

Cambridge University Press

978-1-107-50397-7 - Which European Union?: Europe after the Euro Crisis

Sergio Fabbrini

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PART I

*Institutionalization of  
multiple unions*

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# 1 *From Rome to the Lisbon Treaty*

## 1.1 Introduction

The EU is the result of the evolution and transformation of a historic agreement among, first, Western European nation states and then the Western and Eastern plus the Southern parts of Europe, aimed above all at bringing to a close a long sequence of hot and cold wars. This aim was entrusted to the formation of a common and then single market able to bring economic and social security to European states. European integration has been the response to the trauma and demons of the two halves of the twentieth century. The moral source of European integration resided in the need to avoid further wars and ideological divisions on the continent. After the 1954 failure of the more ambitious project of setting up a European Defence Community (EDC), its success has been dependent, on the military side, on the protection of the North Atlantic Treaty Association or NATO, while, on the economic side, it has rested on the formation and enlargement of a common and then single market. The EU is the outcome of choices made by national elites and supranational actors for peacefully aggregating nation states of different demographic size, historical identity and political cultures. The crucial choices were made at critical junctures, as in the first half of the 1950s, in the first years of the 1990s and then at the start of the 2010s.

Monnet (1978: 46) wrote in his *Memoirs* that “I have always believed that Europe would be built through crises and that it would be the sum of their solutions.” This means that the EU is the sum of the choices taken by actors with decision-making power in those crisis periods conceptualized as critical junctures. Critical junctures are windows of opportunity for pursuing new aims (Pierson and Skocpol 2002). In those moments, the path-dependent logic is suspended and different options

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potentially become available. However, after the founding critical juncture, within which an institutional setting is created, rarely does a new course of action start from scratch. It generally consists in pursuing a new target through a different combination of existing institutional and policy components, or through the strengthening of one or more components and the weakening of others, a combination at times inspired by a new emerging political paradigm. Once a path is taken, however, then the dependency logic starts again, constraining the range of choices available in the following period. The options not pursued during the critical juncture are generally lost and it is unlikely that they will come back later onto the decision-makers' agenda (Pierson 2004). Nevertheless, another critical juncture arises again, placing the previous institutional equilibrium under strain. The new critical juncture will require the consideration of new options, not just the recovery of those abandoned previously. Between one critical juncture and the next, in fact, the context inevitably changes. I assume the institutional structure of the EU is the result of the choices taken at the critical junctures by national and European political elites (Goetz and Meyer-Sahling 2009). However, contrary to Monnet's assumption, I will show that those choices have not necessarily gone in a supranational direction.

This chapter reconstructs the process of institutionalization of the original peace pact, setting out its multilinear development. First, it will discuss the formation of a uniform supranational framework for dealing with the construction of a common and then single market. Once the explicit political view of the integration process was defeated, the latter has in fact been based on the formation of a market regime through the interaction of the institutions representing national and European interests. Second, it will discuss the change introduced in this trajectory by the end of the Cold War and its institutional implications. In the critical juncture of 1989–1991, the EU inaugurated different models of integration in order to make possible the compromises between different views on its nature and future. Third, it will discuss the nature of the multiple compromises reached and their impact on the several treaty rounds that led to the 2009 Lisbon Treaty. The aim of the chapter is to show the multiple and differentiated nature of the process of integration.

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## 1.2 The institutionalization of the single market

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#### *An elite-driven peace pact*

The EU is a *pact* for promoting peace through prosperity among warring states traditionally jealous of their own national identity. The end of the Second World War left a dramatically disrupted Europe. That disruption imposed the necessity of defining new relations between the main European nation states, France and West Germany in particular. The growing confrontation between the two global superpowers that emerged victorious from the war (the USA and the Soviet Union) created the conditions for relaunching the project of integrating the West European nation states into a new, unspecified federation. The explosion of the conflict between North and South Korea between 1950 and 1953 turned the confrontation between the two superpowers into a proper Cold War. The Cold War required West Germany to be rearmed to better guarantee the political stability and military security of Western Europe. It was in that context that the French foreign minister, Robert Schuman, made public on May 9, 1950 a Declaration of his government for promoting a coal and steel community with Germany, “opened to the participation of other countries of Europe.” The crucial point of the Declaration is the following: “The pooling of coal and steel production should immediately provide for the setting up of common foundations for economic development as a first step in the federation of Europe.” The following year the European Coal and Steel Community or ECSC Treaty was signed in Paris. Indeed, it was the struggle for control of those primary resources that had led to tensions between France and Germany for nearly a century. While there were other signatories to the agreement (the Treaty was signed by France, West Germany, Italy, Belgium, the Netherlands and Luxembourg), it made abundantly clear that European integration, in whatever form, was not possible without France and Germany’s reconciliation. The Franco-German axis was the engine of integration from the very beginning (Hendriks and Morgan 2001). In 1952 a new Treaty, the European Defence Community or EDC, was signed in the same city by the same six European countries.

According to Burgess (2014), the Schuman Declaration of 1950 epitomized the attempt to use the post-war critical juncture to start the project of integration. For institutional analysis,

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critical junctures are characterized by a situation in which the structural (that is, economic, cultural, ideological, organizational) influences on political action are significantly relaxed for a relatively short period, with two main consequences: the range of plausible choices open to powerful political actors expands substantially and the consequences of their decisions for the outcome of interests are potentially much more momentous. Contingency, in other words, becomes paramount (Capoccia and Kelemen 2007: 343).

The two Paris Treaties that emerged from the Schuman Declaration tried to fill the critical juncture with the launch of the economic and military pillars of a future (unspecified) European federation, whose aim was to wrap the nation states signing the Treaties within a supra-national framework. This project came to a partial (although traumatic) halt in 1954, when the French Assemblée Nationale voted down the EDC Treaty.<sup>1</sup> The military security of Western Europe was thus allocated to NATO (instituted in 1949 in Brussels), controlled and led by the USA, whereas the integration of Western Europe was reformulated as the economic project of building a common market. The post-war critical juncture came to a close with the signing of the Rome Treaties in 1957, the European Atomic Energy Community (EURATOM) and the European Economic Community (EEC). By necessity, Jean Monnet (1978: 93), the main architect of the EEC, wrote in his *Memoirs*, “we believed in starting with limited achievements, establishing a de facto solidarity, from which a federation would gradually emerge.” Keeping the security side out of the integration process had, however, contradictory effects. On one side, it helped European states to maximize their resources for the economic reconstruction of the continent, apart

<sup>1</sup> The EDC was originally proposed in 1950 by René Pleven, the then French Prime Minister, in response to US pressure to reintegrate West Germany into the European system of defense. The intention was to form a pan-European force as an alternative to West Germany’s proposed accession to NATO, which was meant to harness its military potential in the case of conflict with the Soviet bloc. The EDC was to include West Germany, France, Italy and the Benelux countries and provided for centralized/supranational military procurement. The EDC would have had a common budget, armies, command and institutions. The EDC plan went for ratification to the French National Assembly on August 30, 1954 and failed by a vote of 319 to 264. The Gaullists, who feared that the EDC threatened France’s national sovereignty in military policy, and the Communists, who opposed a plan set up against the Communist bloc, formed a successful parliamentary coalition against the government’s proposal.

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from reassuring each of them that further interstate conflict would be prevented by the tutoring role of the USA. On the other side, however, “the American security blanket obviated the need for greater integration” (Parent 2011: 139).

With the 1957 EEC and EURATOM, signed in Rome, the EU came to be based on interstate treaties intended to create a supra-state polity, able to close the long era of European civil wars (which started with the Prussian invasion of France in 1871, going through the First World War and then ending dramatically in the Second World War: Judt 2005) by fostering the growth of a common market on a continental scale. Since then, a sequence of Treaties has periodically structured what we have come to call the EU (see Appendix Table A.1). Moreover, the EU, which arose out of an agreement between six states in 1957, after several enlargements has come to be composed of twenty-eight member states (since July 1, 2013) and more than half a billion inhabitants with the accession of Croatia<sup>2</sup> (see Appendix, Table A.2). The development of the EU since the Treaties of Rome of 1957<sup>3</sup> has led to the progressive institutionalization of a veritable political system, equipped with its own institutional structure and comparable to other established political systems (Hix 2005).

The debate on how to interpret this long process of integration has continued to be lively. As asserted by scholars of the liberal inter-governmental approach (Moravcsik 1998), the EU is the outcome of intergovernmental agreements between national leaders in intergovernmental conferences (IGCs), in their turn expressing the preferences of the main economic interests of their country. However, although national governments have played a crucial role in treaty-making, those national governments have recognized the need to delegate crucial policy functions to institutions independent from their will, as asserted by the scholars of the neo-functional approach (Borzel 2006; Haas 1958). At the same time, the Treaties, even those justified by dramatic historical events such as the founding Treaties, were and have

<sup>2</sup> On December 9, 2011 Croatia signed the EU accession treaty. The EU accession referendum was held in Croatia on January 22, 2012, with the majority voting for Croatia's accession to the EU, with accession formalized in July 2013. Croatia is thus the twenty-eighth member state of the EU.

<sup>3</sup> Although two treaties were signed in Rome, the EEC Treaty aimed to develop an economic community and the EURATOM Treaty aimed to develop a nuclear energy community, it is the first Treaty that is considered as the founding bloc of the EU for its institutional implications. I will refer to it as the Rome Treaty.

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been negotiated by politicians with advice from public officials (such as Jean Monnet, for instance) bringing new ideas and awareness of the limits of the traditional logic of the balance of power, as asserted by the scholars of the constructivist approach (Parsons 2003).

Notwithstanding their differences, all approaches to European integration have stressed the strategic role that political elites played in the founding of the EU. It was political elites (national and supranational) that were the crucial actors that made possible the aggregation of Europe. Unions of states are necessarily the outcome of elite-driven choices of institution-building and the EU has not been an exception in this regard (Haller 2011). In the post-war disorder, the European elites recognized that their states had no chance of avoiding the wars generated by the rivalries their own nationalism produced, except by substituting the balance of powers with institutionalized integration. As stated in the first line of the EEC Rome Treaty of 1957, the signatories declared that they were “determined to lay the foundations of an ever-closer union among the peoples of Europe.” The same Jean Monnet (1978: 286) wrote in his *Memoirs*, “I thought it wrong to consult the peoples of Europe about the structure of a Community of which they had no practical experience. It was another matter, however, to ensure that in their limited field the new institutions were thoroughly democratic.”

However, in Rome 1957, as opposed to Philadelphia in 1787 (Deudney 1995), the constitutional rationale of the new political order was not discussed, after the failure of the highly political project of constituting an EDC. The founding fathers of the European integration project were aware that the traditional Westphalian system of states, with its balance-of-power logic, was the source of permanent interstate insecurity, thus triggering periodic attempts by one state or another to impose an imperial order on the others. Indeed, the “historic transition ... marked by the settlement of Westphalia in 1648, which ended the Thirty Years’ War and opened the quest ... to find a way for independent states, each enjoying sovereignty over a given territory, to pursue their interests without destroying each other or the international system of which each is part” (Lyons and Mastanduno 1995: 5), brought the European Westphalian states to reciprocal destruction in two world wars. The leaders of those Westphalian states were obliged to look for post-Westphalian solutions to the dilemma of reconciling autonomy and peace. They had to go beyond diplomacy



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in order to guarantee peace on the European continent, launching a process of institutionalized integration. As Eriksen (2014: 30) argued, the EU represents “a move beyond the Westphalian order, that is the international order founded on the principles of co-existence and non-interference among sovereign states with the concomitant self-help principles.” However, after 1954 the constitutional rationale of the European post-Westphalian project remained necessarily under-elaborated. The EU is the outcome of the attempt by the European elites to go only *de facto* beyond the Westphalian solution to interstate rivalries.

*The institutional foundations*

The 1957 Rome Treaty inaugurated the project to transform the international relations of the European nation states into the internal features of a new supranational polity. The peace pact could not have been guaranteed solely by an interstate (or intergovernmental) agreement (as previous experience had amply shown). The interstate (or intergovernmental) agreement needed to be protected and constrained by supra-state (or supranational) institutions and actors. Without supra-state authorities (that is, authorities institutionally separated from the states that had created them in the first place), the Treaty’s founders assumed that there was no guarantee that the partners of the interstate (or intergovernmental) agreement would abide by their own rules or would respect their own decisions. In the founding of the EU, thus, supranational features were considered necessary in order to protect the *pact* from interstate rivalries and instability.

The following support for the peace pact came from transnational cooperation on a growing number of common economic matters (Lindberg 1963). This cooperation led to the progressive institutionalization of the close network of institutions envisaged by the Rome Treaty – the intergovernmental Council of Ministers (then called the Council of the Union, now simply the Council, strengthened, since 1974, by the informal meetings of the European Council of heads of state and government: Naurin and Wallace 2008) and the supranational Commission and European Parliament or EP (originally called the Assembly) – under the supervision of a supranational judicial institution (the European Court of Justice or ECJ) (Dinan 2006: Part III). If the intergovernmental side of the EU stressed the role of the states

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as masters of the Treaty, the supranational side was necessary in order to embed those masters into a larger institutional context that they could not control individually. For the first time in European history, the leaders of European nation states tried to build a supra-state, and not only interstate, order through peaceful means (basically through negotiation over common economic issues).

The founding Treaties thus established an institutional model that combined two different interests: the national interests as represented by the intergovernmental Council (the decision-making body) and the European interest as represented by the Commission (epitomized by its formal monopoly of legislative initiative). The interaction between the two interests, however, very soon came to be adversarial, as became evident during the 1960s when the then French president, General Charles De Gaulle, ordered his government not to participate in the Council's meetings (the "empty chair" strategy) in protest against the Commission's assertion of its independent role. The conflict between the two institutions led to a vertical policy-making model, with the Council (under the leadership of the French and German governments) acting as the main decision-making actor. The Commission and the ECJ were marked as the institutions with the most committed European vocation; and certainly they had the most to gain in terms of power and influence with the institutionalization of a supranational system.

The EP played a limited role in the founding period because of its indirectly elected nature. It started merely as a parliamentary assembly that became a parliament in 1962 (Rittberger 2005). Within the original institutional architecture of the EEC, the Parliament had a simple consultative role in the Union's decision-making process. Until 1979 its members were nominated by the national parliaments according to their own specific rules. Its nature as a second-tier institution did not inspire its members to claim a larger role in the Union's decision-making process. In 1964 its right to be involved in the signing of trade agreements with non-EEC countries was recognised and in 1975 a procedure that required its opinion for resolving inter-institutional disagreements was introduced. In the first three decades of its existence, although the parliamentary assembly and then the Parliament had important political leaders as president, the institution's role continued to be marginal or secondary.

At the same time, the Rome Treaty served to provide a juridical basis to the EU (Sandholtz and Stone Sweet 1998). The ECJ, profiting from