to consider themselves as self-legislating individuals within a functional domain that is exclusively reserved for a European government.¹⁴ The model therefore articulates agency in terms of popular sovereignty and implicitly calls for a social contract. Yet, although it opens new perspectives for democracy in Europe, the third model is hampered by ambivalence between local loyalties and cosmopolitan principles.

In this chapter, I propose a republican version of the third model, which starts with public goods, rather than identities and loyalties. I believe that this approach can overcome the shortcomings of a purely cosmopolitan model for Europe. I will argue that the answer to the EU's governance problems requires a political union with full democracy. I have previously coined the term *European Republic* for such a political union.¹⁵

Academic discussions about Europe's democratic deficit go back a long way,¹⁶ but few authors dare to suggest a European government.¹⁷ Such ideas may seem utopian, but I will argue that a

¹³ G. Frankenberg has emphasised the difference between *organizational contracts*, such as the German Imperial Constitution of 1871, in which the 'pouvoir constituant' depends on membership in another body (for example, the EU's member states), and the Hobbesian or Rousseauian *social contract*, in which a society of individuals is transformed into an agreement of general will through a multiplicity of more or less fictitious individual agreements. The first kind of contract may preserve communitarian identities and partisan interests, the second may more easily support the vision of a common good or common wealth. See G. Frankenberg, 'The Return of the Contract: Problems and Pitfalls of European Constitutionalism', (2000) 6 *European Law Journal*, pp. 257-276. A similar normative cleavage exists between communitarian and republican federalism. See S. Collignon, *supra*, note 12.

¹⁴ Eriksen and Fossum, *supra*, note 6, at p. 31.

¹⁵ See Collignon, *supra*, note 12.

¹⁶ See A. Follesdal and S. Hix, 'Why There Is A Democratic Deficit In The EU: A Response to Majone and Moravcsik', (2006) 44 *Journal of Common Market Studies*, pp. 533-62, and the literature quoted there.

¹⁷ Active policy makers seem to have less problems with this idea. Maybe practical experience creates wisdom. See G. Verhofstadt, *The United States of Europe*, the Federal Trust, London, 2005, or the *Grundsatzprogramm* of the German Social Democratic Party (SPD, 2007), which states: 'Our model is a political union granting all European citizens democratic rights of participation. The democratic Europe needs a government answerable to parliament on the foundation of a European constitution.'

democratic political union is the logical necessity resulting from the normative context of European history and the process of European integration.¹⁸ The true utopia is the idea that today's intergovernmental European governance could sustain and govern the European Union efficiently. In order to understand this logic, I will first look at the limitations of the present system, and then develop the argument for why a democratic government is necessary for the EU.

The limitations of the European Union governance without government

In this part, I will first discuss the nature of European public goods and their externalities. We will then look at the forms of policy cooperation that they require. We will terminate with the issues of legitimacy that result from these forms of governance.

European integration and public goods

European integration owes its success to Jean Monnet's stepwise method of gradually building institutions with the purpose of making individuals cooperate consistently over time. In line with British functionalist thought of the inter-war period, his basic conviction was that when individuals are working together, interact in trade, and exchange ideas, they are less likely to wage war. The emblematic sentence 'We do not create coalitions among states, we unite human beings' described the project, which was then gradually implemented by Schuman, Adenauer, de Gasperi and Spaak. This realisation has become a historically unprecedented success. But as Monnet already anticipated, this success now requires institutional change.¹⁹

Practical cooperation has a purpose. The post-war objective of European unification was peace and prosperity, freedom and democracy. But Morgan has argued that European integration is now in a crisis of justification and needs a re-definition of purpose.²⁰ The question is: How can this be done? Europe seems to be returning into

¹⁸ C. Dieterman, Book Review, (2004) 41 *Common Market Law Review*, pp. 894-897.

¹⁹ F. Duchêne, *Jean Monnet: The First Statesman of Interdependence*, New York, Norton, 1994.

²⁰ G. Morgan, *The Idea of a European Superstate. Public Justification and European Integration*, Princeton NJ, Princeton University Press, 2005.

a world in which partial, rather than common, interests prevail. Nevertheless, the interests of individuals are often derived from what they perceive as their common purposes, because these common ideas serve as benchmarks or focal points for the coordination of individual actions.²¹ This does not mean that all individuals agree on what to do, but that their disagreements are defined by reference to both shared ideas and collective intentionality and purpose that are common knowledge. We will see below that strategic behaviour by some actors may, in certain cases, induce them to do exactly the opposite of what would be in the common interest. Nevertheless, the question of how public and shared preferences emerge remains crucial for the viability of political and economic integration. Modern political theory has shown that the generation of common understanding, concerns and interests requires public debates, communicative action,²² and open deliberation,²³ from which some form of general will, or a vague sense of potential consensus of what seems reasonable, will emerge. No collective action is possible without such prior agreement on what the collective interest is. Economists call the object of common interest a *public good*. This concept received a precise theoretical foundation by Samuelson.²⁴ It has the advantage that it takes the political discourse from the level of principled generalities down to the hurly-burly world of real policy-making, where individuals conflict over ideas with regard to what should be done in the common interest.

Since the Treaty of Rome in 1957, the range of European public goods has grown considerably. An increasing number of European citizens are affected by policy decisions in specific sectors, and they therefore share common (and sometimes contradictory) interests. Numerous theories have tried to explain this phenomenon,²⁵ and, although they

²¹ T. C. Schelling, *The Strategy of Conflict*, Cambridge MA, Harvard University Press, 1980; D. Lewis, *Convention*, Oxford, Blackwell Publishing, 2002.

²² J. Habermas, *Theorie des kommunikativen Handelns*, Frankfurt a. M., Suhrkamp Verlag, 1981.

²³ J. Bohman, *Public Deliberation. Pluralism, Complexity and Democracy*, London, MIT Press, 1996.

²⁴ P.A. Samuelson, 'The Pure Theory of Public Expenditure', (1954) 36 *Review of Economics and Statistics*, pp. 387-389.

²⁵ E. B. Haas, *The Uniting of Europe. Political, Social and Economic Forces, 1950-1957*, University of Notre Dame Press, Indiana, 2004; A. Moravcsik, *The Choice for Europe. Social Purpose and State Power from Messina to Maastricht*, London, UCL Press,

disagree about the motives and limitations underlying this process, most analysts would probably agree that functional interdependencies between different public goods have generated enlarged collective policy responsibilities. Examples of the functional spill-over include: the European Customs Union, which could not function without the joint management of revenue; the Common Agricultural Policy, which required the joint administration of prices and quality standards for agricultural products; the Single Market, which needed a common competition policy in order to prevent distortions; the Single Currency, which was the necessary complement to the Single Market, and the foundation for successful macro-economic stabilisation policies; and the Schengen Agreement, which abolished internal border controls within the European Union and not only facilitated the free movement of persons, but also implied that a common external border needed to be secured. Thus, once the freedom of movement was accepted as a common value, the European dimension of justice and home affairs became part of European public goods. Similarly, foreign policy is the classical *topos* of public goods. Although this is probably the least developed part of European integration, it is increasingly prominent and finds approval with a large majority of European citizens.²⁶ As the scope of these externalities broadened, the *acquis* of European policy arrangements was also extended to an increasing number of member states that wished to benefit from these public goods. This 'widening' demands in return the 'deepening' of the EU, in order to ensure the efficient administration of these public goods. The deepening and widening of the European Union are inter-related processes. The process of a growing domain of public goods is, however, not linear; it interacts with political ideologies, and, on frequent occasions, the responsibility for administering European public goods has been re-nationalised. We will discuss below the consequences of decentralising policy-making for efficiency and legitimacy.

European public goods are created by laws, but, as we will see below, their administration may require discretionary actions by governments. A precise measurement for the growth of the EU's

1998; G. Majone, *Regulating Europe*, London, Routledge, 1996; Alan Milward, *The European Rescue of the Nation-State*, London, Routledge, 1992.

²⁶ According to Eurobarometer, 2005, No. 63. 'Public opinion in the European Union', September 2005, the figure is 77 per cent.

public goods is difficult, as they are linked to qualitative jumps in responsibilities. But some figures may serve as an indicator. For example, the total number of regulations, directives and decisions by the EU has increased from 2 612 in the period 1971-75 to 11 414 over 1996-2000.²⁷ The number of pages in the Official Journal of the EU has increased from 16 500 pages in 1995 to 24 800 in 2004.²⁸ One may dispute whether all these texts are actually necessary. In fact, many regulations specify exemptions for member states in specific areas. But the growth clearly shows the greater involvement of policy-making at European level. Referring to a remark by former Commission President Jacques Delors, it is often claimed that 80 per cent of all economic legislation in the EU originates today at the level of European institutions.²⁹

With the quantitative growth in the importance of public goods, of Europe's *res publica*, and with the enlargement of the European Union, the need for a coherent regime of common governance has emerged. Coherent collective action is not without problems, because public goods are related to externalities. An externality exists when the decisions and actions of one actor affect the utility of other actors without them having to bear the costs and responsibilities for their actions.³⁰ These policy externalities may be caused by laws or discretionary policy decisions. A positive externality exists if the decision by one actor increases the utility of all others; a negative externality decreases the utilities of the other actors because of the first actor's behaviour. Typical examples for positive externalities are synergies and economies of scale. The classic example of a negative externality is environmental pollution, but policies can also cause external effects. The larger a group becomes, the less likely it is to make optimal decisions in the common interest.³¹ This problem can be overcome by more coordinated and centralised decision-making.

²⁷ A. Alesina, I. Angeloni and L. Schuknecht, 'What Does the European Union Do?', (2005) 123 *Public Choice*, pp. 275-319.

²⁸ G. Tremonti, *La Paura et la Speranza*, Milan, Mondadori, 2008.

²⁹ A. Moravcsik and A. Töller have questioned this figure, see 'Brüssel regiert nicht Deutschland', *Financial Times Deutschland* 10 February 2007; but T. Hoppe has recently confirmed it for Germany, in 'Die Europäisierung der Gesetzgebung: Der 80-Prozent-Mythos lebt', (2009) 6 *Europäische Zeitschrift für Wirtschaftsrecht*, at p.169.

³⁰ S. E. Holtermann, 'Externalities and Public Goods', (1972) 39 *Economica*, pp. 78-87.

³¹ M. Olson, *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge MA, Harvard University Press, 1971.

Thus, the success of European integration has not only brought about *more* European goods, but it has also changed the *quality* of European political action. The frequent European Treaty changes since Maastricht have been the consequence of the political events that have transformed Europe since the fall of the Berlin Wall: integrating the unified Germany into monetary union would have been impossible without better coordination of macro-economic policies; adapting the old institutions to a Union of 27 member states required less unanimity in decision-making in the Council, etc. These institutional adaptations have sought to preserve the traditional model of autonomous ('sovereign') member states cooperating voluntarily amongst each other, but they are not sufficiently far-reaching to deal with legitimacy issues.

When externalities exist, individual actors cannot be excluded from the consumption of, or forced to contribute to the collective provision of, public goods. They may shirk and let others do the job. Because they do not have to assume full responsibility for their acts, they can shift some costs onto someone else or lose the motivation to manage their common interests. As actors seek to maximise their own benefits by interacting strategically, given the behaviour of all other members in a group,³² *strategic complementarities* prevail, when each actor's behaviour increases his or her own utility *and* the utility of all others. In technical terms, this means that the cross-derivatives of marginal utilities are positive. Collective goods characterised by strategic complementarities are called *inclusive public goods*. They provide positive externalities, which are incentives for voluntary cooperation between independent actors because each actor would benefit from making a contribution to the collective objective. However, despite this potential for gain, coordination failure is possible when information asymmetries prevent individual actors from properly perceiving their optimal benefits. Coordination failure occurs when policies that could improve welfare are not implemented. For game theorists, such coordination failures occur in situations of 'prisoner's dilemmas', in which one actor does not know what the other intends to do. The resulting sub-optimal equilibrium can be pareto-improved by an independent agent that ensures the removal of informational bottlenecks. In other words, cooperation can be hampered by

³² R. Cooper and A. John 'Coordinating Coordination Failures in Keynesians Models', (1998) 103 *Quarterly Journal of Economics*, pp. 441-463.

cognitive and insurance problems, which require institutional solutions. With a supportive institutional framework, voluntary cooperation may be capable of supplying the desired amount of inclusive public goods. In the European Union, examples for inclusive public goods include: peace and prosperity (which attract countries to join); the euro, which contributes positively to the stabilisation of the macro-economy; or concrete projects such as the production of Airbus and the Galileo satellite system. In all these instances, member states are benefiting their own interests by complying with policies which simultaneously increase the utility of all others. Often, the European Commission has taken on the role of a supportive coach which ensures that informational asymmetries do not block the pursuit of such beneficial policies.

However, in the case of *strategic substitutabilities*, this approach does not work. Here, collective action problems prevent the optimal provision of collective goods by generating negative externalities. Any individual government could increase its own utility by going against the stream, provided that all other actors behave optimally in the collective interest. Such a government would be able to reap extra gains at the expense of all other members of the group. Hence, any individual actor has an incentive to do the opposite of what the collective interest requires. Technically, this means that the cross-derivative of marginal utilities is negative. Public goods that give rise to these incentives are called *exclusive public goods*, sometimes also *common resource goods* or *common-pool resources*.³³ The classical example for collective action problems with exclusive goods is the 'tragedy of the commons',³⁴ but Ostrom³⁵ has shown that the tragedy can be avoided by setting up appropriate institutions. This is relevant for European integration. While public goods, which generate strategic complementarities, allow us to interpret the European Union as a problem-solving institution, strategic substitutabilities will turn it into a 'problem-creating' institution. Initially, European integration generated inclusive public goods, but, over the last two decades, a growing range of policies have become prone to strategic

³³ M. Olson, *supra*, note 31; E. Ostrom, 'Commons', in D. Cuff and A. Goudie (eds) *The Oxford Companion to Global Change*, Oxford, Oxford University Press, 2009.

³⁴ G. Hardin, 'The Tragedy of the Commons', (1968) 162 *Science*, pp. 1243-1248.

³⁵ E. Ostrom, *Governing the Commons: The Evolution of Institutions for Collective Action*, Cambridge, Cambridge University Press, 1990.

substitutability. In the case of monetary policy, the logic was acknowledged by the creation of the European Central Bank as the sole decision-maker; other, less recognised, but equally important, fields include the structural economic reforms under the Lisbon Agenda and fiscal policy in monetary union. In the next section, I will show that the different natures of inclusive and exclusive public goods require different forms of rules and government.

Policy coordination

As, by definition, property rights do not exist for public goods, positive or negative externalities cannot be directly assigned to those who are responsible for causing them, and the originator cannot be asked for compensation. Therefore, externalities must be 'internalised' by making individual actors accountable to those who are affected by their decisions. A democratic law-making government is the classic institution by which the externalities of a broad range of rights are internalised.³⁶ But it is also possible to internalise externalities by the voluntary cooperation of governments. However, this solution does not work in all circumstances. We now need to analyse why this is so.

A growing amount of literature has been studying the effects of 'Europeanisation', a term that describes both the policies aimed at internalising externalities through voluntary cooperation, and the impact that these policies have on state institutions and modes of governance.³⁷ No doubt, Europeanisation has successfully dealt with many externalities resulting from the creation of the single market legislation. But the method has also reached its limits. The Service

³⁶ One may argue that *government* is sufficient to internalise externalities and that *democratic* government is only one of several institutional arrangements. However, while centralised government may render decision-making more efficient, it does not necessarily internalise externalities, for this requires that the government responds to the preferences and interest of those who are affected by government decisions. A democratic government is a sufficient condition for internalising externalities.

³⁷ J. J. Anderson, 'Europeanization and the Transformation of the Democratic Polity, 1945-2000', (2002) 40 *Journal of Common Market Studies*, pp. 793-822; J. P. Olsen, 'The Many Faces of Europeanization', (2002) 40 *Journal of Common Market Studies*, pp. 921-952; K. Featherstone and C. M. Radaelli (eds), *The Politics of Europeanization*, Oxford, Oxford University Press, 2003; and A. Töller, 'The Europeanization of Public Policy - Understanding Idiosyncratic Mechanisms and Contingent Results', (2004) 8 *European Integration Online Papers*, available at <<http://eiop.or.at/eiop/index.php/eiop/index>>.

Directive or the Cardiff and Luxembourg Processes are policy areas in which governments seek, with little success, to complete the integration of the single market for goods and services. Similar problems hamper macro-economic policy coordination or the acrimonious negotiations between the member state governments regarding the European budget. Clearly, there are signs of under-provision of public goods.

For years, the Commission has propagated 'massive potentials gains' from wider and deeper integration; it has emphasised the 'cost of non-Europe' and pushed for more integration. Nevertheless, the member states are slow or even resist implementing these apparently beneficial policies. Take the Lisbon strategy, for example, which has formulated a programme of reforms to turn Europe into 'the most competitive economy in the world', a programme that should clearly benefit everyone; but very little has been achieved.³⁸

The reason for this is that many of the public goods promised by the Lisbon Agenda are subject to strategic substitutability: if reforms are politically painful and costly, but everyone would be better off provided all member states complied with the reform programme, then each government might have an incentive to hold back the implementation of reforms until their colleagues have done their homework, because that would lower their own costs. The Lisbon Agenda is making little progress, because the incentives for free-riding on the actions of others are reducing each member state's effort to comply with policies which support the common purpose, and, consequently, nothing gets done.

The same applies to fiscal policy in the European monetary union, where strategic substitutabilities prevail in many areas. In the single currency area, central bank liquidity is a common-pool resource. When governments wish to borrow, they tap the same capital market. Their actions affect interest rates and the borrowing costs for all. Hence, fiscal policies are an exclusive public good. The Stability and Growth Pact (SGP) attempts to regulate the externalities of national

³⁸ S. Collignon, 'Why Europe is Not Becoming the World's Most Competitive Economy. The Lisbon Strategy, Macro-Economic Stability and the Dilemma of Governance without Governments, (2008) 3 *International Journal of Public Policy*, pp. 72-99.

fiscal policies by obliging member states to *balance* their cyclically adjusted, i.e., structural deficits, but only few countries have complied.³⁹

This compliance problem can be explained by the strategic substitutability, which derives from the fact that, in a monetary union, the central bank provides liquidity subject to a hard budget constraint (price stability) and the funds obtainable in capital markets are limited, while market access is free for all. The scarcity of resources drives up the price of money, i.e., the interest rate, when governments borrow excessively. The euro-area has, therefore, a collective interest in constraining public deficits in an aggregate manner, and the Stability and Growth Pact rightly requires all member states to balance their structural deficits; however, individually governments could borrow at very favourable terms if all other member states were balancing their budgets. Hence, each national government has an incentive to go against the European interest and this prevents the proper implementation of the SGP.

The concept of strategic substitutability helps us to understand why voluntary cooperation amongst the governments in the European Union is systematically handicapped. One approach for overcoming this problem is to restrict access to the common resource.⁴⁰ This was the purpose for setting the Maastricht convergence criteria, but once member states have joined, compliance is again subject to the collective action problem. In environmental economics, the problem is resolved by specifying property rights for tradable pollution permits. This idea was adapted by Casella to improve the implementation of European fiscal policy rules.⁴¹ The advantage of this model is that markets 'audit' the behaviour of member state governments; the drawback is the difficulty of assigning property rights in the permissible deficit to member states. A second solution would be fiscal federalism, in which macro-economic policy is centralised in a federal government. But these ideas are blocked, as governments pretend to serve the national interest and do not wish to

³⁹ Collignon, *supra*, note 38.

⁴⁰ For this reason, public goods subject to strategic substitutability are called 'exclusive'.

⁴¹ A. Casella, 'Tradeable Deficit Permits', in A. Brumila, M. Buti and D. Franco, *The Stability and Growth Pact, The Architecture of Fiscal Policy in EMU*, London, Palgrave, 2001.

relinquish their power. In reality, the national interest, i.e., the interest of all citizens in a country, would be optimised if positive externalities could be maximised and negative externalities minimised. Yet, as policy-making in the European Union is based upon the sovereignty of national governments, and governments seek extra gains at the expense of their partners, welfare-optimising policies are institutionally-inhibited.

Welfare in the European Union would improve if national governments coordinated their actions and avoided the distributional effects of negative externalities. This is fundamental rationale for policy coordination in the EU. But voluntary policy coordination only works well for strategic complementarities, and, hence, for inclusive public goods. When public goods are exclusive, and actors are many, and their incentives are dominated by strategic substitutability, collective action problems will cause coordination failure. Collective action problems have become more salient in the EU, as the negative costs of non-compliance for the individual member state are diminishing in an enlarged Union, while the potential benefits of the public goods are available for all. The temptation for free-riding has increased as a consequence of the successive enlargements of the EU.⁴² In a large European Union, in which governments are autonomous, while their policies affect all member states and are subject to the logic of strategic substitutability, voluntary intergovernmental cooperation is not producing efficient results.

Policy coordination regimes must address the specific nature of the externalities, and the strategic incentives for non-cooperation that they cause. In this context, one should distinguish two dimensions: (1) conflicting interests between actors (governments) will derive from heterogeneous preferences and require mechanisms for overcoming policy blockages through preference convergence; and (2) the time dimension of having positive externalities today *versus* negative effects tomorrow may cause dynamic inconsistencies.⁴³ When an actor's best plan for the future will no longer be optimal as that future arrives, and when other actors have built their own behaviour on the expectation of what each group member had

⁴² For a formal model, see Collignon, *supra*, note 12, Annex II.

⁴³ F. Kydland and A. Prescott, 'Rules Rather Than Discretion: The Inconsistency of Optimal Plans', (1977) 82 *Journal of Political Economy*, pp. 473-492.

planned to do, their interactions will lead to coordination failure. Rules and laws are then required for coherent policy-making over time, while discretionary actions by a single executive are more suitable when policy actions must adapt to new circumstances.

Thus, different policy regimes are necessary to deal with these potential coordination failures. These regimes reflect, to some degree, the three models of European integration, described by Eriksen and Fossum.⁴⁴ The optimal provision of *inclusive* public goods may simply require some form of soft coordination to overcome informational asymmetries, when individual actors are unaware of the behaviour of others. The European Commission has successfully played this role for many policy areas that cover inclusive public goods. Under these conditions, intergovernmental cooperation linked to some forms of 'audit democracy' will ensure welfare gains. The EU will be able to work efficiently and legitimately as a problem-solving institution. However, preventing deviant behaviour in the case of *exclusive* public goods will require hard coordination policies. Constraining rules must ensure compliance with the coordination regime, and sanctions must be imposed when policies are not implemented. If the decision of imposing sanctions is itself subject to a collective action problem ('I do not sanction you today, if you will not sanction me tomorrow'), policy implementation needs to be centralised in a single authority. This can be interpreted as a call for centralising federalism, but, as I will show below, federalism is not solving the problem of legitimacy. Putting these two dimensions of policy regimes together, we obtain the matrix in Figure 13.1.⁴⁵

If policy preferences converge to a common consensual equilibrium, in which the interests of all participating parties are enhanced and benefits increased, *voluntary* coordination is successful and arrangements like the Open Method of Coordination (OMC) under the Lisbon Strategy are appropriate for achieving the desired outcomes. If, however, there is a danger of dynamic inconsistency, at least some form of *soft coordination by binding rules* is also required, so that peer pressure will lead individual member states to behave in accordance with the general interest. In Europe, this is the logic that has justified administrative procedures such as the Broad Economic Policy Guidelines, the Luxembourg and Cardiff Processes, etc.,

⁴⁴ Eriksen and Fossum, *supra*, note 5.

⁴⁵ See, also, Collignon, *supra*, note 12.

because, even if the policy content is not necessarily binding, the coordinating procedure does constrain member states. On the other hand, in order to maintain time consistency and prevent individual actors' from non-compliance in the presence of strategic substitutability, *rule-based policies with the possibility of sanctions*, as in the Stability and Growth Pact and the Excessive Deficit Procedure under the Treaty of Maastricht, are the appropriate policy regime. But if discretionary policies are desirable, *delegation to a unified policy-maker* is necessary.

		Time consistency		
		Discretionary policies	Rule-based policies	
Preference consistency	Disjunct	I. Delegation to unified actor	II. Hard co-ordination with sanctions	Exclusive public goods
	Converging	III. Voluntary co-ordination	IV. Soft co-ordination by guiding rules	Inclusive public goods

Figure 13.1: Policy coordination regimes

This analysis brings out one important point: different public goods require different policy regimes. A lot of confusion about European policy-making results from the fact that the strategic incentives dominating different policy domains are ignored. As a consequence, inappropriate policy regimes are applied to solve problems that require different arrangements, and the political discourses give rise to expectations which cannot be met. Voluntary policy coordination amongst independent governments should be confined to inclusive public goods, because only here can the EU serve as a problem-solving institution. This is where intergovernmentalism has its role to play and a model of 'audit democracy' could ensure the efficient and legitimate administration of these public goods. Exclusive public goods require much stronger forms of governance, because the EU is becoming a problem-creating institution, if national governments remain fully autonomous in this domain. It is then necessary to impose rules with sanctions, or, if discretionary policies are desirable, to delegate and centralise decision-making at European level. This is

where the federalist model provides an efficient solution, although it ignores the torrid question of legitimacy. Unless a centralised European policy-making authority has the consensual backing of European citizens, it is unlikely to remain sustainable over time. The republican model formulates an answer where the federalist model remains silent, namely, to the question of how this consensual backing can be achieved.

Legitimacy

The problem of legitimacy is related to the efficiency of government. As mentioned above, European integration used to draw its legitimacy from producing good results: peace and prosperity, freedom and democracy. But as collective action problems increase and the efficiency of intergovernmental governance declines, this output legitimacy is diminishing. Other reasons for legitimacy need to be found. I shall now examine this link.

Legitimacy is the explicit or implicit *acceptance* of policies by those to whom they apply. Illegitimate policies are resented, avoided, circumvented, or outrightly rejected, because people do not accept them. Legitimacy is in crisis when citizens cannot bring themselves to say 'yes' or remain indifferent to the policies pursued by governments. Legitimacy therefore depends on what people want and what governments produce. When people's preferences matter as input into the policy-making process, we say they generate input-oriented legitimacy; if the output corresponds to what people have charged their representatives to do, the government has output-oriented legitimacy.⁴⁶

In intergovernmental policy-making regimes, these two domains are systematically separated, because policy decisions are the outcome of a two-level game,⁴⁷ in which governments provide policy output collectively, but take policy input nationally. At the intergovernmental or secondary level, rational governments negotiate agreements on common objectives and policy actions, but, at the primary level, they are constrained by the preferences of their

⁴⁶ F. W. Scharpf, *Governing in Europe: Effective and Democratic?*, Oxford, Oxford University Press, 1999.

⁴⁷ R. D. Putnam, 'Diplomacy and Domestic Politics: the Logic of Two-Level Games', (1988) 42 *International Organization*, pp. 427-60.

home constituencies. In conformity with principal-agent models, national governments have some margins of autonomy, within the constraints set by the nation state. This relative autonomy allows them to seek 'win-sets' for solutions, which simultaneously accommodate both the preferences of national constituencies and of their Council colleagues. National governments may decide to sacrifice some input legitimacy if they consider that the output will ultimately be beneficial to themselves and their principal. Output legitimacy could, therefore, compensate for loss of input legitimacy. However, if collective action problems reduce the scope for output legitimacy, as I have argued above, this diminishing return from efficient intergovernmental cooperation needs to be compensated by higher input legitimacy. Hence, the issue of preference formation becomes paramount.

In models of liberal intergovernmentalism, the policy preferences of governments are derived from the social purposes that emerge from societal ideas, interest groups and institutions. They underlie and structure the strategic calculations of policy-makers, who seek to get elected.⁴⁸ In these models, social or societal preferences are *prior* to the preferences of states ('bottom up') and government representatives have to accept them as policy input in order to retain the legitimacy of their power. Different national constituencies have different preferences and governments negotiate with the intention of maximising their utility, taking what their partners do into consideration. Note that, in this system, citizens' preferences are aggregated through *national* deliberation processes, which take place in a fragmented EU polity. The results of these segregated deliberation processes can be modelled by the policy preferences of national median voters. But *across borders, citizens' preferences are not aggregated, because deliberation remains confined to national public spheres.* Hence, there is no European median voter that matters, although the intergovernmental decision may reflect the median voter in the Council. As a consequence, collective preferences are distorted by the most powerful group, i.e., by large member states. National preferences are traded-off by governments seeking compromises,

⁴⁸ A. Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', (1993) 31 *Journal of Common Market Studies*, pp. 473-523; *Id.*, 'Taking Preferences Seriously: A liberal Theory of International Politics', (1997) 51 *International Organisation*, pp. 513-553.

which reflect some overlapping consensus at the secondary level.⁴⁹ Given this framework, preference heterogeneity increases as the Union becomes larger and includes more countries. Hence, in addition to the collective action problems discussed above, the win-sets for feasible policy outcomes are shrinking as the Union becomes larger, and this compounds the perception of a democratic deficit.

Liberal intergovernmentalism can be criticised for not taking into account how societal preferences are transformed by the process of European integration itself. This changes if we ask ourselves how collective preferences and the positions of median voters are formed. The third, cosmopolitan, model for European democracy, mentioned by Eriksen and Fossum,⁵⁰ overcomes the constraint of assuming preferences as being given by recognising that public preferences are formed by deliberation and debates in different *public spheres*, or in, what I call, *epistemic constituencies*. They are epistemic because public debates change individuals' understanding and knowledge of what they want. If these epistemic constituencies remain segregated, they are likely to yield heterogeneous preferences. A fragmented public sphere describes a situation in which different epistemic constituencies deliberate in isolation of each other, so that they become separate communities with different, and sometimes contradictory, comprehensive doctrines and preferences.⁵¹ But, if these constituencies are connected through the exchange of the information and arguments that takes place in public debates, preferences will become endogenous to the European decision level, and national preferences will change over time and converge to some form of European consensus. The win-set of feasible cooperation

⁴⁹ Moravcsik correctly points out: 'Preferences, unlike strategies and policies, are exogenous to a specific international political environment. Thus, for example, the phrase "Country A changed its preferences" in response to an action by Country B misuses the term [...], implying less than consistently rational behavior.' Moravcsik, *supra*, note 25, at pp. 24-25. The concept of 'overlapping consensus' is due to J. Rawls, 'The Domain of the Political and Overlapping Consensus' (1989) 64 *New York University Law Review*, pp. 233-255.

⁵⁰ Eriksen and Fossum, *supra*, note 5.

⁵¹ J. Rawls (*Political Liberalism*, Columbia University Press, 1996) defines *community* as 'a society governed by a shared comprehensive religious, philosophical or moral doctrine' (at p. 42), while 'comprehensive doctrines of all kinds - religious, philosophical or moral - belong to what we may call the 'background culture' of civil society' (at p. 14).

strategies will then expand, as policy preferences between member states converge.

Despite the static assumptions of some intergovernmental models, there is evidence that this convergence does take place, but, as the model of stochastic consensus will demonstrate below, the process is slow in the present day institutional framework.⁵² In the European Union, policy deliberation is systematically – and institutionally – segregated by national borders, because democratic processes are restricted to the nation state. Diverging preferences and policy dissent between member state electorates will, therefore, continue to exist as long as citizen representation at the EU level remains weak. This is why the intergovernmental model with its audit democracy cannot generate significant input legitimacy. But the persistence of preference heterogeneity is also a problem for federalism, and especially for German-styled federalism, which is based upon the subsidiarity principle.⁵³ We therefore need a model that combines the efficiency of centralising federalism, which is generated from direct democratic sanctions with the epistemic efficiency of cosmopolitanism, which does not require preference homogeneity *a priori*.

One solution is European representative democracy. If European citizens could choose a European executive or government when they elect the European Parliament, national public spheres would become connected because candidates and parties would need to form winning alliances across borders in their competition for the European median voter. A unified European epistemic constituency would emerge, because the institutional structures would require deliberation at European level. Thus, the lack of policy debate in today's fractured EU-polity contributes to persistent preference heterogeneity, which affects the effectiveness of policy-making; democracy, in contrast, would increase both the effectiveness, and the (input) legitimacy, of Europe's governance.

⁵² For the full proof of this statement, see Collignon *supra*, note 12, Annex I; S. Collignon and M. Al-Sadoon, 'A Theory of Stochastic Consensus', Center for European Studies (CES), Harvard University, Working Paper, 2006, Working Paper, Harvard CES, available at <www.stefanollignon.eu>.

⁵³ Centralising federalism *à la* Spinelli is, of course, only possible if preferences are *a priori* assumed homogenous because then everyone will agree to the new system.

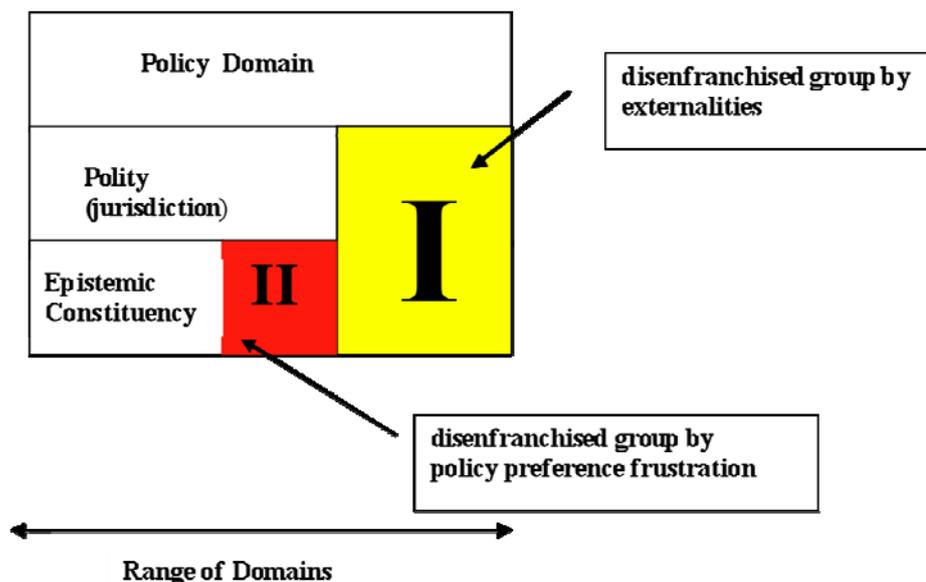


Figure 13.2: Policy-making inefficiencies

The logic of this argument allows us to find institutional solutions to the efficiency-legitimacy trade-off problem. Because *efficiency* measures the *cost* of realising one's preferences, the efficiency of policy-making depends not only on the means of achieving the goals, but also on the preferences themselves. If different people wish to pursue different heterogeneous goals, a centrally determined policy will be more costly in welfare terms, than if they all agreed on the same goal because frustration is a cost. This is where the centralising federalist model has difficulties in generating input legitimacy.⁵⁴ We can illustrate this logic as in Figure 13.2. We distinguish three layers in a collective decision-making process. First, we call *policy domain* the set of all citizens who are affected by specific policy decisions.⁵⁵ Second, the *polity* is the political organisation that makes laws or takes discretionary decisions. At European level, this organisation

⁵⁴ See Alesina and Wacziarg, *supra*, note 2, who derive the legitimacy of the EU's governance from the cost benefit ratio between efficiency losses caused by preference heterogeneity versus the economies of scale from larger economic units. However, their concept of efficiency losses covers only the partial aspect of preference input into policy-making. Yet, what matters is the overall inefficiency cost, which is the combination of input and output effects on policy making.

⁵⁵ Although Collignon, *supra*, note 12, derived the concept of policy domain from simple welfare economic concepts, it bears significant resemblance with Dewey's definition of the 'public'; J. Dewey, *The Public and its Problems*, Athens, Swallow Press, 1954, at p.15.

may take different forms. For example, it may be a unified government, as in the federalist model, or a Council decision made by national governments, as in the intergovernmental model.⁵⁶ Finally, the *epistemic constituency* is the group of citizens, who have the sovereign right to authorise policies, and who provide input into the decision-making process by debating arguments and contribute to public preference formation through public deliberation.

In the ideal case of a democratic nation state, these three layers are congruent, meaning that they cover the same set of citizens. But in the European Union, and to a lesser degree in all modern nation states, this is not necessarily the case, because states are frequently exposed to political externalities. What is special about the EU is the fact that the domain of public goods has become so thick, that the incongruence requires new institutional arrangements. If the European polity is smaller than the policy domain, policy externalities are generated, because decisions made at European level reflect only the partial interests of a subset of EU member states. For example, a national government may insist on 'red lines' that express the preferences of its national constituency, but not those of another member state. It thereby creates external effects for the welfare in the partner country's constituency. We call this externality Type I, or output inefficiency. For example, in negotiations about the EU's Financial Framework, the British government has frequently refused to give up or re-negotiate the rebate that Margaret Thatcher obtained in 1984. Other member states would then have to pay more, or the overall budget would have to be cut, and this causes Type I welfare inefficiencies. Or the French and Dutch referenda rejecting the Constitutional Treaty disenfranchised the majority of citizens who had voted in favour of the Constitution.⁵⁷ Unanimity rules can cause large Type I inefficiencies, because the minority can dominate the majority. But if the set of citizens who are entitled to authorise a government as their representative is the same as the set of citizens who are affected by the decisions of this government, then Type I inefficiencies disappear, and we may speak of *output congruence* of the political system.

⁵⁶ I refer here to the three models described by Eriksen and Fossum, *supra*, note 5.

⁵⁷ Referenda took place in Spain, France, the Netherlands and Luxembourg. The total number of votes in favour was 26 661 082, against 22 668 594, hence, the majority in favour of the constitution was 3 992 488 votes.

On the other hand, if the polity is larger than the epistemic constituency, Type II, or input inefficiencies emerge. Political authorities are taking decisions, which may violate the preferences of some minority group of citizens. For example, if the British rebate for EU budget contributions could be abolished by (qualified) majority voting in the Council, and assuming the British median voter does not want to pay for French or other farmers, the preferences of the majority of British taxpayers are neglected.⁵⁸ Type II inefficiencies result from the policy preference frustration of disenfranchised groups. These inefficiencies increase with the heterogeneity of preferences in a society. For this reason, it is often suggested that subsidiarity or decentralisation could eliminate Type II inefficiencies.⁵⁹ In fact, subsidiarity implies reducing the policy-making competences of the polity to the scope of the epistemic constituency. If the set of citizens who are deliberating about the collective preferences is the same as the set of citizens who are electing their representatives in the polity, then Type II inefficiencies disappear and we may speak of *input congruence* of the political system.

Hence, the issue of electoral franchise is crucial for Type II inefficiencies. Historically, the struggle for democracy was about enlarging the electoral franchise, especially to non-property owners and to women, but, in the intergovernmental system, the franchise is systematically reduced to citizens who belong to a specific nation state. The subsidiarity argument claims that citizens will 'feel closer' to policy-makers at decentralised levels, because local representatives are more 'like them' (they share an identity), and citizens would therefore more easily accept decisions made at national or local level, rather than at the 'distant' EU level. But, the subsidiarity solution has two major drawbacks, leaving aside the fact that there is no evidence that people trust low-level politicians more than higher level ones,

⁵⁸ Another way express this logic is to say that the median voter position of the intergovernmental policy compromise is different from the national median voter. Of course, one may argue that any majority vote frustrates minorities. But in a well-functioning democracy minorities do 'accept' the majority's decision as legitimate, because they consider the system as fair. And fairness implies that the minority is not *systematically* excluded.

⁵⁹ Alesina and Wacziarg, *supra*, note 2; W. Oates, 'An Essay on Fiscal Federalism', (1999) 37 *The Journal of Economic Literature*, pp. 1120-1149.

and also the fact that law and democracy are not about closeness, but about mediating structures, which ensure equality. First, it is clear from Figure 13.2 that, for a given policy domain, decentralising the polity and reducing the scope of the jurisdiction would increase Type I inefficiencies. It would increase the disenfranchised group of citizens that are subjected to externalities resulting from decisions taken by lower level governments. Contrary to what subsidiarity advocates claim, decentralisation may augment the feeling of insufficient political representation, of dominance by remote political forces, and, therefore, the perception of a democratic deficit in a given policy domain, i.e., for all those citizens that are affected by the decentralised policy. Second, as we have seen, by decentralising European policy decisions, the group of decision-makers becomes larger, so that collective action problems will increase, and output legitimacy will suffer. Thus, subsidiarity is not an optimal solution to the EU's legitimacy dilemma. The proper criterion for decentralisation is the size of the policy domain, and not of the epistemic constituency.

But Europe is caught in a dilemma. If one seeks to increase output legitimacy by increasing the decision-making polity to the size of the policy domain, this will only lower input legitimacy, unless the problem of preference heterogeneity is addressed: reinforcing policy cooperation by more intergovernmental coordination would internalise externalities and, therefore, reduce Type I inefficiencies, but intergovernmental compromises almost inevitably shift the negotiated equilibrium away from the preferences of national median voters, and this increases Type II inefficiencies. For example, the Lisbon Strategy improved cooperation between member state governments, and the exchange of information between national administrations has led to the Europeanisation of the European polity (i.e., the polity has become more coherent with the policy domain). But because national epistemic constituencies remain largely isolated, the process of preference convergence remains slow, and policy dissent remains dominant. Thus, the impression of remote policy-making in Brussels without the necessary democratic input by European citizens is reinforced. Intergovernmental policy coordination, therefore, decreases Type I and increases Type II inefficiencies without solving the fundamental dilemma between legitimacy and efficiency. Simply shifting competences for policy-making without simultaneously considering the scope of the

externalities and the size of the epistemic constituency does not change the importance of policy inefficiencies, and the legitimacy of the regime will not improve. Neither subsidiarity nor technocratic policy coordination are capable of supplying legitimacy to European integration. This is Europe's dilemma.

A different solution, which I call *European republicanism*, would simultaneously increase the epistemic constituency to the size of the European polity, and the polity to the size of the policy domain. This solution requires an institution that is *responsible* for the whole range of (exclusive) European public goods, and also *responsive* to the preferences of all European citizens affected by these goods. The only institution capable of fulfilling this function is a democratic government for the EU. It must assume responsibility for the provision of all European public goods (so that the polity covers the full policy domain) and be elected by all European citizens (so that the epistemic constituency becomes European). Hence, instead of taking the trade-off between input and output inefficiencies as given, a European government would *shift the trade-off curve* by extending the epistemic constituency and the polity simultaneously.⁶⁰

The key to shifting the inefficiency trade-off is the creation of democratic structures; citizens, rather than governments, must be the ultimate authority for policy choices. One may think that, in a modern society, this idea imposes itself; it has been a commonplace, since the American and French Revolutions, that *citizens*, and not states, are sovereign. Modern democracy emphasises the individual rights of free and equal citizens, rather than the rights belonging to *peoples*. However, in Europe, the idea of democracy is becoming confused with cultural identities. Individuals are treated *as if they belonged to their country*, and not as if their country belonged to them. This holistic fallacy is the categorical mistake that prevents Europe's governance from being structured efficiently. Once it is understood that individual citizens are the owners of public goods, there is no

⁶⁰ The idea of extending the sphere of government is old and even anchored in Roman Law. Similarly, in the Federalist Paper No. 10, (A. Hamilton, J. Madison and J. Jay [edited by R. Clinton], *The Federalist Papers*, Mentor, Penguin Putnam, at p. 42) Madison argued in favour of a large republic, because it reduces the likelihood of agency capture by sections, i.e., by state coalitions. I take the argument further by reducing the size of sections in the Union to the number of citizens in society.

difficulty in thinking of the republic as '*une et divisible*',⁶¹ in which individuals own different collective goods, just as they own cars and bicycles. In order to manage their European goods efficiently, citizens need to appoint a government at European level; for local goods, they use local governments. However, shifting the trade-off curve will only work if citizens can express their ownership rights in full and equal autonomy, and this implies that they can appoint a representative government as their agent. A centralised EU government must be based upon unambiguously democratic institutions. But how realistic is it to establish such democratic governance for Europe?

Why a democratic government is necessary for the EU

In this part, I will first discuss the shortcomings of European integration without democracy. The second section will discuss two concepts of deliberative democracy. I will argue that collective preference formation is crucial for reconstituting democracy and this gives a republican flavour to the cosmopolitan model of European democracy that was discussed by Eriksen and Fossum.⁶² The chapter terminates with a discussion of objections raised against the idea of a European Republic, and how this idea fits into the three models of intergovernmentalism, federalism and cosmopolitanism.

Europe without democracy

Most analytic work about the European Union focuses on what the Union is, and what it is not. Rarely do scholars make normative prescriptions, unless they write policy papers. However, all social institutions have normative content,⁶³ and, if functional norms are mutually inconsistent within a given system, they will, in the long run, undermine society's capacity to sustain and reproduce itself. Although the European Union's capacity to function is not (yet) in question, normative contradictions manifest themselves today in the EU's crisis of legitimacy and could threaten the system's sustainability. If I am now turning to the normative necessity of setting up a European government, I do not wish to make policy

⁶¹ T. Chopin, *La République une et divisible: Les Fondements de la Fédération américaine*, Paris, Plon, 2002.

⁶² Eriksen and Fossum, *supra*, note 5.

⁶³ J. R. Searle, *The Construction of Social Reality*, Harmondsworth, Penguin, 1995.

recommendations. Instead, my purpose is to demonstrate how the contradictions, which are causing the legitimacy crisis, can be normatively resolved while preserving the system's overall intention of securing peace and prosperity, and freedom and democracy. In other words, the necessity of a European government is derived from the overall objective of European integration. If this objective is abandoned, a subject which is beyond the scope of this chapter, there is no longer a necessity for a European government.

My solution to the dilemma of legitimacy in the European Union is strikingly simple. It sets up a *political union* that realises the fundamental principles of *democracy*; I have called it the *European Republic*. This political union consists in appointing a European government responsible for administering those (and only those) European public goods which affect *all* European citizens, and this government would be subject to the general suffrage of all Europeans, thereby making sure that it acted in accordance with the preferences of European citizens. This solution is not the federal model, as I will show below. It describes a republican approach to European integration, because it builds upon the participation of free and equal citizens, and not upon cooperation between governments. It also rejects the holistic idea that citizens can be seen as culturally homogenous representative agents of nations. Democracy is a regime in which *citizens as the sovereign* make political choices and authorise governments to act in their name.⁶⁴ This implies that people (citizens) have authority, while governments have power. Traditionally, this concept of democracy has been realised in the framework of nation states, and, as a consequence, democracy has become confused with the identity of the *demos* and is no longer understood as an instrument for defending the interests of citizens. But this association is in no way necessary. If we derive the nature of the republic from the existence and the scope of public goods (the *res publica*), we describe republican democracy as a regime in which people (the principal) control governments (their agents).⁶⁵ Governments are assigned functions; they are not representations of identity feelings.

⁶⁴ The sovereignty of the people does not, therefore, only show up in a 'constitutional moment', but also every time citizens can express their will by voting, and, indeed, every time the representative agents refer to the people when making their policy decisions.

⁶⁵ This interpretation also clarifies why even regimes with constitutional monarchs may be called *republics*.

Moving to the European Republic and appointing a democratic government for the EU would return authority and power to where it belongs: European citizens are the ultimate authority; the European government exercises power as their agent. Notice, however, that such European democracy does not *replace* the traditional nation state or member state governments, which remain in charge of all the policy issues that affect their citizens at national level. The European Republic is a complement, and not a substitute, to the nation state, because European public goods are complementary to national goods. Nevertheless, there will be a range of public goods that cannot be assigned exclusively to either the European or the national level. For example, the organisation of social security is a national matter, but it may affect conditions of fair competition, which are a European issue. Such overlapping not only necessitates cooperation between nation states and the European Republic, but it will also require a transformation of the traditional nation state. Hence, nation states become member states in the European Republic.⁶⁶

The republican approach to European democracy is a form of cosmopolitanism, because it recognises the importance of political communities and states, without assigning priority or exclusiveness to them, and rejects the ‘one-sidedness and limitedness of “reasons of states”’.⁶⁷ Our version of republican cosmopolitanism is, however, closer to the Stoic than to the Kantian account, because it postulates the ‘public use of reason’ with Kant, but it is also aware of people’s cognitive limitations, their bounded rationality, which assigns a role to local *as well as* wider communities. I will return to this issue in the next section. At this point, we simply derive the nature of the republic from the nature of the *res publica*, the public goods.⁶⁸

⁶⁶ For example, the French V Republic may become the VI Republic in the context of the European Republic. This VI Republic must specify the rules by which the national polity interacts with the polity in the European Republic. See S. Collignon and C. Paul, *Pour la république européenne*, Paris, Odile Jacob, 2008.

⁶⁷ D. Held, ‘Principles of Cosmopolitan Order’, in G. Brock and H. Brighouse (eds), *The Political Philosophy of Cosmopolitanism*, Cambridge, Cambridge University Press, 2005.

⁶⁸ For the distinction between Stoic and Kantian cosmopolitanism, see Held, *supra*, note 67. For a value-driven, rather than a functionalist version of republican cosmopolitanism, see J. Bohman, ‘Republican Cosmopolitanism’, (2004) 12 (3) *The Journal of Political Philosophy*, pp. 336-352, at p. 10.

The argument for establishing a true representative democracy in the European Union refers to the basic democratic *principle of congruence*, which says that a government is accountable to citizens for all actions that affect them. I have shown above that this principle implies the absence of Type I and II inefficiencies. Habermas has formulated it like this:⁶⁹

The democratic constitutional state, by its own definition, is a political order created by the people themselves and legitimated by their opinion and will-formation, which allows the addressees of law to regard themselves at the same time as the authors of the law.

Consequently, if there are policy tasks that affect all European citizens, democratic theory postulates that they, the citizens, and not national governments, must have the ultimate authority over deciding what needs to be done. This ultimate authority is their sovereignty. In the European Republic, voters must be able to exert their authority by choosing between competing parties and their proposed EU-policy bundles. Political competition would not only allow voters to accept or reject leaders, but it would also promote policy debate, deliberation, innovation and preference change.⁷⁰ In today's European Union, the process of political contestation and European-wide deliberation is severely constrained, because policy choices are made by intergovernmental bureaucracies, and citizens provide little or no input into these public choices.⁷¹

The problem is institutional. The European Commission, effectively a weak European executive, is nominated by the European Council of

⁶⁹ J. Habermas, *The Postnational Constellation, Political Essays*, Oxford, P, MIT Press, 2001.

⁷⁰ S. Hix, *The End of Democracy in Europe? How the European Union (As Currently Designed) Restricts Political Competition*, LSE Working Paper, LSE, London, 2003, available at http://personal.lse.ac.uk/hix/Working_Papers/HixEnd_of_Democracy_in_Europe.pdf.

⁷¹ It is true that NGOs and lobbying groups provide feedback and technical knowhow for European policy makers (for a discussion, see S. Collignon, and D. Schwarzer, *Private Sector Involvement in the Euro. The Power of Ideas*, London, Routledge, 2003). But the segregated debates in such epistemic *communities*, even if they are European epistemic communities, disenfranchise ordinary citizens and prevent the emergence of an epistemic *constituency* that defines a democracy.

the heads of states and governments, and, although the European Parliament (EP) has to approve the nomination of its members, the Commission is less concerned with obtaining political party support in Parliament, than with ensuring the consent from important governments. Essential legislation is made in the European Council, with the EP as a co-legislator, but members of parliament rarely dare to go against the *explicit* will of their national governments.⁷² Thus, European political orientations do not systematically reflect the political majorities in the European Parliament, and are therefore not controlled or controllable by EU citizens. Because European elections do not allow citizens to choose an EU-government, they remain of 'second order', and the voters are more likely to express dissatisfaction with their national government in EU elections.⁷³ National governments control political orientations⁷⁴ and political debates reflect the interests of states and national political classes. Thus, Europe's epistemic constituencies are national and segregated. Partisan debates about what is the proper direction and orientation of European policies are framed in terms of opposing state interests, and not in terms of citizen's interests, and the electoral choices of citizens reflect national policy debates. Thus, the intergovernmental governance is a major factor which contributes to the democratic deficit and to the growing de-legitimisation of EU institutions.

⁷² There is evidence that the ideological left-right dimension dominates voting in the European Parliament (see A. Noury, 'Ideology, Nationality and Euro-Parliamentarians', (2002) 3 *European Union Politics*, pp. 33-58) and that national parties dominate votes in the EP party groups (See S. Hix, 'Parliamentary Behavior with Two Principals: Preferences, Parties, and Voting in the European Parliament', (2002) 46 *American Journal of Political Science*, pp. 688-698. This dependence on national parties can be used by governments to force their own MEPs to vote against the European party line, as was witnessed when the Portuguese and Spanish Socialist governments requested their MEPs to vote for the conservative Barroso as Commission president in 2009.

⁷³ S. Hix, A. Noury and G. Roland, *Democracy in the European Parliament*, LSE Working Paper, LSE, London 2005, at p. 31, available at: <http://personal.lse.ac.uk/hix/Working_Papers/HNRDemocracy_in_the_EP-11July05.pdf>.

⁷⁴ The Treaty of Lisbon explicitly stipulates: 'The European Council shall provide the Union with the necessary impetus for its development and shall define the general political directions and priorities thereof. It shall not exercise legislative functions' (European Union, 2008).

For many years, the existence of a democratic deficit has been the subject of heated debates among scholars.⁷⁵ But the issue of democracy goes further than whether citizens can choose policies *at European level*. In fact, intergovernmentalism perverts democracy even *within the nation state*. Democracy is 'perverted' if governments can escape domestic mechanisms of democratic accountability.⁷⁶ But this is precisely what happens when governments use the relative autonomy of their agency status in negotiating with other governments. Clearly, agency problems and the question of how to monitor governance are as old as representative democracy itself, but, as we have seen above, the EU is unique, in that it institutionally generates a gap between citizens' preferences and policy decisions made by governments. Because the intergovernmental compromise is a Nash-equilibrium, governments can justify this escape from accountability by claiming that 'there is no alternative' (TINA), and that 'pacta sunt servanda'. When legislation is issued by the European Council or the Council of Ministers, national parliaments must endorse it to make it enforceable law. Governments argue that their parliaments 'have to' implement the agreed policies, because, otherwise, the whole European edifice would fall apart. But this argument marginalises national policy deliberation and empties debates in national parliaments of any substantial content. By 'perverting' domestic politics in this way, governments lose the argument that cooperation between member states is legitimised by the 'indirect' democracy in the Council, where only democratic governments are represented. The reason for this perversion of democracy is, therefore, inherent in intergovernmentalism. Demands that national parliaments should assume greater responsibility for European policies, as recently formulated again by the German Constitutional Court,⁷⁷ cannot solve the problem, because they reproduce the subsidiary dilemma discussed above. The fundamental

⁷⁵ For references see J. H. H. Weiler, U. R. Haltern and F. C. Mayer 'European Democracy and its Critique', in J. Hayward (ed.) *The Crisis of Representation in Europe*, London, Frank Cass, 1995; F. W. Scharpf, *supra*, note 46; A. Moravcsik, 'In Defense of the "Democratic Deficit": Reassessing the Legitimacy of the European Union', (2002) 40 *Journal of Common Market Studies*, pp. 603-634; Follesdal and Hix, *supra*, note 16.

⁷⁶ D. Wincott, 'Does the European Union Pervert Democracy? Questions of Democracy in New Constitutionalist Thought on the Future of Europe', (1998) 4 *European Law Journal*, pp. 411-428.

⁷⁷ Bundesverfassungsgericht, 2009. 'Entscheidung zum Lissaboner Vertrag'; BVerfG, 2 BvE 2/08 vom 30.6.2009, Absatz-Nr. (1-421), available at <http://www.bverfg.de/entscheidungen/es20090630_2_bve000208.html>.

problem with democracy in Europe is that, *as a rule*, citizens have no choice over the policy output that the intergovernmental European governance system produces at European level.⁷⁸ As a consequence, European citizens are not the authors of the law although they are subject to it.⁷⁹

Overcoming preference heterogeneity

If the principle of congruence is to be applied to the European polity, European citizens must authorise the agent that administrates their public goods, i.e., they must be able to elect a government by universal suffrage. We must now discuss the conditions under which such government would be legitimate. As Bohman rightly argues, it would be naïve to think that democracy can bring about its own pre-conditions.⁸⁰

One objection to creating a European government is the argument that the variety of many nations and the people in Europe with different beliefs, ideas, identities, and preferences, prevents imposing a single set of policies legitimately. There are too many *demoi*, but no single *demos*. Without a pre-existing *demos*, the federalist dream of a European state also vanishes. Some thinkers have drawn the conclusion that the European construction must accommodate the persistence of the many *demoi* in Europe.⁸¹ However, preference heterogeneity is a matter of time. In the short run, beliefs, opinions, and preferences are given. But, over time, they change. As people learn from each other, their views converge. When new ideas appear, the (potential) consensus is 'shocked', and noise and dissent emerge. I call this process stochastic consensus.⁸²

⁷⁸ The salience of the problems disappears when the system produces output legitimacy, because citizens are then happy with what member state governments decide.

⁷⁹ I am aware that agency problems may also pervert classic democratic systems in nation states. How to minimise this danger is a matter for constitution writing. But in the EU, democracy-perverting inefficiencies are systematically produced by intergovernmental policy cooperation.

⁸⁰ J. Bohman, 'Democratizing the Transnational Polity. The European Union and the Presuppositions for Democracy', RECON Online Working Paper 2007/02, ARENA, Oslo.

⁸¹ Bohman, *supra*, note 80; K. Nicolaïdis, 'The New Constitution as European "Democracy"', (2004) 7 *Critical Review of International Social and Political Philosophy*, pp. 76-93.

⁸² Collignon, *supra*, note 12; Collignon, *supra*, note 53.

What is important for the foundation of political authority is, first of all, under what conditions political preferences converge to an equilibrium, which we may call the 'general will'. And, secondly, we need to know how long it takes for this general will to emerge and what determines the speed of preference convergence.

These issues are only addressed by the republican-cosmopolitan model of European integration. The intergovernmental model can ignore them, because it assumes preferences as being exogenously given. The static approach to collective preferences pushes the project of European integration back to intergovernmental cooperation, to representative democracy in the nation state with accountability as 'audit democracy'. The federalist model assumes a federal identity *ex ante* and appeals to symbolic acts of affirming this identity without being able to demonstrate how consensus will come about. In our republican model, the communitarian identity of the *demos* is the *consequence* of public deliberation, because the consensual identity emerges from the process of pondering the weights of arguments, and not just from the values and beliefs alone that individuals hold.⁸³ An individual will change his or her beliefs if he or she thinks another person has better arguments. The weights of arguments are not necessarily equal, although all individuals in a consensual community are likely to attach the same weight to the same argument.⁸⁴ In fact, this is the reason why they believe themselves to be 'identical', i.e., possessing an identity, despite being very different individuals. I will now show that establishing a democratic government is a necessary condition for policy preferences to converge towards greater homogeneity.⁸⁵ The key to this argument is a re-interpretation of the theory of deliberation.

⁸³ We therefore propose an individualistic concept of community, where the comprehensiveness of ideas emerges from individual *choices* (the decision and assignment to trust), and not from community *membership* and the assignment of *status* to individuals, as it is usually done in holistic-communitarian conceptions.

⁸⁴ K. Lehrer and C. Wagner, *Rational Consensus in Science and Society*, Dordrecht, D. Reidel Publishing Company, 1981.

⁸⁵ A necessary and sufficient condition would be a democratic constitution that protects individual and human rights and ensures the practical validity of principles of justice.

How are collective preferences generated? Why are they often heterogeneous over different groups? For economists, preferences are exogenously given.⁸⁶ For liberal realists such as Moravcsik,⁸⁷ preferences change with structures, but structural change remains exogenously determined. There is, therefore, little that institutions or human agency can do to change them. In contrast, theories of deliberative democracy explain preference change as a consequence of communication.⁸⁸ The notion of deliberative democracy is rooted in the Kantian cosmopolitan ideal of the democratic association of rational individuals, in which the justification of the terms and the conditions of this association proceeds through public argument and reasoning among equal citizens.⁸⁹ The most convincing argument wins. This is useful because it allows public choices in terms of non-instrumental rationality, and makes it possible to see preferences not as static pre-conditions for choice, but as the outcome of a dynamic process.⁹⁰ We need to understand the conditions under which this process becomes possible, and the conditions which structure the flow of information and, therefore, the speed of preference change. If the theory of deliberative democracy could help us to understand *how preferences change*, it will supply us with reasonable arguments as to why and how the epistemic constituency of the European Union could be enlarged. As we have seen, this enlargement is a necessary condition for restoring the principle of congruence and solving the legitimacy problems in the EU. This makes the cosmopolitan model attractive for reconnecting democracy with Europe.

The theory of deliberative democracy, as discussed in the literature, has some well-known weaknesses. What matters for us, here, is that it postulates the existence of a public sphere as a *pre-requisite* for democracy and sets ambitious standards for the conditions under which deliberation can acquire universal validity. In the European context, reality is seen wanting when compared to those standards.⁹¹

⁸⁶ G. Becker, *Accounting for Tastes*, Cambridge, Harvard University Press, 1996.

⁸⁷ Moravcsik, *supra*, note 25.

⁸⁸ Habermas, *supra*, note 22.

⁸⁹ J. Habermas, 'Further Reflection on the Public Sphere', in C. Calhoun, (ed.), *Habermas and the Public Sphere*, Cambridge, The MIT Press, 1992, at p. 446.

⁹⁰ J. Heath, *Communicative Action and Rational Choice*, Cambridge, MIT Press, 2001.

⁹¹ U. Liebert and H.-J. Trenz, 'Between Norms and Practices of the Public Sphere: Assessing the Infrastructure for Democracy in Europe', in E.O. Eriksen and J. E.

Thus, if the European Union lacks an integrated public sphere, then, there can be no European democracy. The argument hinges on the assumption that the public sphere is founded on some form of cultural or constitutional identity,⁹² without which individuals would not accept political equality. What the argument boils down to is: 'we' do not want to be outvoted by 'them'. The issue becomes important in the context of integrating 'big' and 'small' countries into a European democracy. If preferences were given and unchanging, the bigger countries will always dominate the smaller, or the tyranny of the majority would oppress minorities. This is one of the most powerful arguments against centralising federalism.

But, if preferences change because individuals discuss arguments in favour or against a given policy, the identity dissolves and new identities are created, because people change their views, attitudes, values and preferences. However, the willingness to form beliefs on the basis of information communicated to others, and the capacity to communicate information to others with the expectation that it will be believed, requires a *generalised system of trust*.⁹³ Hence, what matters for policy consensus, i.e., for the acceptance of political choices, is an institutional framework that allows citizens to debate policy issues and ponder the weight of arguments which other people put forward. In other words, trust is generated in the process of communication and this leads ultimately to agreement. Democracy does not require national or cultural identity as a pre-requisite for setting up a common government; it needs institutions that generate debate and empower public audiences to turn to *broad constituencies* for legitimating collective decision-making.^{94,95}

Fossum (eds), *RECON – Theory in Practice*, ARENA Report No 2/09, Oslo, ARENA, 2009.

⁹² J. Habermas has called this attachment to constitutional identity 'constitutional patriotism'; J. Habermas, *Between Facts and Norms*, Cambridge, MIT Press, 1996.

⁹³ Heath, *supra*, note 90, at p. 83ff.

⁹⁴ Liebert and Trez, *supra*, note 91, at p. 166.

⁹⁵ Democracy needs the broadest possible constituency, namely all citizens concerned by policy decisions, i.e. in the policy domain. This is why deliberation in restricted epistemic constituencies, for example through committees, the Open Method of Coordination in the Council or in the civil society of NGOs, cannot become a substitute to genuine democratic debate. For a discussion of supra-national deliberation through committees, see the different contributions in E.O. Eriksen, C. Joerges and J. Neyer (eds), 'European Governance, Deliberation and the Quest for Democratisation', ARENA Report 02/2003, ARENA, Oslo.

If, in Europe, there is no integrated public sphere, it must have institutional reasons. Most of the academic literature on the European public sphere argues that the fault is on the supply-side: there are no actors, there is no language, no media, and no formal or informal institutions which could carry the deliberative process across the continent. But the supply-side only responds to the demand-side. Gathering information, participating in public debates is costly in terms of time and money. Bearing these costs only makes sense if one can reasonably expect to gain from it, be it in terms of better policy decisions, swinging majorities in favour of one's own preferences, or simply because understanding the world improves one's standing with others. Participation in political debates and deliberative processes depends on the balance of the costs and benefits necessary to make choices and decisions. When political institutions do not allow citizens to make political choices, the benefits from participating in trans-European debates are close to zero. Hence, if people do not bother about policy deliberation, it is because the benefits that they expect are insignificant, given how the EU polity works.

In a democracy, sovereign citizens authorise governments to act on their behalf. What they authorise, and what they reject, is the *object* of public debates among free and equal citizens. Europeans are equal in their status as owners of European public goods, but not because they all think alike. They have shared interests, but distinct identities. If European citizens could exercise their sovereign rights over European public goods and take sovereignty away from states, their preference heterogeneity and different 'identities', which are the main arguments for subsidiarity, become less of a problem for democracy. However, this argument is only valid if we can show how the process of political deliberation within an integrated polity would contribute to preference convergence. One way to make this point is to trust a Kantian view of procedural rationality: people convince each other by the power of the best argument.⁹⁶ But this approach has been criticised for its idealistic and unrealistic assumptions.⁹⁷ The theory of

⁹⁶ C. Calhoun, 'Introduction: Habermas and the Public Sphere', in C. Calhoun, (ed.), *Habermas and the Public Sphere*, Cambridge, The MIT Press, 1992.

⁹⁷ C.R. Sunstein, 'Deliberative Trouble? Why Groups go to Extremes', (2000) 110 *The Yale Law Journal*, pp. 71-119; L. Sanders, 'Against Deliberation', (1997) 25 *Political Theory*, pp. 347-76; J. Knight and J. Johnson, 'Aggregation and Deliberation: On the Possibility of Democratic Legitimacy', (1994) 22 *Political Theory*, pp. 277-296.

stochastic consensus⁹⁸ provides an alternative to the idealistic weaknesses of deliberative democracy.

In this framework, consensus about collective preferences is the result of real, and not ideal, communication processes which are always going on in every society. This realism shifts the focus from substantial arguments to procedural conditions of communication. Stochastic consensus on policy preferences, i.e., convergence on the *likelihood* that proposed policies are accepted by citizens, is seen as the *expected equilibrium* of the views or preferences that individuals are likely to adopt under conditions of bounded rationality. It emerges, as the communicative inter-actions between individuals will influence the readiness of citizens to accept specific ideas.⁹⁹ There are two necessary and sufficient conditions for this stochastic consensus to emerge. First, *bounded rationality* implies that individuals are aware of their limited cognitive resources. They do not know *everything* perfectly, and are, therefore, willing to learn from others, whose cognitive capacities they evaluate and whose judgements they trust. They are, therefore, open to being influenced by those whom they trust, although the likelihood of accepting another person's view may vary from issue to issue and from person to person. Nevertheless, people learn from each other, not for altruistic motives, but because it serves their interests, given their limited cognitive resources. Second, *connectedness* implies that information circulates through the specific patterns of connection and trust that exist between persons in the society. Individuals gather information that is useful for them through networks of people. What one person does not know may be learned through accessing another person he or she trusts, even if it is indirectly through a chain of connections. The connectedness condition is fulfilled when all the individuals of a society are directly or indirectly connected through a network of relations, or, in the same manner, through a network of influence. This is a fairly simple and realistic assumption, for if it were not fulfilled, society would split into separate units. These two assumptions overcome the highly stylised conditions of ideal discourse settings, which characterise the Kant-Rawls-Habermas model of rational deliberation. As Lehrer and

⁹⁸ Collignon, *supra*, note 12.

⁹⁹ See Collignon, *supra*, note 12, at p. 135, for a simple and practical example for policy deliberation on economic policies in a democratic setting.

Wagner have shown,¹⁰⁰ consensus will emerge as individuals learn from each other, because, if these conditions are fulfilled, rational people *cannot but agree*. If they have doubts about the appropriateness of their own preferences, intellectual coherence requires that they take each other's views into account and that makes them converge to consensus in the process of exchanging information. This is the core idea of stochastic consensus.

In this model, *institutional structures are important for the speed by which consensus emerges*. This is where stochastic consensus adds to the republican model a degree of practical realism that purer models of cosmopolitanism do not provide, for it integrates the emergence of communities into the broader process of preference convergence in society. If the process of convergence to consensus is slow, noisy dissent prevails in the public sphere. It looks as if preferences are quasi-permanent and exogenously given. This makes the acceptance of centralised policy decisions at European level more difficult. The denser the network by which individuals are connected is, and the flatter the hierarchies of communication are, the faster information will spread across society. And the more rapidly information travels and influences people's opinions, the faster consensus will emerge. In today's non-democratic system of European policy-making, policy debates are concentrated in closely connected local or national communities which elect their 'own' government, while cross-border connections are loose. Thus, political life in nation states is characterised by a dense network of communication and the resultant local consensus is the foundation for national policy identities. In contrast, the flow of information between countries is strongly concentrated in the intergovernmental transactions of policy networks, and this fact slows down the flow of information between the populations in different member states. This structure of communication leads to the rapid emergence of local consensus in national political community, but only to very slow consensus among European citizens. As a consequence, political preferences seem to be tied to communitarian identities, and the likelihood of accepting common policies is low. However, the structure changes in the European Republic. Democratic institutions could facilitate and accelerate the emergence of policy consensus across the European Union, because people need to choose a government on Election Day

¹⁰⁰ K. Lehrer and C. Wagner, *supra*, note 86.

and in order to make a decision, they will talk, connect and deliberate with people whom they trust and to whom they are connected. This flattens the hierarchy of communication. On the other hand, political candidates and parties need to win a majority of voters, and this forces them to build cross-border political alliances around (reasonably) coherent programmes. Candidates seek to influence voters in electoral campaigns. So, they must communicate with voters, and citizens will demand information and explanations prior to making up their minds upon whom they should elect. If European citizens must choose a European government, this task will connect them, not by civic virtue but by selfish interest, and, as a consequence, the emergence of policy consensus will be more rapid. A European government could not exist without cross-border communication. Hence, democratic institutions and elections at EU level matter, because they provide choices that foster mutual respect across borders. It is precisely this that Jean Monnet sought to achieve.¹⁰¹

Collignon and Schwarzer have described how private citizens and NGOs contributed to the enhancement of trust across borders during the creation of European Monetary Union.¹⁰² But such civil society structures are lacking the permanence of constitutional arrangements. They form what Eriksen called 'weak public spheres'.¹⁰³ By establishing citizens' rights to vote and to choose their government, democracies anchor democratic debates and deliberation in the citizenry. It has often been observed that the emergence of the public sphere has been historically correlated with that of the nation state. But, in fact, the public sphere only developed once the absolutist state turned into a representative democracy. The right to elect a European government would remove the institutional separation which today inhibits the emergence of an integrated public sphere and prevents the circulation of ideas and information in European policy debates. The democratic right to choose a government establishes the European public sphere.

¹⁰¹ See the quotation at the beginning of the chapter.

¹⁰² Collignon and Schwarzer, *supra*, note 71.

¹⁰³ E. O. Eriksen, 'Conceptualising European Public Spheres', in J. E. Fossum and P. Schlesinger, *The European Union and the Public Sphere. A Communicative Space in the Making?*, London, Routledge, 2007.

In my books *The European Republic. Reflections on the Political of a Future Constitution*¹⁰⁴ and *A Theory of Stochastic Consensus*,¹⁰⁵ I have simulated some stylised facts to study the implications of the governance structures in the European Union for the speed by which policy consensus will emerge.¹⁰⁶ I have distinguished three models: in the intergovernmental, model citizens are directly related to their government, but only their governments communicate across borders through diplomatic channels. In the second model, intergovernmental connections are strengthened by communication through the work of the European Commission. Finally, in the European Republic, a European government is directly accountable to its citizens and to member state governments. Policy dissent is measured as the standard deviation of preferences at any point in time from the latent consensual equilibrium. The results of these simulations show that the likelihood of more rapid speed of preference convergence is significantly increased if a European government is accountable to all European citizens. Policy dissent dies out most quickly under the regime of the European Republic and is most persistent under pure intergovernmentalism. Thus, the theory of stochastic consensus provides useful theoretical underpinnings for the argument that setting up a democratic government at European level and creating a political union with full democracy would help to overcome the problem of preference heterogeneity.

Objections

The project of the European Republic raises many questions. Is the idea not utopian? Does it not lead to a dreadful and dreaded European super-state? Is it not federalism, and threatening the existence of European nation states? Is the European Republic a Leviathan that stifles markets? Will it end democracy as we know it? In response to such questions, I will now match the concept of the European Republic against the three models of European integration developed by Eriksen and Fossum.¹⁰⁷

The intergovernmental model sees European integration as a task for the member state governments. It assumes that *states are sovereign* and

¹⁰⁴ See *supra*, note 12.

¹⁰⁵ See *supra*, note 52.

¹⁰⁶ Collignon, *supra*, note 12; Collignon, *supra*, note 52.

¹⁰⁷ Eriksen and Fossum, *supra*, note 5.

governments will cooperate when they reap the benefits that exceed the cost from the given cooperation. Integration is legitimised by the good results that it produces for citizens. Our republican approach agrees with this reasoning for the limited range of inclusive public goods. For the first two or three decades of European integration, strategic complementarities generated incentives which were able to drive the process of European construction. But, since the implementation of the single market and the Treaty of Maastricht, this is no longer the case. A whole new range of exclusive public goods has been created and here the old governance logic no longer functions properly. Strategic substitutability prevents the optimal provision of European public goods. Thus, the intergovernmental model is no longer an efficient method for administering a large range of European public goods today. But the republican approach to European integration not only criticises the sub-optimal provision of public goods, and, therefore, the reduced output-legitimacy that this model yields, it also demonstrates that intergovernmentalism cannot transcend the important preference heterogeneity between different member states. Diverging policy preferences between member states hamper the efficiency of the policy-making process itself. But, in addition, intergovernmentalism undermines the democratic process at both national and European level. This is a normative violation of the big picture of European integration, namely, that one of its objectives is the preservation of freedom and democracy. Intergovernmental policy-making with a technostructure of remote-controlled, opaque and sly bureaucrats resembles more to the *Ancien régime*, in which a paternalistic aristocracy pretended to know best what was right and good 'for the people', than to a modern democracy. Today, the perception of being ignored as citizens is the root-cause of the popular disenchantment that fuels euroscepticism.¹⁰⁸

European federalists seek to remedy the efficiency problems of the intergovernmental model by more policy delegation to the European level and, ultimately, by setting up a federal state. This is the second model in the Eriksen-Fossum framework. Our republican approach argues that the centralising federalist solution is unnecessary and inappropriate for the range of inclusive public goods, because, in this

¹⁰⁸ R. Teboul, *Contre l'Europe: l'après referendum*, Paris, L'Harmattan, 2005, at pp. 14-16.

case, sufficient incentives exist for the voluntary cooperation between national governments to produce the benefits of European public goods. Centralising federalism would, however, improve the governance of exclusive European public goods. In certain policy areas, such as monetary, trade, or competition policies, the federalist logic already applies today. However, there are flaws in federalism, which become apparent when one turns from output legitimacy to input legitimacy. Centralising federalism requires a highly developed sense of collective identity *a priori*, and there is little evidence for it. Decentralising federalism promotes the concept of subsidiarity in order to accommodate the prejudices (in the literal sense of the word) of the existing local communities and nation states. In the first case, preference heterogeneity is statically preserved. The holistic communitarianism of regional identities, combined with the principles of subsidiarity, prevents efficient policy-making as well as democratic accountability. In the second case, the federalist model fails, because citizens usually identify more with national, than European, traditions and preferences. Nevertheless, the European Republic shares with federalism the assignment of different government levels. But while federalist ideology derives this assignment from epistemic arguments of identity, the European Republic follows the functionalist logic of public goods.

The European Republic is not the same as a federal state. While European federalism seeks to integrate people's identity, the European Republic articulates common interests, and acknowledges that citizens can have *any identity* that they wish to adopt and at the same time share common interests. Citizens are simultaneously the sovereigns for decisions taken at the level of the Union and at the level of member states. The fundamental principle is that individual citizens are the ultimate authority for decision-making. Governments, be they at regional or federal level, are citizens' agents charged with administering public goods that affect them through different scopes of externalities. However, the European Republic is not a state, for it does not require the thickness of norms and traditions that characterise states. Nor does the European Republic have to recreate the coercive power apparatus, which is typical of states. It is a republican version of federalism, because it realises the basic democratic principle of congruence, whereby different groups of citizens become the authors of precisely those laws that are addressed to them: or, to put it differently, everyone shares the right to

authorise exactly those policies, which have an effect on his or her life. Citizens collectively control fundamental policy orientations and thereby become the masters of their destiny. But policing these policies can, to a large degree, be delegated to the member states. Europe is built on nation states. Their roles and identities are different from the states in the United States of America, and Europeans have long and varied historical traditions of government and policy-making. These differences need to be addressed when designing the European republic.¹⁰⁹

The European Republic is also no superstate, because it does not appeal to the concept of state. As MacIver pointed out, one can distinguish between the government and the state, when constitutional law binds the legislator in the making of law.¹¹⁰ The European Republic requires a European government for policy-making, but it does not focus on the coercive functions of the state, which can be delegated to the member states. Contrary to the concept of the unitary state that prevails in the UK or in the French Republic, the European Republic recognises that the republic can be 'one and divisible' because there are many different public goods that do not affect all citizens equally. This fact allows us to see the European Republic as an articulation of the third model of European integration, which Eriksen and Fossum call cosmopolitan.¹¹¹

The cosmopolitan model has the advantage that is rigorously founded in methodological individualism and thereby avoids the fallacies of political holism,¹¹² which prevents European citizens from defending their interests beyond the nation state. Individual citizens seek to advance the common good by deliberating publicly about what is best for them. They are not inhibited to opt for what is reasonable by considerations of identities, traditions, *Sitte* (Hegel), or by the authority of states. However, the primordial focus on public deliberation can backfire when insufficient attention is given to the institutions of democratic *choice*. Associating citizens through NGOs and other civil society organisations to the policy deliberation of

¹⁰⁹ For fuller details of how to conceive the European Republic, see Collignon and Paul, *supra*, note 66.

¹¹⁰ R. M. MacIver, *The Modern State*, Oxford, Oxford University Press, 1926, at p. 277.

¹¹¹ Eriksen and Fossum, *supra*, note 5.

¹¹² K. Popper, *The Open Society and its Enemies*, London, Routledge, 1995.

élites, without giving them the right to choose and elect, can become a manipulating device to reduce dissatisfaction in the intergovernmental model of policy-making. The republican approach overcomes this handicap by placing deliberation at the broadest possible constituency. At the same time, our concept of European republicanism is non-communitarian and anti-holistic, because it recognises individuals as the owners of public goods. As owners, they have a right to appoint governments to manage their collective property. They are the sovereign, governments are their agents. This is the modern conception of democracy.

The European Republic covers more than many single public goods. It bundles them to the *res publica*. This is necessary because the range of externalities has grown so large and become so diversified that the usual mechanisms of policy coordination are no longer capable of coping. The traditional nation state has become dysfunctional in the European Union. Constructing the European Republic is a device for internalising external effects by democratic choice mechanisms.

This is why the European Republic is not a Leviathan. It delegates policies to the European level in accordance with the nature of specific public goods. The question of 'who is affected by policy decisions' decides which jurisdiction should be competent. This criterion solves the problem of proximity, which is often used to justify decentralising subsidiarity: if citizens know that they are affected by European policy decisions and can influence these decisions, then Europe is not distant. Furthermore, only exclusive public goods need to be fully within the domain of the European government, while inclusive public goods may well be provided by voluntary policy cooperation amongst the individual member states. For the rest, the question of how much government interference is appropriate for maximising the welfare of citizens is a matter of public debate and political controversy, and will be decided by party competition and the votes of the citizens.

The republican approach to European integration is not utopian, but has practical implications. For example, the Treaty of Lisbon (European Union, 2008) defines in Part I, Title I, categories and areas of Union competence. Art. 2 confers *exclusive* competence on the Union (essentially for competition rules, monetary policy, foreign trade), where 'only the Union may legislate and adopt legally binding acts'. Subsequent articles stipulate forms of interaction between the

Union and the member states. In many traditional policy areas of the European Union (mainly internal market, social and cohesion policies, agriculture, environment, energy, transport, freedom, security and justice, etc.), Union competence is *shared* with member states. In some areas, such as research, technological development and space, the Union is to have competences *co-existing* with those of member states, and in health, industry, education, and culture, the EU may *support* national policies with complementary competences. This categorisation becomes useful when we match it with our characterisation of inclusive and exclusive public goods. Exclusive goods should fall under the exclusive competence of the EU. For inclusive public goods shared, co-existing or supporting competences between member states and the EU may be appropriate. However, the Treaty of Lisbon does not allocate competences in accordance with the externality problems. It has two major shortcomings. First, the match between the exclusive competences and exclusive public goods is deficient. For example, fiscal policy coordination is not classified as an exclusively European policy area. Other areas, such as foreign policy are also given different regimes. It is, therefore, necessary to redefine the content of these exclusive competences and the Treaty of Lisbon would allow this to be done at least in some areas. Verhofstadt has provided a sensible list for where the EU should have exclusive competences:¹¹³ (1) Macro-economic management of the Euro Area, including the European budget; (2) Large European projects for technological research and development; (3) A single European area of justice and security to fight crime more effectively; (4) European diplomacy; and (5) A European intervention force. These are broad categories, which need to be translated into the specifics of daily politics.

Secondly, the Treaty of Lisbon remains unclear with regard to who will be the representative agent of European citizens in the long run: the Council or the Commission? In other words, the Treaty does not give the European Union a democratic government. It has strengthened the power of the Parliament and this is often claimed to represent democratic progress. But more power to the European Parliaments is not sufficient to manage exclusive European public

¹¹³ G. Verhofstadt, *The United States of Europe*, London, The Federal Trust, 2005.

goods efficiently when discretionary policies are required.¹¹⁴ The European Republic approach calls for a European executive, a government. Given that the European Commission already operates a well-functioning administration, it would be logical that it both assumes responsibility for administering exclusive public goods, and implements policies that are democratically authorised. But such a re-allocation of competences would be resisted by member state bureaucracies. Yet, the Treaty gives the European parliament the power to confirm the European Commission and a broad range of laws. There is, therefore, ambivalence as to where the real power is, and from where it derives its authority: from governments or from citizens? One day, the conflict of interests between citizens and bureaucracies will require clarification. A power struggle between the Council, representing national governments, and the Parliament and the Commission, representing European citizens, will have to push the issue to a point at which the present ambivalence of the Treaty of Lisbon will be overcome.¹¹⁵

Conclusion

How realistic is the European Republic? Utopia is the land that will never be. Our analysis has shown that a European Union based upon intergovernmental coordination fails to be an efficient actor and a legitimate policy-maker. Collective action problems, prisoner dilemmas and the lack of legitimacy, are all preventing the Union from having power, defined as the collective capacity to act, and from having legitimacy for its pursued policies. The true utopia is, therefore, the idea that the European Union can be run by an intergovernmental mode of policy-making and simultaneously remain capable of acting as a powerful world player.

¹¹⁴ The American Articles of Confederation, the first Constitution after Independence, failed precisely because Congress was a law-making, but not an executive, institution. It was the 'Miracle in Philadelphia' in 1787 that established a federal government capable of pursuing discretionary policies.

¹¹⁵ The English revolution is the classic example for the power struggle between Parliament and autocratic rule, which ended with the solution of representative parliamentary democracy, even though, at first, the Parliament was far from being truly representative. In Europe, the battle has to be between the European Parliament, representing all European citizens as the sovereign and partial interests of nation states' élites.

In this chapter, I have argued that the way in which Europe is governed is unsustainable in its present form. In the new environment of 27 member states and a deeply-integrated range of public goods, the risk that fifty years of European integration might unravel is high. I have shown that European republicanism could resolve the normative contradictions that haunt the European Union today. These contradictions result from the growing externalities of public policies due to globalisation and Europeanisation, and the need to manage their effects according to the principles of modern democracy.

In democracies, power resides ultimately with citizens. The rise of euroscepticism has been a sign of the disenchantment of citizens with Europe's present-day governance. So far, this silent rebellion has had no voice. No spokesperson has turned resentment into improvement, or given voice to create loyalty and, therefore, help to avoid exit. The importance of Europe's common public goods, and the depth of Europe's already existing *res publica*, merit more than merely accommodating the *status quo*. This chapter indicates a direction. In the end, it is up to European citizens to make the European Republic the democratic reality of our time.