Introduction

> I have found that the word 'Europe' was always in the mouth of those politicians who demanded from other powers that which they did not dare to pretend in their own name.
>
> Otto von Bismarck (1876)

The imposing structure of European laws, institutions, and policies has been erected on the basis of a few operational principles that have remained mostly implicit, but nevertheless have shaped the political culture of the European Union. These principles – which taken together form what may be called the operational code of the EU – are not mentioned in official documents, nor discussed in the academic literature, but I submit that it is impossible to understand the current predicament of the European project – the EU's legitimacy crisis and the growing alienation of the citizens from the European institutions – without starting from them. Arguably the most important of these implicit operational principles says that integration has priority over all other competing values, including democracy. Hence the monopoly of legislative initiative granted to the non-elected European Commission – a sacrifice of basic principles of representative democracy on the altar of integration. The rationale of this rule, the key element of what came to be called the Community Method, will be explained in later chapters. A second principle enjoins EU decision-makers to follow, wherever possible, the strategy of the fait accompli – the accomplished fact which makes opposition and public debate useless. This was, according to insiders, Jean Monnet's approach: 'since the people aren't ready to

For cases and other legal information, see the Court of Justice of the European Communities website: www.curia.eu.int/en/content/juris/index.htm. For treaties and secondary legislation (EC Regulations, Directives, and Decisions), see the Official Journal of the European Communities: http://europa.eu.int/eur-lex/en/oj. For European institutions, policies, official statements, etc., see: http://ec.europa.eu/atoz_en.htm.

agree to integration, you have to get on without telling them too much about what is happening' (Pascal Lamy, cited in Ross 1995: 194).

A striking application of the strategy of fait accompli was the decision to proceed with monetary union before there was any agreement on political union; if anything, resistance to political integration has increased since the centralization of monetary policy. Hence the European Central Bank (ECB) operates in a political vacuum – a situation unknown to modern democracies. Hence, too, the absence of a politically legitimated authority capable of acting decisively for the entire EU in order to address the most severe financial crisis of recent decades. Even under less dramatic circumstances, if the Council of the twenty-seven finance ministers of the EU is unable to reach a common position on, say, external monetary action, authority over this matter would flow by default to the ECB. When the euro was introduced, an American scholar wisely wrote: 'Prudence might have counseled that the European Union take certain steps well before the creation of the euro area' (Henning 2000: 36). The problem is that prudential reasoning is foreign to the philosophy of fait accompli.

According to a third operational principle, ultimate ends are largely irrelevant: what counts are movement (the so-called bicycle theory of integration), procedures, and the expansion of European competences. This principle of irrelevance of ultimate ends – a distinctive feature of federalist revisionism, or cryptofederalism, as discussed in chapter 3 – explains the reluctance of the Euro-elites to discuss the finality of the integration process, except as an open-ended commitment to 'ever closer union'. It has been rightly remarked, however, that the conception of politics as an infinite process is in the long run uncongenial or incomprehensible to the human mind: the leader who wishes to mobilize the people and push them to political action is inevitably led to posit finite goals (Carr 1964: 89). The current Euro-fatigue has one of its roots in the indeterminacy of the final destination. The motto taken from Bismarck's papers suggests yet another implicit principle often used in interstate bargaining at EU level – the instrumental use of 'Europe' for national purposes – see the final section of this introduction.

Now, it is not difficult to deduce these and similar principles from the record of fifty years of European treaty- and policy-making. The question, therefore, is why scholars have been reluctant to examine the operational code of EU decision-makers, with all its disturbing implications, preferring instead to limit their investigations to legal, economic, or institutional technicalities. The reason, I believe, is that most students of the EU are not detached observers, but convinced supporters of

European integration. Hence they are afraid that fundamental criticism would jeopardize the attainment of the goals they support by sowing the seeds of discontent towards the Union in the minds of ordinary citizens. Having taught in the past several courses on environmental policy on both sides of the Atlantic, the following analogy has often occurred to me. When the law, politics, and economics of environmental policy-making were new academic subjects, students, and teachers tended to share a deep commitment to the environmentalist cause. They generally viewed environmental quality as an absolute value rather than an important, but not the sole, goal of public policy. As a consequence, the idea of discussing environmental policies in terms of trade-offs, opportunity costs, and cost–benefit ratios was anathema. Not only economic growth, viewed as the major cause of environmental degradation, but even the use of economic instruments like pollution rights to replace the traditional command-and-control methods of pollution regulation were regarded with deep suspicion. In spite of their commitment to democracy, and especially to public participation, the votaries of environmentalism were not troubled by the thought that their one-dimensional view of public policy hardly matched the preferences and priorities of the great majority of voters.

The fundamentalist phase of environmentalism did not last more than two decades, at least in the United States, while fifty years after the signing of the Treaty of Rome, the idea that European integration may have costs as well as benefits, or that the cost–benefit ratio may be shifting with changes in the size of the Union and in the international environment, is still foreign to many academic observers of the EU. The average citizen, on the other hand, is becoming increasingly aware that despite such ambitious projects as the single European market, Economic and Monetary Union (EMU), and 'big bang' enlargement – the simultaneous accession of all ten candidates except Bulgaria and Romania – the EU is apparently unable to do much about such everyday problems as unemployment, soaring prices of food and energy, or transnational crime – not to mention major financial crises. Instead of trying to understand the reasons for today's disenchantment with European integration, some scholars continue to express their admiration for 'the inherent ability of the EU integration process to constantly reinvent itself', (Szyszczak 2006: 487), and confidently assume that 'the approaches to integration that have been followed for half a century are still basically valid, and capable of evolving in response to changing pressures and new priorities' (Dougan 2006: 869).

Shortly before the French and Dutch voters rejected the Constitutional Treaty in 2005, a distinguished American student of European integration wrote that the 'constitutional compromise' embodied in the multilevel system of governance of the EU 'is unlikely to be upset by major functional challenges, autonomous institutional evolution, or demands for democratic accountability … When a constitutional system no longer needs to expand and deepen in order to assure its own continued existence, it is truly stable' (Moravcsik 2005: 376). As a matter of fact, EU leaders are now so aware of the risk of systemic instability that they are haunted by the ghost of popular referendums. The Irish No to the Lisbon Treaty in 2008 has reminded people that the ghost is still in the machine. What these and other recent events teach is that total optimism and avoidance of radical criticism, far from promoting the integration process, make the arguments of the Euro-sceptics appear more realistic and relevant. This book offers a critical assessment of the traditional, Brussels-centred, approach to European integration precisely because its author believes that the idea of Europe united in its diversity must be saved from the rising tide of Euro-scepticism.

European Integration and its Discontents

Two shocks that recently hit the European Union – the rejection by popular referendums first of the Constitutional Treaty, then of the Lisbon Treaty – have revealed the fault in the foundations of the European structure: the chasm between elite and popular opinion on the scope, aims, and achievements of the integration project. France and the Netherlands, the two countries where the popular vote sunk the ambitious Constitutional Treaty in May/June 2005, were among the founding members of the European Coal and Steel Community (ECSC), established in 1951, and of the European Economic Community (EEC) and European Atomic Energy Community (Euratom), six years later. In different ways, both countries have always been in the forefront of the integration process – the first European Communities were largely a French invention, while Dutch governments have openly advocated federalist goals, notably on the occasion of the drafting of the Treaty on European Union (TEU). Ireland's rejection of the scaled-down version of the Constitutional Treaty, the Reform (Lisbon) Treaty, on 12 June 2008, was in some respects even more surprising than the negative votes of three years before. Ireland joined the European Community (EC) in 1973, after 80 per cent of the voters had approved their country's membership in a referendum.

Membership brought significant financial transfers under the Common Agricultural Policy (CAP) and the structural funds: almost €40 billion since 1973, net of contributions to the European budget. Irish industry and agriculture have undergone considerable adjustments since accession, although economists point out that causality is difficult to prove because of the influence of non-EC factors such as globalization and government policies – the shift in economic policy from protectionism and import substitution to free trade and foreign direct investment had already taken place at the beginning of the 1960s. Be that as it may, the shock of June 2008 was all the more surprising because of the conviction of the Euro-elites that four million Irish could not possibly stop the march of half a billion Europeans towards 'ever closer union'.

The French, Dutch, and Irish votes were not the first manifestations of popular discontent. Since the early 1990s referendums on treaty ratification have been used by voters to express their growing disillusionment with European integration. In 1992 almost 49 per cent of the French voted against ratification of the TEU, revealing surprisingly widespread resentment of deeper European integration. Earlier in the same year Danish voters had rejected the TEU, despite the fact that the political and economic elites of their country were in favour of, and campaigned for, ratification. In 2001 it was the turn of the Irish people to reject the Nice Treaty, again contrary to the indications of their national leaders. In the case of both the Danish and first Irish referendums, however, the process of parliamentary ratification continued in the other member states, and a few opt-outs and minor textual changes made it possible for the Danes and the Irish to vote again and in the end approve the treaties.

The situation turned out to be quite different in 2005. At first the heads of the European institutions tried to convince the other member states to continue with ratification in spite of the French and Dutch No, but their hopes were dashed by the British decision to postpone indefinitely the referendum originally planned for the first half of 2006. The Lisbon Treaty had been carefully drafted to avoid any reference, however remote, to terms like constitution, federalism, or political integration, and even failed to mention rather innocuous symbols of statehood such as the European flag and anthem. The treaty framers had also been generous in granting opt-outs in the hope of convincing the national governments that ratification by popular referendum was unnecessary, but all these stratagems failed to impress the voters – not only in Ireland, but probably also in many of the countries whose citizens were not given the same chance to voice their dissatisfaction.

The Irish Referendum and its Aftermath

After the Irish voters, including a large majority of young people and women, used the chance offered to them to vent their dissatisfaction with the European project, Euro-leaders remembered the lesson taught by the constitutional debacle of 2005. They resisted the first impulse to ask the other member states to continue with parliamentary ratification so as to isolate Ireland. Instead, it was decided to give the Dublin government time until mid-October 2008 to come forward with ideas on how to resolve the impasse. At the time of writing (early October 2008) it seems most unlikely that a solution will be found so soon. Although British prime minister Gordon Brown had promised to continue with ratification, the Czech Republic and Poland did not make similar pledges. In fact, Vaclav Klaus, the Euro-sceptic Czech president, declared that after the Irish No, the Lisbon Treaty was dead, while his prime minister was quoted as saying that he would not bet 100 crowns on a Czech Yes. The leaders of the larger member states unanimously declared that a substantive revision of the Lisbon Treaty was out of the question; but a survey commissioned by the European Commission, and released a few days after the Irish vote, indicated that almost two-thirds of those who voted No did so in the hope of forcing a substantive revision of the treaty. Unsurprisingly, at the time of writing nobody dares to predict what may happen in 2009, when the European elections are scheduled. According to the German social-democrat Jo Leinen, chairman of the constitutional committee of the European Parliament (EP), the crisis opened by the Irish vote is even more serious than the one of 2005 (quoted in Beste *et al.* 2008). Another European parliamentarian, the Christian-democrat Elmar Brok, did not rule out the end of the European Union as we know it. As reported by *Spiegel On Line*, the German politician, who is an influential advisor of Chancellor Angela Merkel on European affairs, envisages the possibility that the present Union may divide into a 'Small Europe', grouped around France and Germany, and a looser economic union including the member states which oppose a political union (Beste *et al.* 2008).

It is indeed difficult to see how the Irish voters could be induced to change their minds. European citizens had been told by their leaders that the Lisbon Treaty is necessary to give the EU a platform to project its influence more effectively on the world scene, in particular by means of the Common Security and Defence Policy – hence the emphasis placed by the treaty on the role of the European Defence Agency. The new treaty

is also said to be necessary to start a new round of enlargements. But these are precisely the prospects which most alarmed Irish voters, strongly attached to the neutrality of their country, and so determined to retain full control of their national borders that they refused to join the Schengen Agreement on the abolition of all border controls. The issue of immigration from new member states also played a significant role in the rejection of the Constitutional Treaty, and continues to remain high on the list of public concerns in many member states. Hence, the announcement by the French and German leaders that the EU's plans to accept new members from the Balkans would be put on ice until Lisbon is ratified – 'No Lisbon, no enlargement' French president Sarkozy is reported as saying – could actually give many people, not only in Ireland, one more reason to oppose ratification (Volkery 2008). At the same time, what the French farm minister, and former EU commissioner, Michel Barnier, said after the referendum, namely that the Irish vote showed that Europeans were afraid of an EU 'without borders and limits', was immediately noted with preoccupation in the many countries, including Turkey, still waiting to be admitted to the Union (Cohen 2008: 5).

Right now Europeans have more immediate concerns than future enlargements of the Union. According to press reports, at their meeting of 16 June 2008, EU foreign ministers expressed fears that the Irish referendum might show that the Union had become too elitist and technocratic, and was losing touch with citizens on concrete issues (Castle 2008: 3). In fact, the concomitance of the Irish vote with protests across Europe against rising food and energy prices underlines a loss of confidence among significant parts of the electorate in the EU's ability to deal with everyday issues. Inflation and economic stagnation had also hit the European economy hard in the 1970s, yet few people at the time accused the EC of being unable to deal with everyday issues. The politically significant new factors in the present economic crisis are the end of what has been called 'permissive consensus' – when European voters took the integration project for granted, as part of the political landscape – and the growing divergence between elite and popular estimations of the value added by integration. 'Politics begins where the masses are, not where there are thousands, but where there are millions, that is where serious politics begins.' Lenin's dictum (cited in Carr 1961: 61) explains both the absence, in the present EU, of serious politics – as distinct from bureaucratic and institutional politics, and from political bargaining in camera – and the beginning of a necessarily messy process of politicization of the European project.

The Referendum Roulette

The current debate about alternative modes of treaty ratification is the first stage of this process of politicization. To understand the nature of the debate, one should keep in mind a fundamental difference between the EU and its member states, namely the absence of the traditional government–opposition dialectic at European level. Having been denied an appropriate political arena in which to hold European governance accountable, voters are almost forced to gradually transform popular referendums into contests for or against the EU. Given the present state of public opinion, such referendums represent a potential hazard for the integration process, not just in traditionally Euro-sceptic countries but in all member states – some authors go as far as to speak of a 'referendum roulette' (Trechsel 2005). It seems highly unlikely, however, that in the future it will be possible to force the referendum genie back into the bottle – or to stop the politicization of the European project. After the Irish No, demands for popular ratification of future European treaties have been advanced by leaders of different countries and political hues. In July 2008 Werner Faymann, the social-democratic candidate for the Austrian federal election to take place the following September, came out in favour of popular referendums for all future treaty amendments and on other important EU issues. The Austrian Parliament had already ratified the Lisbon Treaty in April of that year, but the social-democratic leader was obviously trying to improve his electoral chances by taking advantage of widespread EU-fatigue: according to recent Eurobarometer data, only 28 per cent of Austrian citizens still support the EU; in 1994, 66.6 per cent had voted in favour of joining the Union. In Italy, to mention another example, support for future referendums on Europe was expressed by the spokesman of the populist Northern League in the national parliament, just as that body was ratifying the Lisbon Treaty.

One of the favourite arguments against ratification of EU treaties by popular referendum is that voters cannot be expected to read and evaluate technically and legally complex texts running into hundreds of pages – 346 pages in the case of the Lisbon Treaty. This argument is flawed in several respects. First, it is not only the average voter who does not have the time, or the motivation, to peruse such documents. Brian Cowen, the Irish prime minister, admitted he had not read the Lisbon Treaty, and Ireland's EU commissioner, Charlie McCreevy, added that 'no sane person' would (Murray Brown 2008: 3). Justice Iarhlaith O'Neill, the High Court judge appointed by the Irish government to

provide an impartial treaty analysis, admitted that parts of the text are difficult to understand (Murray Brown 2008: 3). It is reasonable to assume that not only the average citizen but also the average member of a national parliament – the body which would have to ratify a new treaty in the absence of popular referendum – would find it hard to understand what was unclear to a High Court judge. The difference is that the average parliamentarian is likely to vote according to party discipline, while the average voter uses the referendum as a rare occasion to express his or her assessment of the European project – voters' turnouts at referendums are typically higher than at elections for the European Parliament. In sum, it is far from clear why parliamentary ratification of European treaties should be preferable to ratification by popular vote: it is certainly not more democratic, nor is it somehow more rational, or necessarily better informed.

According to an influential theory of democracy, moreover, even in national elections it is rational for the average voter *not* to become fully knowledgeable about public affairs. Anthony Downs was the first scholar to give serious attention to the problem of political information in modern mass democracies. Downs's argument is that the cost of becoming informed about the details of political issues generally outweighs the relative benefits to be derived from voting on an informed basis. The costs of becoming informed – the costs of gathering and selecting data; of undertaking a factual analysis of the data; and of evaluating specific goals in light of the factual analysis – are too high for most voters rationally to invest the time, attention, and resources needed to become politically informed. Rather, rational voters have strong incentives to develop methods of avoiding the high costs of information acquisition. They do so by developing a variety of principles of selection: rules employed to determine what to make use of and what not. These rules allow voters to make political decisions and form political preferences without becoming fully informed about the content and details of political issues: they focus their attention upon only the most relevant data. This 'will allow them to avoid the staggering difficulty of knowing everything the government has done during the election period and everything its opponents would have done were they in office' (Downs 1957: 217). In any case, since the rise of mass democracy nobody has proposed to use the 'rational ignorance' of the voters as an excuse to restrict the right to vote at national elections. Also from the viewpoint of democratic theory, therefore, the arguments of the Euro-elites, and of their academic supporters, against treaty ratification by referendum are flawed. Instead of

taking seriously the demands of modern mass democracy, such arguments reflect an old-fashioned conception of policy, in particular foreign policy, as a virtual monopoly of cabinets and diplomats: the philosophy of old-regime Europe applied to the post-modern system of governance of the EU.

Legitimacy and Efficiency

A recurrent theme in the following chapters is the ineffectiveness of many EU policies, and the implications of such ineffectiveness for the legitimacy and stability of the EU system. In public discourse and in the academic literature much more attention is given to the issue of the 'democratic deficit' – the absence or incomplete development, at European level, of the institutions and practices of parliamentary democracy – than to the question of suboptimal performance of the EU. In my opinion this is a mistake. Suboptimal performance, I argue, is a more immediate threat to the survival of the Union than the democratic deficit. Legitimacy, Martin Lipset wrote, 'involves the capacity of [a] system to engender and maintain the belief that the existing political institutions are the most appropriate ones for the society' (1963: 64). Legitimacy is an evaluative standard: 'groups regard a political system as legitimate or illegitimate according to the way in which its values fit with theirs' (Lipset 1963: 64). Like other evaluative standards (e.g. accountability) the modern notion of legitimacy is derived from experience gathered at the national level. Michael Shackleton, a reflective staff member of the European Parliament, has rightly pointed out that it is not necessary for the EU to meet the same level of legitimacy as its member states, provided it delivers a reasonable level of benefits in terms of efficiency (Shackleton 1998: 134). The efficient delivery of benefits does not, per se, produce legitimacy – efficiency is instrumental, not normative. As Shackleton suggests, however, efficiency is particularly important for a polity that, being new, still lacks popular support. A serious crisis is bound to occur, sooner or later, if the new polity is unable to sustain the expectations of major groups of the population for a long enough period to allow legitimacy to develop upon a new basis.

There seems to be little doubt that disappointed expectations are one important, if not the main, reason why the EU, instead of progressively attracting the loyalty of its citizens, is becoming less popular and less trustworthy with the years. Since its beginning, the process of European integration has been driven essentially by economics. Indeed, the essence