The Impact of Policy Responses to the Eurozone Crisis on Democracy, Accountability and the Rule of Law in Europe

by

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List of acronyms and terms

EC	European Commission
ECB	European Central Bank
ECJ	Court of Justice of the European Union, commonly referred to as the European Court of Justice
ECOFIN	Economic and Financial Affairs Council, composed of the economics and finance ministers of EU member states
EFSF	European Financial Stability Facility
ESM	European Stability Mechanism
EU	European Union
Eurogroup	The grouping of finance ministers of countries that are members of the eurozone
Eurozone	The collection of member states of the EU that use the euro as their official currency
FLS	The Bank of England's Funding for Lending Scheme
GDP	Gross Domestic Product
IMF	International Monetary Fund
LTRO	Longer-Term Refinancing Operations
MEP	Member of the European Parliament
MP	Member of Parliament
OMT	Outright Monetary Transactions
PIIGS	Portugal, Ireland, Italy, Greece and Spain
PM	Prime Minister
PSI	Private Sector Involvement (an offer to exchange Greek government bonds held by private sector creditors for

	new Greek government bonds, with terms more favourable to Greece)
QE	Quantitative Easing
SGP	Stability and Growth Pact
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TLTRO	Targeted Long-Term Refinancing Operations
Troika	A term used to refer to the official creditors of Greece comprising the EU, the ECB and the IMF
UK	United Kingdom of Great Britain and Northern Ireland
UKIP	United Kingdom Independence Party, a British political party seeking the withdrawal of the UK from the EU

Executive summary

This paper examines the extent to which policies implemented by institutions of the European Union (EU) have been consistent with maintaining and enhancing political accountability within Europe. The paper contends that the particular policies adopted in the midst of the euro crisis prioritised short-term effectiveness and that the impact on accountability (or any limits which an awareness of accountability might impose) have not been part of the mix of considerations taken into account in formulating policy. There is a tension between short-term measures to attack the crisis and to put out the fire, and measures to address underlying causes which can inform policies that can not only de-escalate the crisis but can also construct a desired environment post-crisis. Maintaining one's eye on both of these simultaneously is the art of crisis management.

The issues raised in this paper are larger than just an examination of the impact on political accountability of the architecture of European institutions and of how policy actions were taken. The lack of effective accountability of these institutions to European citizens diminishes Europe's democracy. It also diminishes interest in and respect for politics generally, both at the European and national levels. Just when Europe seeks to influence the world by promoting the rule of law, democracy, human rights and fighting against terrorism and illiberal governments, Europe's example seems slightly less brilliant since the euro crisis. This erodes Europe's soft power. This paper attempts to show that the EU can act in a way that is both effective in addressing the short-term fire of the crisis to promote the value of economic stability, whilst simultaneously promoting or at least not diminishing the values of liberal democracy which will be much harder to regain if not continually reaffirmed.

Section 2 of this paper discusses the concept of political accountability and expands the concept beyond democratic elections. Elections provide a form of accountability, but in the period between elections, there are other mechanisms that provide a way to maintain accountability of government decisions and actions.

Section 3 provides a background of EU decision making prior to the euro crisis. We see that the EU's method of policy making that focused only on short-term results and did not include a vision as to what the goals of its policies were.

Section 4 discusses how this method of decision making continued as European institutions such as the European Commission (EC) and the European Central Bank (ECB) struggled to contain the euro crisis that threatened the single currency project. Because of the crisis atmosphere the short-term bias in EU policymaking was confirmed and politics and the legitimacy of that policies would enjoy if ratified via the political process were circumvented.

Section 5 focuses on the institutional construction of the ECB, as a highly independent central bank, with few mechanisms to incorporate outside views into its policymaking. Compounding the architectural defects that reduced the political accountability of the ECB, the ECB's actions in combating the crisis exacerbated the lack of accountability and thereby reduced the legitimacy of its actions and subordinated political control and accountability to economic efficiency and effectiveness.

Section 6 discusses the how the ECB has not been accountable in its efforts to manage the euro crisis and therefore its policy has lacked the legitimacy with the public that it might otherwise have had. Of course, we must admit that had the ECB been more accountable, the substantive policies it pursued might well have been different.

As it is easy to criticise the ECB and other institutions that were dealing with an existential crisis at least with respect to the single currency, the paper concludes by discussing some of the underlying causes of the euro crisis in an attempt to identify some useful guidance that might show a way forward different from the one that the EU has taken to date.

1. Introduction

The global financial and eurozone crises have tested the ability of governments to respond, changed the effectiveness of response tools and reduced the political will to make decidedly difficult choices. Understandably, the public discourse and policymakers focused on what was necessary in the short-term to avoid possible economic disaster. The US and global economies were dangerously close to collapse and, under those circumstances, the entirety of the focus was properly on averting the worst-case scenario. In the United States, policymakers focused on the crisis as a day-to-day matter, as numerous meetings of officials occurred at the last minute over weekends – for example, to engineer the bailout and acquisition of Bear Stearns & Co. Inc. in March 2008 and to consider and to take the decision to not to rescue Lehman Brothers in September of that year.

The goal of crisis management is not only to address the acute issues in order to prevent a crisis from escalating and spiralling out of control, but also to move towards a desired result. Robert Pfaltzgraff for example has stated that "[e]ffective crisis management consists of the ability to snatch victory from the jaws of defeat – to be able to look ahead with strategies and policy choices that enable us not only to surmount present threats and dangers, but also to build a better future".[1] In the context of the euro crisis, the definition of longer-term strategies and policy choices required that these be debated in the political sphere as this could not be decided on the basis of technocratic expertise.

[1] Robert Pfaltzgraff, *Crisis Management: Looking Back and Looking Ahead*, presented at The Crisis Management Conference, Athens 2008, organised by the Hellenic Ministry of National Defence, 2 July 2008, available at: http://www.ifpa.org/pdf/athena_08.pdf.

Policymakers must simultaneously be practical in considering measures needed to manage the crisis and to consider political considerations in defining the desired scenario after the crisis and the likely wider impact of de-escalation measures. However, the global financial crisis and the eurozone crisis were characterised only by the former. Policymakers operated under the implied assumption that the goal was containment with the hope that the situation would settle down and revert to what it was before the crisis. Given the severity and the chronic nature of the crises, this operating assumption was flawed.

Because of the singular focus on averting disaster, policymakers did not consider what effect their decisions would have longer-term implications for the societies they were labouring to protect. To the extent that policymakers considered the implications of the crisis, they tended to focus on the trees (the role of regulation, arbitrage of regulatory regimes globally, and excessive risk and leverage in the financial sector) and became lost in the forest. A "forest view" would have for example raised questions about the proper role of the financial sector in the economy and heightened sensitivity to risks that the social impact of economic decisions would be contrary to what would be decided via the political process.

In the US, the Dodd-Frank Wall Street Reform and Consumer Protection Act focused on financial regulation as this was seen as the proximate cause of the financial crisis.[2] Although certainly important, the sheer volume of the Act and the difficulty of enacting the law in face of massive lobbying efforts by the financial

[2] An Act to promote the financial stability of the United States by improving accountability and transparency in the financial system, to end "too big to fail", to protect the American taxpayer by ending bailouts, to protect consumers from abusive financial services practices, and for other purposes, Pub. L. No. 111-203, 21 July 2010, 124 Stat. 1375-2223.

services industry during consideration of the law (and after enactment seeking amendments to the law) took away the drive to examine more fundamental reasons for the crisis.[3]

In Europe, the narrative quickly developed that the financial crisis and the euro crisis were a result of profligate borrowing and spending by governments.[4] Once diagnosed, the remedy to the problem was a fiscal diet, or austerity. Even countries that had not accumulated excessively high ratios of debt to gross domestic product (GDP) adopted austerity policies.[5] It was a convenient and uncomplicated narrative for politicians and journalists to present to the public.[6] However, the cause

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[3] See, for example, *How Wall Street Defanged Dodd-Frank: Battalions of regulatory lawyers burrowed deep in the federal bureaucracy to foil reform*, The Nation, 30 April 2013, available at: http://www.thenation.com/article/174113/how-wall-street-defanged-dodd-frank and *In New Congress, Wall St. Pushes to Undermine Dodd-Frank Reform*, The New York Times, 13 January 2015, available at: http://www.nytimes.com/2015/01/14/business/economy/in-new-congress-wall-st-pushes-to-undermine-dodd-frank-reform.html?_r=0

[4] See Paul Krugman, *Eurozone Problems*, 30 January 2012, available at: http://krugman.blogs.nytimes.com/2012/01/30/eurozone-problems/, "Europe has bought into the notion that fiscal irresponsibility is at the heart of the crisis, which is true only of Greece and not true of the troubled countries as a group".
See also Andrew Moravcsik, *Europe After the Crisis – How to Sustain a Common Currency*, Foreign Affairs, Vol. 91, No. 3 (May/June 2012), p. 54, available at: https://www.foreignaffairs.com/articles/europe/2012-05-01/europe-after-crisis, "[a]ligning the continent's economies will first require Europe to reject the common misdiagnoses of today's crisis. The problem is not primarily one of profligate public sectors or broken private sectors in debtor countries. It is rather the result of a fundamental disequilibrium within the single currency zone".

[5] For example, prior to the 2008 financial crisis, the ratio of net debt to gross domestic product (GDP) in the United Kingdom was 36.7% for the 2007/2008 financial year, less than the ratio during the years of Conservative government under Sir John Major (1992-1997) when the ratio was 39.0% in the 1996/1997 fiscal year after which Tony Blair took over as prime minster. See House of Commons Library, *Public sector borrowing, debt and debt interest payments: historical statistics*, Standard Note SN/EP/574520, March 2015, available at: http://www.parliament.uk/briefing-papers/SN05745.pdf. See also Paul Krugman, *The case for cuts was a lie. Why does Britain still believe it? – The austerity delusion*, The Guardian, 29 April 2015, available at: http://www.theguardian.com/business/ng-interactive/2015/apr/29/the-austerity-delusion.

[6] Simplification and false analogies used to explain government policy can be especially destructive. For example, the view that government is like a household and must live within its means. The view of the government budget as a household budget with a credit card limit is useful to argue against stimulative fiscal policy generally and denies the use of stimulus precisely when it might be needed. See Joseph Stiglitz, *The Price of Inequality* (New York: W.W. Norton & Company, 2012), p. 236.
This narrative was made easier especially in countries like the UK where the media (primarily newspapers, both tabloids and broadsheets) are minimally disguised as partisan. The outsized

of the massive increase in public debt primarily stemmed from the decisions by governments to bail out "too big to fail" banks. If the banks had not been bailed out, even more severe economic and social consequences would have resulted.

Even in 2015, for example, parties in the UK general election campaign pushed the Labour party who were in power at the onset of the financial crisis to apologise for "crashing the economy".[7] The efforts to address financial regulation have been stymied by the location of Europe's financial centre in London, outside the eurozone and on a scale dwarfing the continental centres, where the view that reduced regulatory interference in markets is what is needed to cure the economic situation of the continent. Given the dominance of the City of London in European financial markets, this free-market view spread throughout the continent.[8] In fact, some have argued that the freer markets were the cure to the crises, having ascribed the cause of the crises to government interference in markets.[9]

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influence for example of Rupert Murdoch, who is not shy about influencing the editorial slant of his media properties, helped spread the new Tory narrative during the 2010 general election campaign in the UK. For example, see *How David Cameron went to 'great lengths' to woo Murdoch empire before 2010 general election*, The Daily Mail, 29 November 2012, available at: http://www.dailymail.co.uk/news/article-2240521/How-David-Cameron-went-great-lengths-woo-Murdoch-empire-2010-general-election.html. This story reports on the finding of the "Leveson Inquiry" into the "culture, practice and ethics of the press". See The Leveson Inquiry, website, http://webarchive.nationalarchives.gov.uk/20140122145147/http:/www.levesoninquiry.org.uk

[7] At the general election debate on 2 April 2015, Nick Clegg, the leader of the Liberal Democrats, the junior partner in the coalition government formed in 2010, addressed Ed Miliband the then Labour leader, "Why don't you, in front of the British people, apologise for your role in crashing the economy. Say I'm sorry for crashing the British economy". *General election leaders debate: Nick Clegg's attacks on David Cameron and Ed Miliband make a second coalition much less likely*, The Independent, 3 April 2015, available at: http://www.independent.co.uk/news/uk/politics/generalelection/general-election-leaders-debate-nick-cleggs-attacks-on-david-cameron-and-ed-miliband-make-a-second-coalition-much-less-likely-10154210.html

[8] The City of London is physically located within greater London but has a status distinct from the 32 local councils in greater London. It is the historic location of the UK financial industry. The City comprises an area slightly in excess of 1 square mile and is therefore sometimes referred to as the "Square Mile".

[9] See, for example, John A. Allison, *The Financial Crisis and the Free Market Cure: Why Pure Capitalism is the World Economy's Only Hope* (New York: McGraw Hill, 2013). It is not surprising that this view

Having placed fiscal policy on the austerity autopilot, the only other macroeconomic instrument was monetary policy. As the "only game in town", central banks were called upon to counter the contractionary impact of fiscal austerity on the economy by providing monetary stimulus to spark economic growth. In this way, policymakers avoided deliberations and decisions about spending by outsourcing decision making to independent central banks, which are less politically accountable for their decisions.[10]

Central bank actions took the form of historically low policy interest rates and of quantitative easing (QE) – central banks purchases of government bonds with money essentially printed by the central bank, on the theory that the benefits disperse into the wider economy. In the UK, the Bank of England adopted a QE programme in March 2009 providing for the purchase of UK government bonds, the amount of which reached £375bn by July 2012.[11] The European Central Bank (ECB) adopted its QE programme in January 2015, much later than the Bank of England or the Federal Reserve due to legal considerations discussed later in this paper.[12]

Unsurprisingly, market prices for securities increased with the increased and assured continual demand from central banks and the immediate beneficiaries of

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comes primarily from those on the political right (such as Allison who was a former president of the Cato Institute and on the board on directors of the Ayn Rand Institute) who use the crisis to further their political ideology rather than to inquire into the causes of the crisis.

[10] The concept of accountability is discussed in Section 2 of this paper.

[11] The Bank of England website, *Quantitative easing – Frequently asked questions*, http://www.bankofengland.co.uk/monetarypolicy/Pages/qe/qe_faqs.aspx (accessed on 12 June 2015).

[12] See *European Central Bank unleashes quantitative easing*, Financial Times, 22 January 2015, available at: http://www.ft.com/cms/s/0/aedf6a66-a231-11e4-bbb8-00144feab7de.html#axzz3cqtk8PfZ

the QE policies were those who held securities.[13] Savers on the other hand saw returns dwindle as interest rates fell to historical lows. One can likely assume that on average holders of financial assets are wealthier and have higher incomes than savers, so QE contributed to worsening income inequality as well. The complex distributive impact of monetary polices seem not to have been considered in deciding the policy responses.[14] One criticism of QE is that money printing could have been more widely dispersed in the economy by a progressive tax rebate rather than concentrated in holders of government bonds purchased by the central bank or reliance placed on the weak banking system to transmit funds into the real economy. At least one would be assured that the stimulus reached the real economy rather than being hoarded by banks whose financial condition was weak. One can argue these types of decisions are among the most political requiring public debate – the decision is not purely a technical one.[15]

This paper examines the policies and actions taken to address the financial and eurozone crises – not from the point of view of whether the policies were effective, but rather from the viewpoint of whether policymakers sacrificed other social values in addressing the acute issues brought on by the crisis. The contention

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[13] It is also curious that the response was to rely on the financial sector as a transmission mechanism for the benefits of QE, when the weakness of the financial sector was itself a cause and a result of the crisis.

[14] "Allowing [central bank independence] to rest unchallenged both damages democracy and begs important questions about who the winners and losers of economic policy should be". Sheri Berman and Kathleen R. McNamara, *Bank on Democracy: Why Central Banks Need Public Oversight*, Foreign Affairs, Vol. 78, No. 2 (March/April 1999), p. 2, available at: https://www.foreignaffairs.com/articles/1999-03-01/archives-bank-democracy.

[15] "[D]ecisions made by the central bank are not just technical decisions; they involve trade-offs, judgments". Joseph Stiglitz, Eleventh Tinbergen Lecture delivered on 10 October 1997 at De Nederlandsche Bank (the central bank of the Netherlands), *Central Banking in a Democratic Society*, De Economist 146, No. 2 (July 1998) available at: https://www0.gsb.columbia.edu/faculty/jstiglitz/download/papers/1998_Central_Banking_ina_Democratic_Society.pdf.

in this paper is that policy responses damaged democratic legitimacy not only from a procedural or accountability viewpoint, but also from a structural one, namely one that alters the nature of democratic governance. To the extent that the policy responses focused solely on averting the crises, the underlying causes of the crises remained unaddressed and perhaps even entrenched.[16]

Europe's response to the eurozone crisis, singularly focused on austerity, left the ECB as the focus of policy. However, the causes of the financial crisis and the subsequent euro crisis were not caused by monetary factors. The manifestation of the crises was indeed financial; underlying the crises, however, were issues of globalisation of finance, the outsized role of finance in advanced economies, the lack of effective regulation which led to issues of increasing disparity and the appearance before the crisis that the business cycle had been finally conquered.

By focusing on symptoms of the crisis rather than the causes, the policy responses inadvertently increased the likelihood of another crisis and shifted the risk of another crisis from the financial sector to governments or, more specifically, taxpayers. This in turn made subsequent responses more difficult as taxpayers or voters in the affected countries felt that the economic difficulties would be addressed to their detriment (and to the benefit of those that were seen as a proximate cause of the crises) and consequently crisis management responses needed to obtain legitimacy via the democratic process.

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[16] The International Federation of Red Cross and Red Crescent Societies (IFRC) issued a report in October 2013 in which the IFRC stated that "[t]he long-term consequences of this crisis have yet to surface. The problems caused will be felt for decades even if the economy turns for the better in the near future". *Think Differently: Humanitarian impacts of the economic crisis in Europe*, 1260300, October 2013, available at: https://www.ifrc.org/PageFiles/134339/1260300-Economic%20crisis%20Report_EN_LR.pdf.

The European Union is a clear beacon of international co-operation and liberal democratic values. Failing to safeguard Europe's democratic values to address extraordinary circumstances weakens Europe's moral standing in defending and promoting democracy in the world. The perceived democratic deficit in Europe – arising not from the much-discussed defective architecture of European institutions, but from the weakening of the democratic legitimacy of the European project gives rise to anti-European, xenophobic, racist and nationalistic sentiments in EU member states, as evidenced by the strong performance of reactionary nationalist parties in the European Parliament elections in May 2014.[17] It also undermines trust in democratic politics at both the European and national levels. In order to combat these dangerous trends, Europe must prioritise democracy, peace and security, and the accountability of policymakers (especially those that are not subject to the electoral process) so that the very policies aimed at saving Europe do not end up damaging the very values they are meant to protect.

[17] See, *Eurosceptic 'earthquake' rocks EU elections*, BBC News, 26 May 2014, available at: http://www.bbc.co.uk/news/world-europe-27559714. These parties include the United Kingdom Independence Party (UKIP), the *Front National* in France, *Alternativ für Deutschland* (AfD) and the quasi neo-Nazi Golden Dawn in Greece (Λαϊκός Σύνδεσμος – Χρυσή Αυγή).

2. Democracy, accountability and the rule of law

Democracy and the rule of law are values embedded in the European project.[18] The concept of accountability is fundamental to a democracy as it provides legitimacy to representative government; however, often it is simply equated with the ability of the electorate to vote in or vote out their representatives in periodic free and fair elections.[19] This view of accountability essentially adopts a principal-agent framework, where voters are a collective principal giving instructions to their agents, their elected representatives.[20] The agents are then accountable to their principal (the electorate) at the next election for whether the instructions were in fact carried out.

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[18] Some argue that the rule of law requires that accountability and power not be separated, so that it is problematic if action by the ECB and other European institutions take action that is not within the powers delineated in the Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU). See Sophie Thurner, *The Rule of Law and the Eurozone Crisis*, Project for Democratic Union, 6 March 2014, http://www.democraticunion.eu/2014/03/the-rule-of-law/. The mandate of the ECB under its statute and the TFEU is discussed later in this paper.
The preamble to the TEU states in relevant part, that the member states of the European Union "confirm[ ] their attachment to the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law". Consolidated Version of the Treaty on European Union, 2012, C 326/13, 55 O.J., available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN

[19] "Democracy has many definitions … but accountability is one of its most important components", Philippe C. Schmitter, *Political Accountability in 'Real-Existing' Democracies: Meaning and Mechanisms*, Istituto Universitario Europeo (European University Institute), Florence, Italy, January 2007, available at: http://www.eui.eu/Documents/DepartmentsCentres/SPS/Profiles/Schmitter/PCSPoliticalAccountabilityJan07.pdf.

[20] "One trend in the literature has been to define accountability by reference to principal-agent theory, seeing the problem of accountability in terms of limiting the degree of discretion exercised by those in public office and designing mechanisms to ensure that they serve their public *au pied de la lettre*". Mark Philp, *Delimiting Democratic Accountability*, Political Studies, Vol. 57, Vol. 1 (2009), p. 29. See also Jeremy Waldron, *Accountability: Fundamental to Democracy*, New York University School of Law, Public Law & Legal Theory Research Paper, Working Paper No. 14-13, 1 April 2014, p. 4: "I am inclined to stick to the model of agent-accountability, so far as our understanding of accountability in a democracy is concerned." Available at: http://www.law.nyu.edu/sites/default/files/upload_documents/Accountability.pdf.

However attractive this model may be, it is too simple on further reflection. First, it views both the principal and the electorate as monolithic actors.[21] Of course, the government is not one entity and neither are voters. Second, it limits accountability to the electoral cycle and implies that accountability must wait for the next election and cannot be enforced in the interim. This views accountability as an event rather than a continual process. Guillermo O'Donnell called this 'vertical accountability' which denotes the presence of a democracy if the elections are free and fair. However, he argues that "horizontal accountability" is necessary for a liberal democracy.[22] Similarly, Philippe Schmitter discusses horizontal accountability as "checks and balances" and "separation of power", which are not democratic.[23] In effect, this accountability seeks to prevent the tyranny of the majority if vertical accountability were unchecked. Horizontal accountability can be seen therefore as a component of the rule of law and a concept that has meaning and applicability in periods between elections.[24]

The electoral view of accountability also ignores the complex nature of modern democratic representative governments. For example, in the United States, there is a plethora of executive and independent agencies created by Congress and one might argue that one overarching trend in US politics has been the increasing

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[21] See Schmitter, *supra*, footnote 19, footnote vi.

[22] Guillermo O'Donnell, *Horizontal Accountability in New Democracies*, Journal of Democracy, Vol. 9, No. 3 (1998), pp. 112-113. Of course when looking at the European Union, we are considering a consolidated liberal democracy.

[23] Schmitter, *supra*, footnote 19, p. 10.

[24] Linz and Stepan consider the "emergence of a *Rechtsstaat* [rule of law] … one of the major accomplishments of nineteenth century liberalism". "A *Rechtsstaat* meant that the government and the state apparatus would be subject to the law, that areas of discretionary power would be defined". Juan J. Linz and Alfred C. Stepan, *Toward Consolidated Democracies*, Journal of Democracy, Vol. 7, No. 2, April 1996, p. 19.

importance of administrative action taken pursuant to a growing body of administrative and regulatory law and delegation of powers to unelected bodies. At the international level, countries are parties to an increasing number of sometimes conflicting multilateral treaties and other agreements and members of numerous international organisations, as more and more aspects of life are affected by increasing globalisation. As summarised by Schmitter, the decision-making process itself is an essential component of accountability.[25] Therefore, another shortcoming of the electoral model of accountability is that it limits accountability to a backward looking concept and one focused on sanction and punishment at election time to the detriment of considering the process by which decision are made and the continual nature of accountability.

In order to analyse accountability in more complex democratic systems, we need to unpack the concept further. If we do not take a closer look at the concept, using a simple definition of accountability might negate the democratic legitimacy of administrative agencies[26] and international cooperation.[27] One should not reach this result without examining the alternatives.

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[25] Schmitter, *supra* footnote 19, p. 15.

[26] Ronald Pestritto cites Alexander Hamilton (Federalist Papers No. 23) for the proposition that the discretion given to the federal government under the US Constitution requires the "vigilant and careful attention of the people" but he equates this to a system of "clear electoral accountability". Because he sees discretion in administrative action, he questions its legitimacy and ascribes its ascent to the power of progressives undermining the constitutional framework. Ronald Pestritto, *The Birth of the Administrative State: Where It Came From and What It Means for Limited Government*, The First Principles Series, No. 16, The Heritage Foundation, 20 November 2007, available at: http://www.heritage.org/research/reports/2007/11/the-birth-of-the-administrative-state-where-it-came-from-and-what-it-means-for-limited-government. I cite this example only to show how a more nuanced understanding of accountability is necessary if we are to avoid being led to conclusions by a flawed understanding of the concept.

[27] For example, the argument against continued UK membership in the EU is often couched in terms of lack of democracy or accountability to British voters. Regardless of its validity, the need to be able to show accountability by mechanisms other than periodic elections or directly elected European

Accountability implies that the person or institution to be held accountable can exercise some judgement over what it does or how it does it or both. In the absence of discretion, the concept of accountability loses meaning.[28] In this case, accountability would be reduced "to produc[ing] a given result decided in advance".[29]

Democratic accountability therefore does not require that an institution do what it is commanded to do or what the people judge it should do. This is necessarily the case; otherwise, the identity of the person who occupies any particular office would become irrelevant. If we use accountability as a means to obtain a specific result, then the temperament, philosophy and integrity of a public officer becomes irrelevant: the officer is there merely to enact a pre-determined programme and is judged solely by whether he or she in fact enacted the programme. The only remedy in this case is to replace the officer (or government) with a more effective one or to eliminate the human factor entirely.[30]

Accountability must mean more than just achieving a desired result; it must incorporate standards to determine whether actions taken are consistent with the public interest and within the rule of law – that is, within the discretion accorded to

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officials becomes urgently critical if the argument is to be countered. See Dani Rodrik, *The Globalisation Paradox: Why Global Markets, States and Democracy Can't Coexist* (New York and London: W.W. Norton & Company, 2011), positing that only two of democracy, globalisation and national self-determination can be pursued. See also, Philip Coggan, *The Last Vote: The Threats to Western Democracy* (London: Allen Lane, 2013), p. 230: "Once established [international] institutions [such as the WTO and the IMF] acquire a life and power of their own; their democratic credentials are very thin".

[28] See Phelp, *supra,* footnote 20, p. 38.

[29] Ibid.

[30] John F. Kennedy remarked, "[t]he voters selected us because they had confidence in our judgment and our ability to exercise judgment …[t]his may mean that we must on occasion lead, inform, correct, and sometimes even ignore public opinion". From John F. Kennedy's *Profiles in Courage* (1956), as quoted in Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton & Company, 2003), pp. 168-169.

the officer. For just as the absence of discretion renders accountability an empty concept, unlimited discretion is inconsistent with any concept of accountability we might wish to consider.[31] The concept of accountability therefore must incorporate criteria by which the acceptability of the process by which decisions are made can be judged – in other words, that due process and the rule of law are upheld. For example, we would not tolerate an efficient economic result achieved through extra-constitutional means.

Mark Philp contends that "[a]ccountability in democratic systems varies along [a] dimension from integrity-based to compliance-based systems".[32] Integrity-based systems are those that "aim for high levels of individual … integrity" (and by implication a degree of discretion) and compliance-based systems are those that "structure incentives and disincentives … to motivate compliance"[33], that is a detailed "specification of responsibilities"[34], which at the extreme removes all discretion.

One aspect of accountability is therefore the right to obtain information in order to make a judgement about whether discretion has been exercised properly[35] in the public interest rather than corruptly or in the interest of narrow segments of the citizenry. The fact that an official is aware that he or she must account for their official actions – in the nature of an explanation or justification moves towards

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[31] Berman and McNamara state,"[t]he essence of democracy is not primarily the outcomes it produces but the process by which those outcomes are reached and legitimated". Berman and McNamara, *Bank on Democracy*, *supra* footnote 14, p. 7.
[32] Philp, *supra,* footnote 20, p. 38.
[33] Ibid., p. 37.
[34] Ibid.
[35] Namely, in accordance with the procedural rules that govern decision making by the relevant official (the rule of law).

ensuring the official acts in an appropriate manner, regardless of whether or when the official is subject to removal at the ballot box.[36]

We can also distinguish between goal and instrument independence.[37] Goal independence is the ability of an institution or official to "decide on the formulation of its ultimate objective(s)" whilst instrument independence is the ability to "choose the means by which it seeks to achieve its goals".[38] To the extent an institution "enjoys *both* instrument *and* goal independence, there will be a 'substantial and widely perceived democratic deficit'".[39] Clearly goal independence would imply instrument independence; otherwise, goal independence would be rendered illusory.

While the ability to replace government officials is one component of accountability, the ability for the public to be involved in setting priorities and goals and citizens having some ability to determine if in fact such priorities are not followed are other equally important if not even more important components, as these are continual issues rather than discrete events.[40]

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[36] "[R]ulers who are most accountable are those who are never threated with [removal from office]. They have so internalized the expectations of those they are ruling that they have nothing to fear from accountability; indeed, it gives them grater legitimacy when they have to act against immediate popular opinion". Schmitter, *supra*, footnote 19, p. 6.
[37] Jakob De Haan and Sylvester C.W. Eijffinger, *The Democratic Accountability of the European Central Bank: A Comment on Two Fairy Tales*, Journal of Common Market Studies, Vol. 38, No. 3, September 2000, p. 395.
[38] Ibid.
[39] Ibid., quoting Iain Begg and David Green, *The Political Economy of the European Central Bank*, in Philip Arestis and Malcolm C. Sawyer (eds.), *The Political Economy of Central Banking* (Cheltenham: Edward Elgar Publishing, 1998), emphasis in the original.
[40] See Karl Kaltenthaler, Christopher J. Anderson and William J. Miller*, Accountability and Independent Central Banks: Europeans and distrust of the European Central Bank*, Journal of Common Market Studies, Vol. 48, No. 5, 2010, p. 1267, discussing Berman and McNamara, *supra* footnote 14. "[H]olding an institution accountable requires effort on the part of the citizen. The citizen must want to play a role in defining the policy goals for the institution, they must want to be given information on how and why policy decisions are being made, and they must want the opportunity to sanction the institution they believe has not fulfilled its obligations". Ibid., p. 1270.

Using these concepts of accountability, this paper examines the extent to which the European Central Bank and collective decisions of the eurozone members taken in response to the euro crisis were accountable other than via elections for national parliaments and for the European Parliament.[41]

[41] Section 5 of this paper shows that the ECB is accountable neither to the European Parliament nor to national governments because the ECB's statues and powers are in EU treaties which are in practice extremely difficult to amend.

3. Pre-crisis

The period before the euro crisis found the European Union focused on expansion and integration of new members, particularly those in Eastern Europe.[42] This focus led to the Treaty of Amsterdam (1999) and the Treaty of Nice (2003), which amended the European architecture to enable the expansion of the Union.[43] Above all, however, these treaties were proposed and drafted as top-down processes with little involvement of or input from the European electorate or attempt to rally popular support during the process. The process of ratification of these treaties was seen as a logistical issue rather than one requiring engaging the electorates of the various member states in political discussion. Over time, this view has led to disillusion within the European electorate and EU policies guided more by the desire to avoid referendums than by the substance of the policies and the need to build political support for the policies. By the time of the euro crisis, the logistical and technocratic view had completely prevailed.

The first example of this was The Republic of Ireland's a referendum in June 2001 conducted to ratify the Treaty of Nice. Irish voters rejected the treaty. The Irish government then conducted a second referendum in October 2002, which was accepted by the voters, after having secured guaranties of Ireland's military

[42] Austria, Finland and Sweden joined in 2005 and the first wave of new members from the former communist Eastern Europe joined in 2004 (plus Cyprus and Malta). See The history of the European Union, European Union website, available at: http://europa.eu/about-eu/eu-history/index_en.htm
[43] The text of the Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 1997 O.J. C 340/1, is available at: http://www.europarl.europa.eu/topics/treaty/pdf/amst-en.pdf. The text of the Treaty of Nice amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2001 O.J. C 80/1, is available at: https://www.ecb.europa.eu/ecb/legal/pdf/en_nice.pdf

neutrality and ability to opt-out of any eventual European common defence policy.[44] This was not the first time a rejected referendum was put to the people a second time. Denmark initially rejected ratification of the Maastricht Treaty in 1992 and voters were given a second chance in 1993 (after inclusion of four exceptions for Denmark negotiated in the European council meeting in Edinburgh in December 1992) in which the Danish people did agree to the ratification of the treaty.[45] This led to the common saying that in referendums on EU matters, voters will be asked to vote until they get it right.

These two events show that the primary focus of European leaders during this time was reforming the formal institutions and the functioning of the European Union. The reforms needed or sought were justified not primarily on the basis of increasing democracy or the accountability of the EU to European citizens, but on reforming the institutional architecture of the EU. Even so, the EU made little effort to encourage popular discussion and debate. Unfortunately, this inward looking view continued and was reinforced when ratification of the Treaty Establishing a Constitution for Europe was sought in 2005.[46]

In May and June 2005, voters in France and Denmark rejected the proposed European constitution, respectively, but it was the French rejection that got the

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[44] For concerns about the effect of ratification of the Treaty of Nice on Ireland's neutrality, see Gay Mitchell, *Simply untrue that Nice could erode neutrality*, The Irish Times, 7 October 2002, available at: http://www.irishtimes.com/opinion/simply-untrue-that-nice-could-erode-neutrality-1.1097922

[45] See *Conclusions of the Presidency – Edinburgh December 12, 1992*, available at: http://www.europarl.europa.eu/summits/edinburgh/b1_en.pdf

[46] Draft Treaty Establishing a Constitution for Europe, 2004 O.J. C 310/1 (never ratified). The draft text of the proposed constitution can be found at the website of the European Union at: http://europa.eu/eu-law/decision-making/treaties/pdf/treaty_establishing_a_constitution_for_europe/treaty_establishing_a_constitution_for_europe_en.pdf

attention of Europe's leaders. France is one of the core members of the EU – indeed one of the original six founding members – and it would be inconceivable to proceed with a project that did not obtain the blessing of France. Unlike the previous occasions when small concessions were enough to obtain the approval of voters, the EU reacted by having a "period of reflection" and convened a group of politicians to see what could be done in the aftermath of the rejection.[47] This reflection was not a wholesale rethink of the European project and the pace of integration or even a recognition that the way the EU were operating alienated a significant portion of the European electorate, but a way to see how the proposed changes sought could be obtained by other means. The EU's view, led by Germany and France, was that the changes in EU treaties proposed by the European constitution were needed and that they would be made in one way or another. Finally in 2008, three years after the rejection of the European constitution, the EU decided to abandon the concept of a constitution and instead to bring "key elements" of the proposed constitution (including new powers for the EU, establishing the euro as the official currency, and the Charter of Fundamental Rights) in a new Lisbon Treaty, providing opt-outs for the UK and Poland (in order to obtain their agreement) from the Charter of Fundamental Rights of the European Union that was originally part of the proposed constitution and to be made law by the Lisbon Treaty.[48]

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[47] See, for example, Honor Mahony, *Select group of politicians to tackle EU constitution*, EU Observer, 28 September 2006, available at: https://euobserver.com/institutional/22527

[48] For the "key elements", see *Lisbon Treaty resurrects the defeated EU Constitution*, The Daily Telegraph, 13 June 2008, available at: http://www.telegraph.co.uk/news/newstopics/eureferendum/2123045/EU-Treaty-Lisbon-Treaty-resurrected-defeated-EU-Constitution.html. The text of the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, 2007 O.J. C 306/01, text available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2007:306:FULL:EN:PDF.

The Lisbon Treaty therefore represented a view that European integration and construction needed to proceed despite the obstacles (which were seen as procedural issues rather than more fundamental political alienation of the EU leaders from the electorate) and on a timetable determined by the EU. It may well be that French and Danish voters used the occasion to vote on the proposed constitution to express dissatisfaction with their own governments and as a protest for policies of the EU and of their national governments. However, proceeding to incorporate the key elements of the proposed constitution without identifying and addressing the reasons for voter disaffection dented the legitimacy of policymakers. In other words, although the content of the Lisbon Treaty may be unobjectionable, the process is just as important – if not more – to building longer term democratic support. The short-term battle may have been won at the expense of the ability to build support for future measures. Future changes that EU policymakers consider necessary or desirable for the functioning of the Union may well be rejected regardless of the content because voters believe they are not being consulted.

Because of this troubled history of ratifications of EU treaties, Europe has much at stake with the Treaty of Lisbon tried to provide increased justification for the Treaty of Lisbon on the ground of improving or increasing democracy and

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The text of the Charter of Fundamental Rights of the European Union, 2010 O.J. C 83/02, text available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12010P&from=EN. See also the Protocol on the Application of the Charter of Fundamental Rights of the European Union to Poland and to the United Kingdom, providing for opt-outs to Poland and the UK, text available at: http://www.lisbon-treaty.org/wcm/the-lisbon-treaty/protocols-annexed-to-the-treaties/676-protocol-on-the-application-of-the-charter-of-fundamental-rights-of-.html. The Treaty of Lisbon gave the Charter the force of law in the EU.

accountability.[49] The perception though – and perhaps not entirely unjustified – was that the EU were just "going through the motions" given the history of voting until one gets its right. Voters saw the rejection of the European constitution as one of the few ways in which they could hold the EU accountable and responsive, because mechanisms to hold the EU leaders accountable in a non-electoral context did not exist or were not seen as effective.

Rejection of this treaty following the rejection of the proposed Constitution would have put great strains on the functioning of the enlarged Union and would have exposed the existing chasm between the EU and concerns of citizens of the various member states. Fixing the architecture would then be of secondary importance. Following the ratification of the Treaty of Lisbon by all the member states, attention to narrowing the chasm was lost. After the adoption of the treaty, there was a period in which the EU and its member states could have turned to addressing the democratic deficit and re-engaging with the European population to "catch them up" on the pace of European integration; in other words, not as an institutional matter but as a political issue.[50]

Unfortunately, the EU did not seize the opportunity and it would again be faced during the eurozone crisis with problems of democracy and accountability that could not be solved through changes in institutional or architectural design. Despite the clear lessons of the pre-crisis period, the EU again attempted to deal

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[49] See, for example, *The strengthening of European democracy*, EU website, http://europa.eu/legislation_summaries/institutional_affairs/treaties/lisbon_treaty/ai0021_en.htm (last updated 26 March 2010, page no longer updated).
[50] I refer to democratic deficit in the process by which decisions were made rather than in the institutional structure (architecture) of the EU itself.

with the next crisis using institutional responses without recognising the need not only to gain political legitimacy for its actions, but also reforming EU institutions so that they are able to incorporate democratic input into policy formation and execution. This lack of recognition the declining accountability of existing institutions to European citizens. Actions were taken without incorporating mechanisms by which public input could be incorporated into policies. There was no communication to justify the actions another than that they were needed to de-escalate the crisis. Perhaps this is understandable given the potentially existential threat posed by the eurozone crisis; however, there was no discussion or any views sought as to where the eurozone would be after "the fire had been put out". Because none of these measures was taken, faith in democratic institutions (not only those of the EU and the eurozone, but also arguably even more importantly those of national governments) faced an inevitable decline.

4. The inability of politics to address the crisis

The eruption of the euro crisis in 2009 was precipitated by the global financial crisis that started in 2008. The consensus was that the financial crisis was in large part due to unsustainable levels of debt fuelled by sustained low interest rates, as governments were over-reliant on borrowing to support economic growth and the size of their public sectors in the early and mid-2000s. When governments bailed out financial institutions in order to safeguard the foundations and functioning of their economies, private sector borrowing was converted into public debt. So, when markets and policymakers first started to recognise the incipient severity of the euro crisis in 2009, the narrative of excessive sovereign debt was already embedded in views of markets and market participants, providing a convenient cover for the desire of centre-right governments to pare down what they considered the over-extended welfare state via austerity.[51] As governments increasingly measured the effectiveness of policy actions by the reaction and opinions of markets and market participants, policymakers also adopted this narrative without much discussion.[52]

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[51] See, for example, Paul Krugman, *What's It All About Then*, New York Times, 24 September 2013, "[p]roponents of austerity … were lying about their motives. Strong words, but if you look at their recent reactions it becomes clear that all the claims about expansionary austerity, 90 percent cliffs and all that were just excuses for an agenda of dismantling the welfare state", available at: http://krugman.blogs.nytimes.com/2013/09/24/whats-it-all-about-then/?_r=0. The "90 percent cliff" Krugman cites is from the assertion that debt burdens of higher than 90% of GDP would cause a decline in economic growth by Carmen M. Reinhardt and Kenneth S. Rogoff, *Growth in a Time of Debt*, National Bureau of Economic Research Working Paper 15639, January 2010, available at: http://www.nber.org/papers/w15639.pdf. Krugman's view is supported by The Center for Economic and Policy Research, *Reinhart-Rogoff One More Time: Why the 90 Percent Never Should Have Been Taken Seriously*, 11 May 2013, available at: http://www.cepr.net/blogs/beat-the-press/reinhart-rogoff-one-more-time-why-the-90-percent-never-should-have-been-taken-seriously.

[52] See Heather Horn, *Euro Crisis and the Transformation of European Democracy*, The Atlantic, 1 December 2011, http://www.theatlantic.com/international/archive/2011/12/euro-crisis-and-the-transformation-of-european-democracy/249317/, "what seems to worry European spectators is the

Aside from the economic argument of whether excessive debt can be tackled with austerity measures and promote growth as the debt burden is lifted (so-called "expansionary austerity"), the diagnosis of excessive borrowing and spending by governments missed that the origins of the euro crisis went back to before private debts were socialised. Government debts were a symptom of the disease, not the disease itself. The disease included low or negative economic growth, stubborn unemployment rates and a decline of investment despite accumulation by private companies of substantial cash positions was not simply a story of debtors becoming overextended. The disease was caused by many factors including insufficient or ineffective financial regulatory schemes that led to excessive risk taking by banks through in part complex financial derivatives and other instruments whose embedded risks were not entirely understood and therefore mispriced; extended periods of low policy rates enabling traders to earn massive profits from carry trades and the consequent search for yield by institutional investors including pension funds where increasingly private defined benefit schemes invested their funds; and government policies prioritising home ownership – not the disease itself.

In this way, from the outset, the policy response was flawed. Moreover, by assigning fiscal policy the task of implementing austerity, countries deprived themselves of the one major macroeconomic policy instrument which is legitimated through the political process. This left only one economic policy instrument, monetary policy, to address the crisis. However, monetary policy is entrusted to technocratic economists and bankers insulated from the political process. In the

way in which the markets, as expressed through bond prices and ratings agencies, have overtaken the political process".

case of the ECB, it is a central bank that is one of the most independent and removed from politics in the world.[53] By adopting austerity and making fiscal policy unavailable to work towards desired economic goals, the EU substantially reduced the accountability of economic policy to its citizens, leaving citizens only with elections to try to influence economic policy. One can trace the surge in support for anti-EU political parties to the increasingly remote EU economic policymaking.

Another contributing factor to the misidentification of the causes of the crisis was that 'much of the continent's leadership seem[ed] determined to "Hellenize" the story, to see everyone in trouble – not just Greece – as having gotten there through fiscal irresponsibility'.[54] Given the power of centre-right governments in the larger EU member states (Angela Merkel in Germany, Nicolas Sarkozy in France and David Cameron in the UK), the excessive government debt narrative and the profligate public sector diagnosis dovetailed with their pre-existing economic philosophies and supported this policy response within the EU and eurozone, especially as Germany has become the economic force in the EU.[55]

[53] This is because the ECB's mandate is incorporated in European treaties that require unanimous agreement to change. The ECB does not answer to the European Parliament or any national parliament. Section 6 of this paper discusses the accountability of the ECB in the context of the understanding of the concept in Section 2 of this paper.
[54] Paul Krugman, *End this Depression Now!* (New York: W.W. Norton & Company, 2012), p. 187.
[55] See, for example, Christian Odendahl, *The ECB is not the German Central Bank*, Centre for European Reform, 2 December 2014, available at: http://www.cer.org.uk/insights/ecb-not-german-central-bank. Odendahl argues that "Germany is more influential at the ECB than it should be" and that Mario Draghi, the ECB president, increased German influence by his "penchant for seeking German approval". He argues that although Germany is the largest economy in the eurozone, Germany has no veto on the ECB governing council and therefore Draghi should act regardless of whether the German government or the Bundesbank approves.

Even outside the eurozone, the then opposition Conservative party in Britain argued that the UK needed to rein in its spending to avoid "economic fire".[56] This would become UK government policy after the general election in May 2010 in which the Conservative party obtained more seats in parliament and, as they did not achieve a majority, formed a Conservative-led coalition government with the Liberal Democrats. By June 2010,

> "Europe had signed up to a grand experiment. Austerity was the new religion. All over the continent, governments vied with each other to see who could sharpen the axe first. The daily news was peppered with announcement of cutting, of pruning, of scaling back, of bloated public sectors being squeezed … Almost every European country now had its austerity package … It was a cultural revolution that marked the end of an ever-expanding welfare state that partly defined the European way of life."[57]

Austerity may have been a policy choice in the UK and other northern European countries, but it was more or less imposed by the EU on southern European countries such as Spain and Italy, although of course the implementation of the austerity policies and therefore the results of the policies varied in these countries. These latter countries had no choice in implementing austerity measures

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[56] *Osborne warns UK risks Greek-style crisis*, The Guardian, 21 December 2009, available at: http://www.theguardian.com/business/2009/dec/21/osborne-warns-greek-style-crisis. George Osborne was the shadow chancellor at the time. He became the Chancellor of the Exchequer in May 2010 after the Conservative party joined the Liberal Democrat party to form a coalition government to oust the Labour government. The former governor of the Bank of England, Sir Mervyn King, stated that the UK would be "forced into austerity measures" and that "significant fiscal consolidation" was needed. *Mervyn King warned that election victor will be out of power for a generation, claims economist*, The Guardian, 29 April 2010, available at: http://www.theguardian.com/business/2010/apr/29/mervyn-king-warns-election-victor. This was a break in the tradition that the Bank of England is neutral in elections. After the election, David Blanchflower, a member of the Bank of England's Monetary Policy Committee (MPC) until 2009, had called for the resignation of the Governor accusing him of "compromis[ing] the political neutrality of the Bank of England" and of breaking "his own rules about keeping politics and economics separate". Ed Ballard, *Blanchflower: Mervyn King's "thirst for power" has compromised the Bank of England*, The New Statesman, 1 December 2010, available at: http://www.newstatesman.com/blogs/the-staggers/2010/12/king-bank-england-blanchflower.

[57] Gavin Hewitt, *The Lost Continent*: *Europe's Darkest Hour Since World War Two* (London: Hodder & Stoddard, Hachette UK, 2013), p. 111.

as they exceeded the maximum debt to GDP ratio required by the EU and the EU required that they come back into compliance with the maximum debt to GDP ratio of 3% by 2014-15.[58] Concern about contagion from the Greek situation and increasingly weak banks in Spain in early 2010, lent an air of urgency to EU leaders:

> "In order to prevent Greece becoming the prelude to a Lehman-scale event with Spain, the European governments acted … they binned [placed in the trash bin] their objections to IMF [International Monetary Fund] involvement in the EU, to ECB intervention in the bond markets, to bailouts, to bad collateral at the ECB … The eurozone staved off crisis by ripping up its rules, defying its own ideology on the promise of a future consolidation into a fiscal super-state. Yet the path to that super-state cannot lie through electoral consent: it never has, even in the good times, and with voters from Athens to Dusseldorf rejecting it, it does not look like a winner now."[59]

A precedent was set that the eurozone would act in a way that would detract from the perceived legitimacy of the actions. In fact, the "takeover" of the fiscal policies of southern European countries would not have been possible by pursuing fully democratic processes – the electorates in those countries would certainly have objected if consulted. Decisions taken by the eurozone members would increasingly resemble mandates to southern Europe as the focus was on the immediate crisis rather than preserving the political legitimacy of the actions taken with the citizens of southern Europe.

With this mindset, it was not surprising that the democratic processes were either not respected or actually failed. At the G20 summit in Cannes, France in November 2011, France and Germany essentially demanded that Greece accept the terms of the bailout agreed between the *Troika* (the European Commission, the ECB

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[58] See *EU austerity drive country by country*, BBC News, 21 May 2012, available at: http://www.bbc.co.uk/news/10162176.
[59] Paul Mason, *Meltdown: The End of the Age of Greed*, 2nd edition (London and New York: Verso, 2010), pp. 209, 213.

and the IMF).[60] This bailout consisted of the Private Sector Involvement (PSI), by which lenders to Greece would agree to an approximately 50% reduction in the face value of the loans they held and a reduction in the interest rates on the loans in exchange for an additional €130bn loan and additional austerity measures.[61] The alternative to accepting the bailout package essentially declaring the Greek state bankrupt and dealing with the ensuing social and financial market chaos.

Although the Greek prime minster, Georgios Papandreou, thought that Greece had no choice, on 31 October 2011 he called for a referendum on the bailout deal agreed with the EU because of the effect the austerity provisions in the package would have on the country and he thought the country should decide on important matter that would have substantial long-term effect on the Greek state and society.[62] Jean-Claude Juncker, then head of the Eurogroup, was quoted as saying in an interview with German television broadcaster ZDF (*Zweites Deutsches Fernsehen*): "[w]e made Papandreou … aware of the fact this behaviour is disloyal".[63]

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[60] There were two bailout packages: the first, €110bn package in May 2010 and the second, a €130bn bailout in February 2012 which included the so-called private sector involvement (PSI), which among other things exchanged bonds held by private creditors for new bonds with a face value of 53.5% of the face value of the exchanged bonds, a lower coupon rate with a goal of reaching a debt burden of 120.5% by 2020. See Eurogroup statement, 21 February 2012, available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/128075.pdf. Because of terms of the new bonds, it was estimated that private creditors lost 75% of the value of the old bonds held. See *Greece launches debt swap offer*, Financial Times, 24 February 2012, available at: http://www.ft.com/cms/s/0/cd8953dc-5ee1-11e1-a087-00144feabdc0.html#axzz3ZunNNLB4. The terms of the exchange offer is summarised in a 28 February press release by the Greek Ministry of Finance, available at: http://pdma.greekbonds.gr/index.php/2012-05-28-15-51-30/2012-05-28-15-52-09/2012-05-28-19-19-51/category/1-press-releases?download=232:28-february-2012

[61] See *supra* footnote 60.

[62] *Greek crisis: Papandreou promises referendum on EU deal*, BBC News, 1 November 2011, available at: http://www.bbc.co.uk/news/world-europe-15526719

[63] *Greece calls referendum on EU bail-out*, Financial Times, 31 October 2011, available at: http://www.ft.com/cms/s/0/68748490-03f5-11e1-98bc-00144feabdc0.html#axzz3ZqlIZS2J

Papandreou was forced to cancel the proposed referendum.[64] He was subsequently replaced by the EU – without consulting the Greek electorate – with a technocrat PM, Lucas Papademos, a former ECB vice-president and a former senior advisor at the US investment bank Goldman Sachs.[65]

By forcing the Greek prime minister to cancel the proposed referendum, EU leaders again eliminated any mechanism by which Europeans and Greeks in this case could hold the Greek government accountable for the package it had negotiated with the *Troika*, although Greece's negotiation position was very weak. Additionally, if the Greek had approved the package in the proposed referendum, imposition of the austerity measures would have had much greater legitimacy and the government would have had much greater democratic authority to implement them.

With the installation of the new PM, Greece was set on the path of austerity regardless of the views of the Greek electorate. Papademos was seen as the imposition of a PM who would carry out the bailout package as demanded by the *Troika*. The Greek electorate had no other means by which to object to the measures

[64] A referendum of course is not the only way to obtain legitimacy for proposed actions. In fact, one might argue that it is an abdication of responsibility for representatives to push the decision to the people, when they were elected to take these decisions. The decision to decide matters via referendum might undermine representative democracy and therefore the ability for deliberative political decision-making. At the time, The Guardian argued against the Greek referendum, quoting Clement Atlee, the former UK prime minster, as saying that referendums were the "device of demagogues and dictators". See Michael White, *Greek referendum: an abdication of responsibility*, The Guardian, 1 November 2011, available at: http://www.theguardian.com/business/blog/2011/nov/01/greek-referendum-abdication-responsibility. However, given the existential and constitutional nature of the Greek bailout, perhaps this was one of the cases where a referendum is philosophically defendable and even required. We can leave these questions, which have been studied by political scientists in the EU context and in the context of the rise of "direct democracy".

[65] Lucas Papademos, Mario Draghi the ECB president and Mario Monti, installed in Italy as a technocrat PM, are all "alumni" of Goldman Sachs. In Greece's case, it is particularly interesting as Goldman has been accused of helping Greece "cook the books" in order to gain entry into the eurozone. See *Government Sachs Europe branch?*, Euronews, 15 November 2011, available at: http://www.euronews.com/2011/11/15/government-sachs-europe-branch/

that were being implemented by the government – their views were rendered irrelevant and subordinated to the greater objective of stabilising the eurozone. In so acting the EU essentially removed from the ability of a country to decide its destiny – it placed the policy option of existing the eurozone beyond the ability of democratic politics to decide. In effect, the EU converted the eurozone from a voluntary pooling of economic interests within a social democratic Europe into a prison from which there was no escape other than by means that are outside the rules.

As Papandreou recognised when he proposed a referendum on the bailout package and the austerity conditions it contained, the economic policies implemented the Papademos government would have large consequences for the Greek people. Greece's GDP contracted by 5.4% in 2010, 8.9% in 2011, 6.6% in 2012 and 3.3% in 2013.[66] The policy of reducing Greece's debt burden by squeezing the economy was fanciful – in fact by squeezing GDP, the debt burden (the ratio of debt to GDP) actually increased to 177.1% in 2014[67] from 146% in 2010.[68] The cumulative decline in GDP since the onset of the crisis in 2008 to 2013 is

[66] Source: International Bank of Reconstruction and Development (The World Bank), GDP growth (annual %), http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG, accessed on 12 May 2015.
[67] Source: Eurostat (the statistical office of the EU), General government gross debt – annual data, http://ec.europa.eu/eurostat/tgm/table.do?tab=table&plugin=1&language=en&pcode=teina225, accessed on 12 May 2015.
[68] See Robert Peston, *Why aren't markets panicking about Greece?*, BBC News, 26 January 2015, available at: http://www.bbc.co.uk/news/business-30980321, "at the time the crisis began in earnest, at the end of 2009, [Greece's] debts as a share of GDP were 127% of GDP or national income - and rose the following year to 146% of GDP".

approximately 25% from € 242bn to € 182bn.[69] Unemployment rose from 12.5% in 2010 to 27.3% in 2013.[70] Youth unemployment was 57.3% at the end of 2013.[71]

These were the results of the implementation of the austerity measures required under the bailout packages agreed with the *Troika* (consisting of the European Commission (EC), the ECB and the IMF).[72] In addition to the macroeconomic impact, Greek society was badly frayed as cut backs in social spending, healthcare and education led to an increase in persons living in extreme poverty.[73] The *Troika* was focused on fixing Greece as a technical problem. They did not consider that the drastic change in economic policy required by the bailout package would have a serious impact on Greek society and, therefore, required, garnering popular support. The focus was on the result, with no attention to the process by which the result is legitimised.[74]

Each member of the *Troika* had an interest in the austerity package. The ECB sought to minimise the financial and market impact of the Greek problem to the larger eurozone (contagion). The IMF sought to create conditions to maximise the

[69] *Greek economy's numbers still worrying*, Deutsche Welle, 13 February 2015, available at: http://www.dw.de/greek-economys-numbers-still-worrying/a-18256967

[70] Source: International Bank of Reconstruction and Development (The World Bank), Unemployment, total (% of total labour force) (modelled ILO estimate), http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS

[71] Source: Eurostat, File: Youth unemployment 2013Q4 (%), http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Youth_unemployment,_2013Q4_(%25).png

[72] See, for example, Dimitri B. Papadimitriou, Michalis Nikiforos and Gennaro Zezza, *The Greek Economic Crisis and the Experience of Austerity: A Strategic Analysis*, Levy Economics Institute of Bard College, July 2013, available at: http://www.levyinstitute.org/pubs/sa_gr_7_13.pdf

[73] See *Greek crisis: Human rights should not stop at doors of international institutions, says UN expert*, United Nations Office of the High Commissioner for Human Rights, 2 June 2015, available at: http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16032&LangID=E

[74] "Democracy is messy, but it has the overriding benefit of creating legitimacy by opening up to contestation and discussion all the wrenching trade-offs that must be made", Kathleen R. McNamara, *The ECB is hampered by a lack of democratic legitimacy, despite being responsible for policies hugely consequential for the lives of European citizens*, The London School of Economics, EUROPP – European Politics and Policy, 03 August 2013, http://blogs.lse.ac.uk/europpblog/2012/08/03/ecb-democratic-reform/.

probability of repayment – it thought that reducing the Greek fiscal deficit would maximise the chances of stimulating growth. Political concerns seemed at the forefront of the EC. Maintaining the integrity of the eurozone was not solely a financial issue but an issue of European integration. The EU could not countenance going backwards by having a member of the eurozone leave. This would have dented the goal of "ever closer union", "the further steps to be taken in order to advance European integration" and the reputation of the euro.[75] These interests converged in the case of the Greek bailout package, but none of these institutions seemed able to incorporate larger issues of legitimacy of action and the impact on democratic accountability within the EU. The concern for teaching Greece (and other problem countries) a lesson and mitigating moral hazard issues also motivated the response.

The experience with Greece and the subordination of political decision making to short-term crisis management did not result in any lessons learnt, as the influence of events in Greece impacted how Italy handled a change in government and imposition of austerity. The prime minister of Italy, Silvio Berlusconi, resigned after losing his majority in parliament in November 2011 due to the crisis.[76] Berlusconi was certainly not the right man to lead Italy through the crisis waters. However, after the loss of the majority in parliament, the natural course would have been to organise a general election. The Italian president, Giorgio Napolitano, then

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[75] Preamble to the Treaty on European Union (TEU), Consolidated Version of the Treaty on European Union, 2012 C 326/13, 55 O.J., available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2012:326:FULL&from=EN
[76] *Italy crisis: Silvio Berlusconi resigns as PM*, BBC News, 13 November 2011, available at: http://www.bbc.co.uk/news/world-europe-15708729

appointed Mario Monti, a former European commissioner, as a "technocrat" PM.[77] Perhaps Napolitano was acutely aware that elections in Italy were messy affairs and that no clear majority could result from a quick general election and the political paralysis in Italy would last for a long time in a context where Italy could not wait for long to settle the makeup of a new government. Prior to the appointment, Monti had met with Mario Draghi, the president of the ECB.[78] This sequence of events makes it clear that Monti's appointment was in part engineered by the ECB and perhaps others to ensure that the reforms needed from the EU's viewpoint would in fact be carried out. As stated by Tony Barber of the *Financial Times*, "European policymakers prefer[red] the suspension of politics as usual in Greece and Italy and its replacement with non-partisan, managerial expertise … [g]overnment policies will be supervised, not to say crafted in the first place, by Brussels and Frankfurt".[79] Following these changes in Greece and Italy one commentator concluded that in the cases of Greece and Italy, "democratic legitimacy is clearly regarded as a luxury" by the *Troika*.[80]

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[77] A majority of the cabinet members named by Mr Monti were "academics with undeniable experience in their respective sectors" and, "[d]espite reports that Mr Monti had sought to include politicians in his cabinet, there are none". *Monti unveils technocratic cabinet for Italy*, BBC News, 16 November 2011, available at: http://www.bbc.co.uk/news/world-europe-15751179

[78] *Berlusconi Steps Down, and Italy Pulses With Change*, The New York Times, 12 November 2011, available at: http://www.nytimes.com/2011/11/13/world/europe/silvio-berlusconi-resign-italy-austerity-measures.html

[79] Tony Barber, *Europeans clutch at technocratic fixes*, Financial Times, 9 November 2011, available at: http://www.ft.com/cms/s/0/abccdedc-0ae3-11e1-b9f6-00144feabdc0.html#axzz3ZunNNLB4. Brussels and Frankfurt are the headquarters of the EC and the ECB, respectively.

[80] David Skelton, *Government of the technocrats, by the technocrats, for the technocrats – Democracy must not be regarded as merely an optional extra when solving economic problems,* The New Statesman, 16 November 2011, available at: http://www.newstatesman.com/blogs/the-staggers/2011/11/european-greece-technocrats

In the midst of the crisis, time was a luxury and observing democratic processes takes time.[81] The changes in governments in Italy and Greece were convenient for the *Troika* as they furthered their immediate interest, could be accomplished quickly and easily without the messiness of consulting electorates and going through procedural niceties, and resulted in the desired policies being implemented. However, these changes were only one in a series of decisions that placed convenience ahead of the longer-term impact of the decisions on European democracy. However, not only did southern Europe not have a say in the austerity measures the *Troika* mandated, northern Europe did not have one either in that the bailout packages "transferred the risk in southern Europe to the governments and taxpayers of northern Europe".[82] Northern European citizens assumed the risk of southern Europe in the name of saving the elitist euro project, without a single vote being cast or explanation other than European solidarity.

This path continued therefore to erode the legitimacy of actions taken to address the crisis. Moreover, crisis management by the EU dealt exclusively with the present – the goal of crisis management was containment of the crisis (or in financial market terms, to limit the contagion effects of the eurozone crisis to the so-called PIIGS – Portugal, Ireland, Italy, Greece and Spain). Rather than having a clear crisis management strategy, it seemed the EU was employing the French *système*

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[81] Amartya Sen though has argued that "[p]articipatory public discussion – the 'government by discussion' expounded by democratic theorists like John Stuart Mill and Walter Bagehot – could have identified appropriate reforms over a reasonable span of time, without threatening the foundations of Europe's system of social justice". Amartya Sen, *The Crisis of European Democracy*, The New York Times, 22 May 2012, available at: http://www.nytimes.com/2012/05/23/opinion/the-crisis-of-european-democracy.html?_r=0

[82] Paul Mason, *Meltdown: The End of the Age of Greed*, *supra* footnote 59, p. 213.

D.[83] A clear crisis management strategy would have incorporated several components:

- Immediate concerns to forestall a default in payments by Greece or any of the PIIGS countries ("surmount present threats and dangers");[84]
- Recognising the potential social impact of measures taken to address immediate concerns, by anticipating these impact, planning measures to mitigate such impacts, and modifying the immediate decisions to address the crisis to take these impacts into account; and
- View the crisis as a long-term phenomenon and devise ways to "build a better future" for the affected countries, the eurozone and the EU.[85]

This is just a skeleton of a fully developed crisis plan. Each of these components can be unpacked and will reveal additional considerations. However, even as the euro crisis has continued since 2009, there is still no indication of a larger crisis plan – the *Troika* (since re-christened the "Institutions") and EU member states are still proceeding from one deadline to the next.

Avoiding the need for changes in the European Union treaties was one unifying theme in the actions taken to counter the crisis. Amending the treaties would require unanimity and this was highly unlikely given that several countries would need to ratify changes via referendum. However, rather than having the treaties guide policy responses, the EU stood ready to take action outside the treaties and outside the framework of the EU if necessary, treating the rule of law embodied in the treaties as an inconvenience or more charitably the EU saw the crisis as an emergency justifying the suspension of the usual process of building

[83] From the French verb "*se débrouiller*" translated uncharitably as "to muddle through". This was used as early as in the Franco-Prussian war to describe the French strategy. See, for example, Wayne L. Pickering, *A Comparison of the American Civil War of 1861-65 with the Franco-German War of 1870-71*, a synopsis of a lecture given to the Ottawa Civil War Roundtable, November 2012, available at: http://www.cwrtottawa.ca/?page_id=446

[84] Pfaltzgraff, *supra*, footnote 1.

[85] Ibid.

democratic support and thereby lending legal and moral legitimacy to crisis decisions and policies.

5. European crisis responses

With austerity policies firmly in place and the need for fiscal consolidation unquestioned, monetary policy became the only instrument by which the contractionary effects of austerity could be tempered and by which the integrity of the euro as the single currency of the eurozone could be maintained. The ECB as the central bank for the eurozone and the 'custodian' of monetary policy became "the only game in town".[86] European leaders seemed to have no confidence in the ability of governments of the PIIGS countries, but particularly those of southern Europe, to implement appropriate fiscal policies, in part, because it was subject to messy political processes in the various EU member states. A requirement for austerity at the European level was therefore seen as necessary to ensure that austerity policies were actually enacted. As monetary policy became the only economic policy instrument, the ECB felt forced by financial market developments to say that "[w]ithin our mandate, the ECB is ready to do whatever it takes to preserve the euro. And believe me, it will be enough."[87]

It is quite interesting that Draghi mentioned the mandate of the ECB. His statement implies that whatever action is needed to save the euro, it will not only be enough, but it will fall within the ECB's mandate. However, the central bank's

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[86] The phrase is from Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore: Johns Hopkins University Press, 1996), Chapter 1, "Democracy and its Arenas", p. 5.

[87] Speech by Mario Draghi, President of the European Central Bank at the Global Investment Conference in London 26 July 2012, available at: https://www.ecb.europa.eu/press/key/date/2012/html/sp120726.en.html

mandate is clearly defined in its statute[88] and in the Treaty on the Functioning of the European Union (TFEU).[89] Article 2 of the statute and Article 127(1) of the TFEU define the ECB's primary mandate as maintaining price stability. The ECB also is required to support "the general economic policies in the Union with the view of contributing to the objectives of the Union as laid down in Article 3 of the Treaty on European Union" (TEU).[90] This latter authority would support the ECB's actions away from solely price stability to macroeconomic stability and preserving the euro. However wide this mandate may appear, other EU treaty provisions limit the range of action of the ECB.

The EU is explicitly not liable for the debt or liabilities of any member state.[91] Moreover, the ECB is prohibited from direct financing of governments of member states.[92] However, the ECB is owned by the eurozone member states and ultimately, even if not a legal guarantee of the ECB, if the ECB were to run into difficulty (if, for example, its securities portfolio of eurozone government debt were to lose value to

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[88] Protocol (No. 4) on the Statute of the European System of Central Banks and of the European Central Bank, O.J. 2012, C 326/230, available at: https://www.ecb.europa.eu/ecb/legal/pdf/c_32620121026en_protocol_4.pdf

[89] Treaty on the Functioning of the European Union, consolidated version, 2012 O.J. C 326/47 available at: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:12012E/TXT&from=EN. I acknowledge the discussion of these topics in Matthias Ruffert, *The European Debt Crisis and European Law*, Common Market Law Review, Vol. 48, Issue 6 (2011), for a general legal background of the issues involved.

[90] Article 3 of the TEU set out the general aims of the EU and in particular, Article 3(3) states that the EU "shall work for the sustainable development of Europe based on balanced economic growth and price stability". The TEU, consolidated version, 2008 O.J. C 115/13, is available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0013:0045:en:PDF

[91] Article 125(1) of the TFEU, states in relevant part, "The Union shall not be liable for or assume the commitments of central governments … of any Member State … A Member State shall not be liable for or assume the commitments of central governments … of another Member State."

[92] Article 123 of the TFEU states in relevant part, "Overdraft facilities or any other type of credit facility with the European Central Bank … of Member States shall be prohibited, as shall the purchase directly from them by the European Central Bank of debt instruments".

such an extent so as to erode the ECB's capital base), eurozone governments would *de facto* be responsible for the ECB's liabilities.

After Draghi's statement in July 2012 that the ECB would do whatever it takes to save the euro,[93] the ECB unveiled plans for "Outright Monetary Transactions" (OMT) in September 2012. Under this plan, the ECB would in conjunction with the European Financial Stability Facility (EFSF) or its successor the European Stability Mechanism (ESM) purchase government bonds of member states in secondary markets, provided that the member state requested a programme from either the EFSF or the ESM.[94] Essentially, this required that the member state request a bailout from one of these institutions. As the EFSF and the ESM were not organised as EU institutions the provisions in the TFEU prohibiting bailouts are not strictly applicable.[95]

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[93] Draghi speech, *supra*, footnote 87.

[94] Limiting purchases of government bonds to secondary market purchases was an important feature incorporated so as not to run afoul of the prohibition on direct purchases of government bonds of member states (purchases of bonds in the primary market) in Article 123 of the TFEU. See *supra* footnote 92.
The EFSF was set up in as a "temporary crisis resolution mechanism" by the Eurozone member states in June 2010 with a "mandate … to safeguard financial stability in the Euro zone ... to finance loans for euro area Member States". See European Financial Stability Facility website, http://www.efsf.europa.eu/about/index.htm. The ESM was set up as a permanent institution in October 2012 with a similar mandate to take over from the EFSF. Both institutions operated in parallel until June 2013, after which the EFSF will not enter into any new operations and will wind down its existing loan portfolio and pay down debt raised in the capital markets. See European Stability Mechanism website, http://esm.europa.eu/about/index.htm.
Neither the EFSF nor the ESM are institutions of the EU: the EFSF was organised as a private company under Luxembourg law whilst the ESM is 'an inter-governmental institution of the euro area Member States under public international law'; in other words, they are not created pursuant to any specific authorities of EU treaties. See Presentation by Kalin Anev Janse, Member of the Management Board and Secretary General of the ESM, *European but not EU – the special case of ESM and EFSF*, 14 October 2014, available at: http://www.esm.europa.eu/pdf/Kalin%20Anev%20Presentation_ECA%20seminar_14%20October1.pdf

[95] Specifically, Article 125(1) of the TFEU.

Both these legal manoeuvres, avoiding the prohibitions on direct financing of member states and on bailouts, were questioned, particularly by the German members of the ECB's governing council and the *Bundesbank* (the German central bank), although Draghi stood firm that OMT was within the mandate of the ECB.[96] There had already been challenges to the legality of the ESM brought before the Federal Constitutional Court of Germany (*das Bundesverfassungsgericht*) in Karlsruhe, with a view to invalidate Germany's participation thereby severely disabling the functioning of the ESM.[97] The German constitutional court ruled that Germany's participation was legal, with some conditions.[98] However, Draghi essentially saw any measures designed to save the euro as within the ECB's mandate as they were in effect measures 'to ensure the proper transmission' of monetary policy.[99]

OMT remained unused as Draghi's statement that the ECB will do whatever it takes and the later announcement of the details of OMT in unlimited amounts served to calm financial markets.[100] Markets had been looking for what they termed

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[96] Jens Weidmann, the president of the Bundesbank was also a member of the ECB governing council *ex officio.* The Bundesbank is a member of the Eurosystem (national central banks of member states of the eurozone) and the European System of Central Banks (national central banks of member states in the EU. *ECB, ESCB and the Eurosystem*, European Central Bank website, https://www.ecb.europa.eu/ecb/orga/escb/html/index.en.html, accessed on 13 June 2015.

[97] See *German Constitutional Court decisions on EU anti-crisis measures*, European Parliament Briefing, July 2014, available at: http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2014/140568/LDM_BRI(2014)140568_REV1_EN.pdf. There was an interim decision in September 2012, with the final decision in March 2014.

[98] Ibid., p. 4.

[99] Introductory statement to the press conference (with Q&A), Mario Draghi, President of the ECB and Vítor Constâncio, Vice-President of the ECB, Frankfurt am Main, 6 September 2012, available at: http://www.ecb.europa.eu/press/pressconf/2012/html/is120906.en.html

[100] *Markets rally after Mario Draghi unveils ECB plan to save the euro – as it happened*, The Guardian, 6 September 2012, available at: http://www.theguardian.com/business/2012/sep/06/eurozone-crisis-mario-draghi-ecb-euro

the “big bazooka” – namely, that European institutions would attack the crisis with all available tools. Draghi’s statement was the clearest up to that time in the crisis that markets received a direct communication that European institutions were up to the challenge and would not relent. This calming effect was short-lived as markets focused on the opposition from the Bundesbank to OMT and fears that this opposition might render Draghi’s statements “mere talk”.[101]

In time, challenges to OMT were also brought before the German constitutional court. The court ruled that OMT was incompatible with EU law, specifically Article 123(1) of the TFEU prohibiting the ECB from financing member states and because OMT was not limited in amount and was at the discretion of the ECB, it was unlikely to be a measure “supportive of Union economic policy” under Article 127 of the TFEU.[102] The court questioned whether OMT was an “economic policy measure” rather than a “monetary policy measure”.[103] If OMT were the former, it would raise serious doubts as to its legality. The German constitutional court then referred the case to the Court of Justice of the European Union (ECJ) for

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[101] *Share prices crash as Mario Draghi's 'big bazooka' falls flat*, The Independent, 3 August 2012, available at: http://www.independent.co.uk/news/world/europe/share-prices-crash-as-mario-draghis-big-bazooka-falls-flat-8002283.html

[102] See the decision of the court in English: German Federal Constitutional Court, Order of 14 January 2014 – 2BvR 2728/13, ECLI:DE:BVerfG:2014:rs20140114.2bvr272813, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2014/01/rs20140114_2bvr272813en.html. See also Helmut Siekmann and Voler Wieland, *The German Constitutional Court's decision on OMT: Have markets misunderstood?*, Centre for Economic Policy Research, Policy Insight No. 74, October 2014, p. 3, available at: http://www.voxeu.org/sites/default/files/image/FromMay2014/PolicyInsight74.pdf.

[103] See Jonathan Watson, *Eurozone crisis: ECB presses ahead with bond-buying plans*, International Bar Association, 21 February 2015, available at: http://www.ibanet.org/Article/Detail.aspx?ArticleUid=d22500ec-dc3a-4b6b-a0fd-989a431bf77c.

determination of whether OMT was consistent with EU law.[104] The effect of this referral was to postpone the ability of the ECB to activate the OMT programme if deemed necessary until after the ECJ decision.

One year later, the Advocate General of the ECJ issued an opinion that OMT was "compatible, in principle, with the TFEU", thereby saving Draghi's OMT operations.[105] Shortly thereafter, the ECB proceeded to announce its €1.1 trillion QE programme.[106] This ending to the process of legal challenges to OMT is less than satisfying. From a legal point of view, given the importance of the issues in the case, resolution via an opinion of the Advocate General of ECJ hardly seems as if the court accorded the matter the importance it had. A court should give finality to disputes it adjudicates and this finality is accorded legitimacy as the court is seen as ensuring that the decisions being challenged were made properly, in accordance with the prescribed procedures and taking into account only considerations that are permitted by law. In other words, the court's function is to uphold the values of the rule of law that underpins a democratic system. To the extent that the decision is not by the panel of judges so entrusted, the decision in this particular case seems to have yielded to expedience rather than one that gains legitimacy from the outcome.

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[104] See *German court refers ECB bond-buying programme to European justice*, Financial Times, 7 February 2014, available at: http://www.ft.com/cms/s/0/3feab440-8fd5-11e3-aee9-00144feab7de.html#axzz3a1jRFS3e.

[105] Court of Justice of the European Union, Press Release No. 2/15, Advocate General's Opinion in Case C-62/14, Peter Gauweiler and others v Deutscher Bundestag, *According to Advocate General Cruz Villalón, the ECB's Outright Monetary Transactions programme is compatible, in principle, with the TFEU*, Luxembourg, 14 January 2015 available at: http://curia.europa.eu/jcms/upload/docs/application/pdf/2015-01/cp150002en.pdf

[106] European Central Bank, Press Release, *ECB announces expanded asset purchase programme*, 22 January 2015, available at: https://www.ecb.europa.eu/press/pr/date/2015/html/pr150122_1.en.html. The QE programme differed from OMT in that there was no conditionality attached to the ECB's ability to purchase bonds in the secondary market, meaning not directly from member state governments.

One aspect of OMT is troublesome regardless of whether it is in fact compatible with EU law. As designed by the ECB, the bank would purchase bonds of a eurozone government in the secondary market only if that government agreed a programme (or bailout) from the EFSF or the ESM. This conditionality essentially allowed the ECB to hold OMT as leverage against a government pushing the government to agree a bailout programme. Considering the ECB's accountability deficit, it is not the right institution to force governments into arguably draconian fiscal conditions via the EFSF or the ESM. OMT therefore would circumvent domestic political processes. Again, the ECB is deeply involved in policies that "implicat[e] how scarce public resources are used, money spent and who gets what part of the economic pie".[107]

The process was one large muddle through very technical issues involving the ECB's mandate and authority. Given that the ECB's mandate is enshrined in treaties that are not easily amended, the ECB's responsiveness and accountability for its policy decisions is quite weak. Compared to other central banks such as the Bank of England or the Federal Reserve, the "political isolation"[108] of the ECB perhaps places an even greater premium on a clear and transparent justification and basis for its decisions. The justification is not that it will enable the ECB to address the crisis or improve the economy – one presupposes that even if the ECB at times takes imprudent decisions, the goal of improvement in economic performance is always the motivation. Rather, the ECB's justification must be political insofar as the process of decision must admit public input. More directly, the ECB's policymaking

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[107] McNamara, *supra* footnote 71.
[108] Berman and McNamara, *supra*, footnote 14, p. 5.

process must admit of public input, either directly from the people, or more likely from national governments or other institutions that have a greater claim on public legitimacy, in order to increase its accountability particular in the light of its highly independent status accorded to it under EU treaties.

Using the word "political" in the context of the ECB might seem unusual particular because the concept of an independent central bank is precisely to remove politics from the deliberations concerning monetary policy.[109] However, politics are embedded in the rules that govern the mandate and authority of the ECB. Opaqueness in the legal basis for action or convenient fudges in interpretation of the legal basis for ECB decisions contributes to its further isolation from European citizens and therefore negatively impacts its legitimacy.

The courts were clearly sensitive to the ability of the EU to respond to the euro crisis and the reaction of financial markets to any misstep that they might take in deciding on the ability of the ECB to take the proposed actions. Since the the ECB was the only institution able to act against the crisis given the austerity environment, its creativity in formulating OMT and the legal process facilitated a more efficient policy response. However, the abdication of responsibility of both the German constitutional court to make a definitive ruling and of the ECJ, which did not decide the case but issued only an opinion of its advocate general, dented the

[109] "At the Federal Reserve … policy discussions are serious, even somber, and disagreements are almost always over a policy's economic, social or legal merits, not its political marketability … The attitudes of particular legislators, interest groups, or political parties toward monetary policy are rarely mentioned, for they are considered irrelevant", Berman and McNamara, *supra* footnote 14, p. 7, quoting Alan Blinder, discussing the differences between policy making at the Council of Economic Advisors and the Federal Reserve.

legitimacy of EU institutions in the name of efficiency and effectiveness.[110] Indeed, institutions and policies may be able to be effective and efficient in the short-term, but in the long-run, the effectiveness of institutions and of policy decisions are increased by increased legitimacy obtained through accountability.

Aside from the less-than-satisfactory resolution of the issue of whether the ECB could enact its OMT and QE programmes, several other ECB actions, although on a firmer legal basis, undermine its claim that it acts solely as technocratic monetary policy institution.

Part of the result of the euro crisis had been the conversion of private debt into sovereign debt, as banks were bailed out by their governments. European banks were subjected to four "stress tests" developed by the European Banking Authority from 2009 through 2014 to see how well banks might withstand extreme financial market and economic conditions.[111] Weak European financial institutions tried to rebuild their capital bases to withstand economic shocks by shrinking the volume of risk-weighted assets (assets such as loans to customers against which capital was required to be held).[112] Banks were therefore not keen on additional lending, arguably, something the European economy needed stimulate growth to offset austerity fiscal policies by helping businesses expand and increasing

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[110] "What advocates of the ECB in particular and economics in general seem to have forgotten in the rush for economic efficiency is the power and import of democracy." Ibid., p. 7. See also McNamara, *supra* footnote 71, "[e]ven those who might applaud the aggressive action to stabilize the European economy should be worried about *the process* by which he ECB has been assisting in the salvaging of the EU" (emphasis added).
[111] European Banking Authority, website, *EU-wide stress testing*, available at: http://www.eba.europa.eu/risk-analysis-and-data/eu-wide-stress-testing
[112] Banks were reluctant to tap the markets for additional equity or deeply subordinated debt that would count as regulatory capital as it would likely be prohibitively expensive given market conditions and investor reluctance to invest in weak banks.

employment.[113] Banks instead were incentivised to have a larger percentage of the assets on their balance sheets in the form of European government bonds, whose risk weighting is lower than that of loans to private sector borrowers.[114]

Against this backdrop, the ECB instituted programmes to increase the liquidity of European banks. The ECB instituted its Longer-Term Refinancing Operations (LTRO) programme, which provided initially 3-month loans to European banks (later extended to a maximum of 36 months) at low interest rates in several tranches. Draghi noted that LTRO was an "unquestionable success … risk environment has improved enormously … [m]arkets have reopened … even the interbank market … has also started working slightly better".[115] However, the ECB's underlying objective was to inject stimulus into the real economy. While LTROs helped to reopen interbank markets by increasing confidence between banks that they would have ready access to funding from the ECB if necessary and helped to reduce yields on eurozone sovereign bonds, they did not have much impact from a macroeconomic perspective because the banks were still focused on healing and

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[113] Stimulus was needed not only for the PIIGS themselves, but also because banks in other eurozone countries had large exposures to those countries who would be helped by economic growth. This would lessen the possibility that those banks would need a rescue from their governments should the PIIGS worsen.

[114] In fact, bankers are not pleased that, under the new Basel III capital adequacy rules of the Basel Committee on Banking Supervision, sovereign debt will be subject to higher capital requirements. See *European Banks Weigh-Up Government Bond Problem*, The Wall Street Journal, 27 January 2015, available at: http://www.wsj.com/articles/european-banks-weigh-up-government-bond-problem-heard-on-the-street-1422367571.

[115] *ECB chief says liquidity measures 'unquestioned success'*, EUbusiness, 8 March 2012, available at: http://www.eubusiness.com/news-eu/finance-public-debt.fle. However, as Amartya Sen has argued, "even if the policy decisions taken by the financial experts were exactly correct and rightly timed, an important question of democratic process would have remained". Amartya Sen, *What Happened to Europe?*, The New Republic, 2 August 2012, available at: http://www.newrepublic.com/article/magazine/105657/sen-europe-democracy-keynes-social-justice.

reducing their balance sheets rather than on using the funding to expand their lending which in turn would have placed pressure on the capital bases.

On 5 June 2014, the ECB announced "targeted longer-term refinancing operations" (TLTROs), which consisted of loans from the ECB to banks the amounts of which were tied to lending to businesses and individuals.[116] This was modelled on the Bank of England's £100bn "funding for lending scheme" (FLS)[117] launched in July 2012, under which the Bank of England provided UK banks with funding with the idea that the funds would be used to lend to small and medium sized businesses. The idea behind both FLS and TLTRO was to get a more direct transmission of funding into the real economy.

Instead of governments increasing spending to provide stimulus to the economy, the ECB and the Bank of England enacted these programmes to provide stimulus in view of the austerity fiscal policies that had been adopted by governments. Aside from FLS and TLTRO being poor substitutes for fiscal stimulus, they also relied on the "monetary policy transmission mechanism", namely the banking system. Part of the reason why these programmes were deemed necessary was that this mechanism was not working well, when banks that were keen on reducing assets to increase their capital bases used LTRO funding to purchase

[116] *ECB announces monetary policy measures to enhance the functioning of the monetary policy transmission mechanism*, European Central Bank Press Release, 5 June 2014, available at: https://www.ecb.europa.eu/press/pr/date/2014/html/pr140605_2.en.html
[117] See Bank of England website, *Funding for Lending Scheme*, available at: http://www.bankofengland.co.uk/markets/pages/fls/default.aspx, "The FLS is designed to incentivise banks and building societies to boost their lending to the UK real economy".

government debt and earned the spread between the funding cost and the yield on government debt.[118]

Consequently, the ECB and the Bank of England central banks (the only institutions capable of injecting stimulus into the economy) either usurped the function of the political branches of government or, perhaps worse, enabled governments to escape accountability for the continuation of austerity policies which showed no signs of working to restore substantial economic growth and employment in these economies. In doing so, central banks lent their credibility to those governments and lost their non-partisan status. If central banks enable governments to maintain ineffective policies by implementing policies that counteract or cover up governments' economic plans, then central banks must open themselves up to greater public scrutiny and risk losing whatever justification for policy independence they may have. The ECB and the Bank of England likely crossed this line jeopardising their independence and giving those that seek to remove the independence of these central banks more ammunition for their arguments.

[118] These transactions increased the prices of government debt (reduced the yields on these bonds). One large effect of these programmes was to increase returns to government bond investors while increasing central banks' balance sheets which can represent increased risks to governments should the value of the loans on the books of the central banks decrease substantially in value.

6. Have crisis actions upheld democratic values?

Legitimacy is essential to democracy. Elections provide legitimacy to governments taking power, but they are weak in providing legitimacy to government actions in the period between elections. Elections are one way to hold governments accountable for their actions taken while they were in power, but as discussed earlier, this is a backward looking accountability can only impose sanctions on governments with whose policies voters disagree or which do not achieve their desired goals. If we evaluate the crisis response actions of the EU and the ECB, we note that accountability for actions was weak due to institutional factors and to excessive focus on outcomes rather than process. Moreover, the process itself was one that was suspect from a democratic viewpoint in that the actors whose views could influence policymaking were not the general electorate, but subgroups seeking to further their own interests that did not necessarily coincide with the public good.[119]

Questions about institutional legitimacy from the organisational construction of the ECB. Its statute and mandate are embedded in the European treaties that are not easily amended. Treaty change requires the approval of all EU members – even provisions dealing only with eurozone issues such as the mandate of the ECB, require the assent of non-eurozone members such as the UK, Sweden and Denmark

[119] In this sense, the actions of the ECB and the EU did exhibit a measure "oblique accountability". See Schmitter, *Political Accountability in 'Real-Existing' Democracies: Meaning and Mechanisms*, *supra* footnote 19, pp. 13-14. Although of course the role of interest groups in democratic discourse is important, there is a tension between the freedom to form civil society associations to further the interests of the group and governments' responsibility for the public good as a whole. Schmitter cautions that oblique accountability is "not a substitute for the potentially equal contribution of citizens exercising vertical accountability" but that "it has become a very important complement to it". Ibid., p. 14. As a complement, if it stands alone, it is not effective in any way as a component of political accountability.

(not to mention most of the new eastern European members).[120] Politically, opening up a treaty for amendment, even for technical reasons, will enable member states to try to use the opportunity to seek other changes. The process will either be so slow so as to render impossible effective oversight of the substantive policies of the ECB or fail due to political differences.

Because of the distance between the ECB and national politics – even more so than in the case of the US Federal Reserve[121] – giving the ECB both goal and instrument independence become even more problematic.[122] Instrument independence is a consequence of having an independent central bank. Although under its mandate, the ECB's goal is to maintain price stability, in practice the ECB may have considerable goal independence because of the "lack of operational specificity in the goals".[123] However, we have seen in the ECB's crisis actions that its goal was essentially to save the euro by whatever means. The ECB's primary mandate is price stability. Arguably, one must have a stable currency that enjoys confidence that it will exist in the longer term. Even if one accepts this premise, this reasoning can justify the ECB taking almost any action, including for example, determining fiscal policy. Because of this result, this argument is problematic and

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[120] See Philippe Legrain, *The ECB Needs to Know its Place - The European Central Bank has far overstepped its mandate as a guardian of monetary stability. And a backlash is coming*, Foreign Policy, 22 April 2015, available at: http://foreignpolicy.com/2015/04/22/end-the-european-central-bank-dictatorship/, "The ECB's inordinate independence is entrenched in the EU treaty, which can only be amended if all 28 European Union governments, parliaments, and, in some countries, a popular vote, agree".

[121] The ECB "is by all measures of central bank independence the world's most independent central bank". Karl Kaltenthaler, Christopher J. Anderson and William J. Miller*, Accountability and Independent Central Banks: Europeans and distrust of the European Central Bank*, *supra* footnote 40, p. 1266.

[122] See Jakob De Haan and Sylvester C.W. Eijffinger, *The Democratic Accountability of the European Central Bank: A Comment on Two Fairy Tales*, *supra* footnote 37.

[123] Ibid., p. 395.

the goal of price stability cannot be seen to include saving the euro. This latter goal implicates not only monetary policy, but decisions at national levels as to whether a country desires to be part of the single currency. This ability to expand its goals therefore made the ECB even more distant if not isolated from politics and political input. This distance might be reduced through the ECB increasing its consultations with governments of the EU member states using the euro, not for instructions, but so that the ECB is aware of the political and social issues facing member states that might inform policy decisions and increased accounting to the European Parliament in a way analogous to the so-called Humphrey-Hawkins testimony of officials of the Federal Reserve before the US Congress.

The ECB expanded its goals "extra constitutionally", when the EFSF and ESM were organised outside the EU law and treaty framework. Moreover, the ECB overstepped a purely monetary policy brief when it made the OMT conditional upon countries accepting a bailout deal with the EFSF or ESM that would require adoption of austerity fiscal policies of any country seeking help from the ECB. The ECB came dangerously close to mandating fiscal policies of troubled eurozone countries, which clearly exceeds its brief even by any liberal interpretation of the legal framework under which the ECB operates. Because of this institutional makeup and the freedom it gives the ECB to act as a board of quasi-scientific monetary experts who can protect the purity of its technical decisions from being tempered by political influence that might reduce the efficiency or effectiveness of policy, there is no culture of public input into ECB policymaking.

The ECB has been seen as a technocratic institution to manage monetary policy. It is not surprising then that during the crisis, the ECB together with its partners sought technocratic solutions. They saw the crisis as one primarily of government mal-administration of economic policy – that is governments that did not understand the technical details of how to manage the economy. This gives the ECB the ability to respond to crises, but at the expense of eliminating any accountability mechanism.[124] In the long run, this is not a healthy development for the rule of law in European democracy.[125]

Free and fair elections therefore are an essential component of democracy.[126] The member states of the European Union are liberal democracies; that is, democracies that recognise liberal values and limits on the power of majority rule.[127] The rule of law in liberal democracies limits the ability of government to act in an arbitrary manner and in a differing manner to similarly situated citizens. The rule of law, or the process by which governments formulate and enforce policies, is a component of maintaining legitimacy in the period between elections and, therefore,

[124] The German journalist at *Süddeutsche Zeitung* remarked in an opinion piece "[c]ritics hold that democracy is not suitable to bring Europe through the crisis … [but] what's necessary is a debt cut, not a democracy cut", quoted in Heather Horn, *Euro Crisis and the Transformation of European Democracy*, *supra* footnote 52.

[125] "Europe cannot hand itself over to the unilateral views – or good intentions – of experts without public reasoning and informed consent of its citizens". Amartya Sen, *The Crisis of European Democracy*, *supra* footnote 81.

[126] Samuel Huntington defined the "popular election of the top decision makers is the essence of democracy". He distinguished the way in which governments came to power from "inefficient, corrupt, short-sighted, irresponsible" and "dominated by special interests, and incapable of adopting policies demanded by the public good. These qualities may make such governments undesirable but they do not make them undemocratic". Samuel Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman, OK and London: University of Oklahoma Press, 1991), pp. 9-10.

[127] Fareed Zakaria defines "liberal democracy" as "a political system marked not only by free and fair elections but also by the rule of law, a separation of powers, and the protection of basic liberties". Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad*, *supra*, footnote 30, p. 17.

is important in giving meaning to accountability not only as a periodic event but also as a continuing concept throughout the live of a government – not as a backward looking concept tied to the ability to vote governments in or out.

For legitimacy of policy actions in the longer-term, the rule of law is crucial. This is a focus on the process by which policies are formulated rather than just the outcome. We can envision a policy that is extremely effective in achieving the desired result; however, if the policy is imposed, it will be extremely difficult to maintain the policy.

The ECB is not entirely fenced off from the outside world. In gathering information on the economy to inform its monetary policy considerations, it inadvertently does give one segment of society, global financial markets, an influence in its policymaking. Not only do market conditions provide an input into the deliberations that help determine appropriate monetary policy, they also provide the ECB a measure by which to evaluate the effectiveness of its policies. The reaction of markets in the form of bond prices and yields, particularly on sovereign debt, is seen as a measure of success or failure of policy.[128]

In drawing conclusions from the various policy actions taken in response to the financial and eurozone crises, we do not need to ascribe bad motives to the policymakers involved. We know from crisis management theory, that depending upon the nature of the crisis and the actors involved, a perspective focusing upon "bureaucratic politics" might yield insights that a perspective focused on individuals

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[128] "[W]hat seems to worry European spectators is the way in which the markets, as expressed through bond prices and ratings agencies, have overtaken the political process". Heather Horn, *Euro Crisis and the Transformation of European Democracy*, *supra*, footnote 52.

or institutions as “rational actors” into how and why certain decisions are made and that a series of decisions that may individually be seen as appropriate, when taken together, do not result in moving toward a goal that is desirable from a social point of view.[129]

[129] Graham Allison and Philip Zelikow, *Essence of Decision: Explaining the Cuban Missile Crisis*, Second Edition (New York: Longman, 1999).

7. Conclusion

More than six years from the initial onset of the euro crisis, policymakers and politicians are no closer to to finding a solution to the underlying issues. At the moment, the EU is struggling with coming to agreement with the new Syriza Greek government on a bailout package that would release additional funds to Greece to keep it solvent. One step toward greater accountability was the election in Greece of the Syriza party. The EU however has not shown that it can deal with the expression of popular will in Greece with any changes in the approach to Greece and the euro crisis in general. The extent of the negative social impact in Greece and other eurozone countries is evident. The Greek government at times speaks about the choice between paying international creditors and paying pensioners.

The Greek people voted against austerity, yet they cannot get rid of austerity even by electing a national government who stood for election on an anti-austerity manifesto. Surely, the EU needs to show some flexibility and a movement away from the position that the Greek must pay for their past profligate spending and alleged laziness toward a position that places Greece on a sustainable path toward economic stability and growth. The Greeks must also realise that to some extent their wish to end austerity and to remain part of the eurozone are incompatible, given that the austerity policies were put in place by the EU and the ECB, whose accountability this paper has examined.

The lack of examination as to the more fundamental causes of the global financial crisis and the euro crisis has led to policies which do not address them. If it were so, it would be by sheer coincidence. Amartya Sen has observed that:

> "If proof were needed of maxim that the road to hell is paved with good intentions, the economic crisis in Europe proves it. The worthy but narrow intentions of the European Union's policy makers have been inadequate for a sound European economy and have produced instead a world of misery, chaos and confusion".[130]

One of the basic causes of the crises was the globalisation of finance and the extent to which finance has permeated many aspects of business and politics and to which finance has became an end in itself. One fruitful examination would be to try to ensure that finance returns to its role as an enabler of economic growth, rather than becoming an isolated world of transactions that benefit the banks and the bankers. We are reminded of Karl Marx's illustration of the commodity-money-commodity (CMC') cycle of the economy being turned into a money-commodity-money cycle (MCM').[131] Further examination then leads to other effects such as increasing income inequality. One would eventually conclude that these effects negatively impact the social cohesion and democratic politics, as they undermine necessary conditions for these to exist.

We have not yet reached the point where these considerations form part of the policymaking process in Europe. One of the trends in political economy since the 1980s with the liberalisation of the US economy under President Ronald Reagan and the of the UK economy under the Margaret Thatcher as PM, has been the elevation

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[130] Amartya Sen, *The Crisis of European Democracy*, The New York Times, 22 May 2012, available at: http://www.nytimes.com/2012/05/23/opinion/the-crisis-of-european-democracy.html?_r=0
[131] Karl Marx, *Das Kapital: Kritik der politischen Ökonomie* (1867), Vol. 1, Pt. 2, Chapter 4, 'The General Formula for Capital'.

of economics the field that provides answers as to how society should be organised and what policies should be adopted. Saskia Sassen has identified the impact of these policies - highly educated and paid professionals in "global cities" and the rest of the workforce that enables such professionals to maintain their lifestyles.[132] Francis Fukuyama notes that the development of the knowledge economy "overlooked the fact that the benefits of the new order accrued disproportionately to a very small number of people in finance and high technology".[133] He argues, "the current form of globalized capitalism is eroding the middle-class social base on which liberal democracy rests".[134] Fukuyama reminds us that this assessment of the causes of the financial crisis is not necessarily a leftist or Marxist one. He notes the Joseph Schumpeter, a conservative economist, recognised that it was in the nature of unfettered capitalism to become "culturally self-undermining".[135]

The dual triumph of liberal democracy and liberal, globalised finance leads to a contradiction. The more liberalised and global finance becomes, the more of a negative impact it has on the other value that has become dominant in the world (in theory if not in fact). Amartya Sen in discussing EU policies has observed that that intention of European policymakers that is "fine on its own can conflict with a more

[132] Saskia Sassen, *Global Cities and Survival Circuits*, in Barbara Ehrenreich (ed.), "Global Woman: Nannies, Maids, and Sex Workers in the New Economy" (New York: Metropolitan, 2002), pp. 254-274.
[133] Francis Fukuyama, *The Future of History: Can Liberal Democracy Survive the Decline of the Middle Class?*, Foreign Affairs, Vol. 91, No. 1, Jan./Feb. 2012, p. 59, available at: http://www.foreignaffairs.com/articles/136782/francis-fukuyama/the-future-of-history.
[134] Ibid., p. 53.
[135] Ibid., p. 55.

urgent priority … the preservation of a democratic Europe that is concerned about societal well-being”.[136]

Increasing globalised finance encourages the view of economics as determinants of policy because of the influence of those that benefit from increasing globalisation on the political process.[137] This subordinates politics and political discourse to economics and limits discussion to what is efficient from an economic viewpoint, rather than determining what one wants to achieve and viewing economics not as an end in itself, but as a set of tools that are useful in working toward those goals. By insisting on efficiency, which on the surface seems unobjectionable, those seeking economic solutions to economic and social challenges inadvertently devalues politics, which is at times designed to be inefficient. The primacy of economics introduces another obstacle to political accountability of European institutions. If the structural organisation of the ECB and the structural democratic deficit of the EU were not enough, allowing economics to decide public policy without political input further delegitimises European politics and national politics, as people see that their national governments’ ability to respond to voter desires is limited.

Fukuyama has articulated a prescription for an “ideology of the future” that can save liberal democracy from the decline of the middle class (a proxy for economic alienation and inequality resulting from globalised capitalism). This

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[136] Amartya Sen, *supra*, footnote 130.

[137] This “interest group’s domination of politics” as Fukuyama puts it forms part of the oblique accountability discussed by Schmitter. However, as Schmitter discusses, oblique accountability by itself is insufficient to bring about accountability in general. See Fukuyama, *supra*, footnote 133, p. 60 and Schmitter, *supra*, footnote 19, pp. 13-14 and the discussion of oblique accountability in Section 6 of this paper p. 44.

ideology might serve as a basis for the EU to define the longer term goal of its crisis management strategy that Richard Pfaltzgraff considers an essential part of that strategy. Fukuyama's prescription includes the following points:

- Reassertion of the "supremacy of democratic politics over economics";
- "Legitimate anew government as an expression of the public interest" and
- view of markets not as ends in themselves but valued "to the extent they contributed to a flourishing middle class".[138]

He argues that the needed changes in the global economy will not happen if we remain "enthralled by the narrative of the past generation … that their interests will be best served by ever-freer markets and smaller states."[139]

The EU would do well to have economics serve politics, in the sense that politics is the way a society organises itself and decides on how best to provide and improve the quality of life of its people. Economics can help us identify policies that result in the most efficient result and maximise the society's welfare, but these policies may have non-economic social impacts that a society may wish to avoid. The entire reason for the existence of the EU is not only to provide sounds economic management, but to provide a good quality of life to its citizens. If policymakers keep this in mind as they struggle with debt burdens, fiscal policy rules, budget constraints and EU rules, would go a long way towards moving towards a sustainable solution that allows for sound economic management whilst furthering Europe's democratic values and maintaining the accountability of its institutions.

[138] Fukuyama, *supra*, footnote 133, pp. 60-61.
[139] Ibid., p. 61.

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