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Europe, the Market and the Transformation of Democracy

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I

Money is itself the community and can tolerate no other standing above it. (Karl Marx)

Padoa-Schioppa's (1994: 191) characterisation of EMU summarises the concerns of my essay well: 'subsidiarity, not the Leviathan, is the catchword for European political union'. He explains that EMU is based on a collective decision-making process that both undercuts national plurality of decision-making and encourages competition between territorially segmented national labour markets. This double movement is anchored in the institutional structure of EMU that combines the supranational regulation of money with national state responsibility for competitive labour markets. Padoa-Schioppa neo-Machiavellian view of EMU as a depersonalised 'collective prince' (p. 151) is apt. EMU appears indeed to reduce the political to politics, to the sphere of technical control and management of power which rests on a set of rules outside direct democratic control.

The ECB cannot be given instruction by any democratic body. It appears as if it were a court of law rather than an instrument of public policy (cf. Grahl, 1997). Its objective is to enhance and guarantee the credibility of monetary policy. 'One way to bolster credibility ... is to assign the responsibility for monetary policy to an institution that is not subject to political influence' (Padoa-Schioppa, 1994: 188). A credible monetary policy and democracy appear thus mutually exclusive: for monetary policy to be credible, its conduct outside democratic processes of policy making appears to enhance its standing. Democracy is thus deemed to render monetary policy incredible, at least there is the risk of political manipulation, politicising monetary policy and thereby distorting the so-called self-regulating capacity of the market, favouring 'special interests'. EMU, then, is seen to offer constitutionally safeguarded rules that protect monetary relations from 'non-market' encroachments. The guarantee of its safe and effective functioning is furnished by economic experts whose conduct is shielded from democratic influence and interference. EMU amounts thus to an institutionally embedded and technocratically regulated

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economic liberalism, founded on law. Its institutional structure works like a market liberal ‘anchor’ that restrains representative democracy to its liberal foundation, to market rule. As Simon Clarke has argued in a different context, ‘although the state is constituted politically on a national basis, its class character is not defined in national terms, the capitalist law of property and contract transcending national legal systems, and world money transcending national currencies’ (Clarke, 1992: 136). The issue, then, is that of the so-called institutional framework, and its organisation and legitimation, through which market rule combines with national liberal-democratic systems of social integration.

For the proponents of EMU, ‘expectations are at the heart of the inflation process’ (Padoa-Schioppa, 1994: 21). Since economic relations are assumed to be self-regulating, any ‘economic failure’ under EMU would reflect a lack of responsiveness to the ‘market’ on the part of the democratic majorities. EMU places the responsibility of market adjustment on competitive labour markets. Their adjustment to European monetary conditions is the preserve of member states. Within this structure, fiscal policy is the forte of neither the national state nor the Union.

Fiscal policy is located in the twilight zone between the member states and the Union. EMU excludes the transfer of fiscal responsibility to the Union and member states retain fiscal sovereignty. At the same time, the Union is involved in the conduct of fiscal policy, policing observance of agreed fiscal conditions in member states as specified by the Stability Pact. The Union has the power of coordination and surveillance, and the ability to recommend modifications of fiscal policy and apply sanctions against governments that breach agreed rules. The circumstance that fiscal policy is the responsibility of both the Union and member states is symptomatic. For its advocates, the crucial question for the stability of EMU is that of fiscal policy, and through it, that of containing democratic aspirations within agreed fiscal rules. One way of securing fiscal policy within the framework of EMU would have been to make it a Union responsibility. However, this solution was rejected because it would have complemented monetary federalism with fiscal federalism, and might therefore have led to a supranational system of redistribution associated with Keynesianism. Leaving fiscal policy entirely with the national states, however, would have allowed ‘non-market’ forms of intervention at the national level and would thus have entailed the risk of fiscal free-riding, see below. The solution, then, of continued national fiscal responsibility within an overall supranational—rule based—system of coordination was seen to undercut fiscal free-riding at the national level and prevent the possibility of ‘non-market’ intervention at the supranational level. EMU, then, is endorsed as a ‘framework of incentives and constraints’ that will ‘condition national budgetary policies, for which the keywords will be autonomy (to respond to country specific problems), discipline (to avoid excessive deficits), and coordination (to assure an appropriate overall policy-mix in the Community)’ (Emerson, 1992: 11).

The positioning of fiscal policy, then, is a response to the ‘risk’ that national governments may react to labour conflict through fiscal expansionism. This was seen to pose ‘a major threat to the overall monetary stability’ of the Union (Emerson, 1992: 100). As Padoa-Schioppa (1994: 127) puts it, the question was ‘whether monetary union runs a serious risk of being undermined by independent and possibly uncoordinated budgetary policies by member states’. The rejection of fiscal federalism and the prevention of fiscal free riding was of utmost concern for the architects of EMU. The transition arrangement to EMU, that is the convergence criteria, and the Stability Pact, are geared against what is called ‘unsustainable budgetary policies in a member state’. Such policies are seen

to lead to either 'default' or 'debt monetization', threatening monetary stability. As Emerson (1992) put it, 'fiscal discipline is defined as the avoidance of an unsustainable build-up of public debt' (p. 107). Further the transition to EMU 'amplifies the domestic effectiveness of national fiscal policy for stabilization purposes' (p. 115), requiring a tight control of member states 'if fiscal expansion were systematically beggar-thy-neighbour in character' (p. 119). In short, 'surveillance will have to correct possible tendencies for budget deficits to become too large' and EMU relies on 'fiscal policy to reduce budget deficits' (p. 100). The fiscal rules of EMU prohibit anti-cyclical fiscal policies associated with Keynesianism and confer on fiscal policy the task of controlling public expenditure within balanced budgets. In short, EMU curtails fiscal policy responses to forms of 'democratic activism' and favours a policy of fiscal austerity, for which neither the Union nor member states are directly responsible. This, then, creates a problem for the labour movement in that neither the national government(s) nor the Union appear responsible for fiscal policy.

In sum, EMU is robust about the need for fiscal austerity as a corollary of and condition for the stability of monetary union and the ECB is specifically excluded from lending directly to governments and obliged to avoid the monetary finance of public sector deficits. EMU renounces the use of monetary policy as a means of economic adjustment (inflation and devaluation) and curtails anti-cyclical responses to economic downturns. Instead, it 'calls industrial capital to task, and thus is functional for the greater creation of (surplus) value rather than simply for a more favourable redistribution of the (surplus) value created' (Carchedi, 1997: 100). As Henning (2000: 21) put it, 'knowing that exchange rate policy *via-a-vis* other members of the union can no longer reverse the deleterious effects on the competitiveness of high wage and price increases, firms and unions should act with greater discipline'. Industrial capital, then, will have to improve competitiveness on the basis of lower labour unit costs. Failure to achieve this will carry the risk of competitive erosion and bankruptcy.

Within the structure of subsidiarity, the only 'flexible' mechanism of economic adjustment falls on the nationally regimented labour markets. Increased competition within the EU was to 'result in an increased responsiveness of wages to unemployment', with 'labour market flexibility, and most importantly wage flexibility, ... the most important adjustment instrument' (Emerson, 1992: 149) and the 'wage-price flexibility remains the basic adjustment channel as a substitute for the nominal exchange rate' (ibid.: 102). In addition, labour migration is expected to adjust the burden of unemployment on national budgets. The belief is that 'wage bargainers will be affected by a credible monetary union' as they will realise that excessive wage rises will not be underwritten by devaluations (ibid.: 24). Lower labour costs are 'a condition to the relative price decrease needed to restore the competitive position of [member states] and to bring output and employment back into equilibrium' and 'factor mobility, in particularly labour mobility, may solve the problem through migration' (ibid.: 147). In other words, the cost in terms of output and employment might not be high if the working class responds flexibly to market pressures and requirements. In the absence of such willingness of flexible adjustment, unemployment might follow and the 'need' to migrate might arise. In short, EMU focuses adjustment on 'two primary [channels]: (a) workers can move; (b) wages can change' (Currie, 2000: 124).

The architecture of monetary union vindicates Padoa-Schioppa's view of EMU as resembling a modern version of Machiavelli's prince. This prince is, however, not a

Leviathan. The Union does not possess political sovereignty. The prince exists through the structure of subsidiarity, its republic is the republic of money and its embodiment is the ECB. Courted by fiscal policy, it governs through the parliamentary democracies of its member states who have retained the right to set 'responsible' budgets that will have to be cut back during economic downturns, redistributing wealth from labour to capital. The subjects of the prince are the territorially regimented European working classes. Their allocated position is that of the democratically accepted plebes, democratically accepted that is, in the republic of the market that is governed by Say's (in)famous democracy of demand and supply.

What however happens if and when European labour resists its assigned role as an adjustable factor of production? There is no need here to discuss the crisis of the Stability Pact that emerged as a consequence of Ecofin's reluctance to fine Germany and France who despite austerity reforms, accrued budgets-deficits in excess of Stability Pact rules (cf. Bonefeld, 2004). What is of interest here is the lack of political legitimization of both the Union and national governments. National attempts at preserving legitimacy might well collide, and in the case of Germany have collided, with EU rules. While Brussels does perform the role of a scapegoat for unpopular domestic policy decision, national state legitimacy remains vital and its attainment might well test existing Union relations. The former President of the German Bundesbank, Hans Tietmeyer, anticipated the potential fall out from EMU clearly when he argued that 'sustaining the monetary union might need perhaps more solidarity than beginning it' (cited in Eltis, 2000: 146).

II

The people are sovereign! Yet where does their sovereignty go? (Bertold Brecht)

Conventionally, Tietmeyer's warning is discussed as the 'democratic deficit' of the Union. Anticipating the following argument, 'combined and divided state-and-community sovereignty seems the enemy of popular democracy' (MacCormick, 1995: 102). National parliaments can seldom hold their governments responsible for (majority) decision in the Council of Ministers. Its decisions can be presented to national publics and parliaments as a *fait accompli*. Emasculated national parliamentary systems are not compensated by forms of parliamentary oversight at the European level—the Council of Ministers is the main European legislator and European law is directly applicable and superior to national law. However, upon closer inspection, the debate about the much lamented democratic deficit in Europe reveals itself as something other than a deficit in democracy understood as the democracy of the real sovereign, the people. It rather reveals itself as a debate about the deficit in legitimacy (Beetham and Lord, 1998). This deficit works on two levels. It refers first of all to a lack of legitimacy of national governments who might find that Union requirements of policy making undercut their domestic legitimacy, as is shown for example by the crisis of the Schröder government in Germany. Second, it refers to the lack of democratic means of legitimization at the Union level where supreme court judges and bureaucrats replace, in Weber's conception, the charismatic party leader whose aura provides added legitimacy to fundamentally rational-legal forms of legitimization. In sum, subsidiarity places the burden of democratic legitimization on member state at the same time as most areas of market regulation belong to the Union. While the Union is clearly more than just an inter-governmental organisation and more than a confederation, it does not

possess state qualities of authoritative enforcement. The question, then, of the democratic deficit focuses on how best to secure the legitimation of authoritative enforcement of Union law: should the member states continue to be the main focus of legitimation or should its focus be the Union, or a combination of both. Proposals for institutional reform or the current debate on constitutional reform divide on this: should the European bureaucracy be made accountable to judicial review, political review or parliamentary accountability, or should parliamentary accountability remain the forte of domestic parliaments within a European context of a rule-based system of market regulation? Political power, as Weber reported, is the solution to the riddle of every constitution: the democratic premise that the people are sovereign hardly figures in the debate on the democratic deficit. Their sovereignty is presumed to be expressed either in the form of the rule of law or in forms of liberal-democratic representative government. They thus appear as what they are and that is, as market agents endowed with abstract, standardised rights in the form of negative economic rights; as citizens endowed with political rights, duties and obligations, and thus as legal subjects of the rule of law.

Whatever 'solution' to the crisis of the Stability Pact might be found, and whatever the pronouncement of the ECJ on the legality of Ecofin's decision to absolve Germany and France, the Commission's recourse to the ECJ indicates that fiscal policy has not only become juridified at the supranational level.¹ Governments' fiscal policy intentions have also become subject to judicial review and judgement. Have the member states acted 'responsibly' in relation not only to the enforcement of European law but also in terms of their policy intentions? European law not only oversees the working of the internal market, it also polices the boundaries between the state and the market, and it does so through the market-enabling rules of the Common Market.² The enabling of the market at the European level introduced market criteria into the judicial evaluation on the part of the ECJ, juridifying the internal market, whatever the democratic aspirations for 'non-market' intervention. At issue here is not just the relationship between political sovereignty and legal sovereignty. Law does not enforce itself and the ECJ has no political partner, in the form of a European government, that is responsible for the enforcement of law. Just as law implicates the sovereign state as the law's maker, guardian and enforcer, the market implicates the state as the political sovereign of the economic constitution of liberty.

Economic liberalism sees the state and civil society as comprising a dual structure, with the state holding the monopoly of political power. Civil society encompasses depoliticised relations of economic freedom, and the state purpose is limited to the preservation of this economic freedom, based on the rule of law. The limited state, then, is a strong state—defined by its ability to preserve and enforce the rules of free market relations. As one of the leading proponents of Ordo-liberalism put it, the free economy and the strong state belong together (Rüstow, 1932). Only the strong state is able to preserve depoliticised economic relations. The democratisation of political power is thus seen as a potential threat to liberal state purpose, perverting the rule of law in favour of democratic forms of economic regulation. Transcendent European structures of law and money thus detach economic relations from democratic meddling, restraining state purpose to its liberal basis. Member states enjoy political sovereignty at the same time as which most market structures transcend national borders. Vast areas of policy-making are transferred to Union bureaucracies and the supremacy and direct applicability of European law not only provides for a legal structure detached from parliamentary democracy. It also restrains the scope of democratic activism and polices the boundaries of the free market,

‘even against democratic institutions whose proposed intervention is not based upon market considerations’ (Everson, 1995: 138). Supranational structures of money and law restrict democratic aspirations for non-market intervention at the same time as bureaucratic, expert-led oligarchies wield real political power.

The Union is thus characterised by a mixed constitution: the supremacy of ostensibly depoliticised law and money detached from nationally based systems of representative democracy, and the concentration of coercive power in a plurality of liberal-democratic member states. Of course, democracy as we know it was grafted on to the liberal state. What is at issue, then, is not that the rule of law has become, as it were, de-democratised by virtue of its separation from parliamentary forms of democratic law making. It never was democratised in any radical democratic sense. Liberal-democracy was a democracy within the framework of the rule of law and of the rule of law—a democratic *Rechtsstaat*. What is, however, important, is that the struggle over, and in defence of, material benefits *within* the framework of national states was co-determinus with the struggle for ‘social’ and ‘political’ democracy. For the proponents of market-liberalism, as will be argued below, this struggle was seen to subvert the liberal purpose of state power to secure and safeguard negative economic rights.

This, then, does not mean the ‘weakening’ of the ‘state’—far from it. Its market liberal purpose is strengthened. While every citizen is subject to European economic rights, the nation state retains its monopoly of coercive force. Neither does so-called ‘hollowing out’ of liberal-democracy imply the doing away of democracy. Rather, the democratic element is put at the service of its liberal foundation. Its (emasculated) democratic character remains a significant source of legitimation and provides an important channel for democratic activism. The liberal conception of ‘limited’ democracy is thus reinforced in terms of its much praised capacity for organising the circulation of elites through peaceful means, that is, through competitive elections (cf. Schumpeter, 1992).³

Stephen Gill has argued that European integration amounts to a new form of market constitutionalism that is ‘designed to insulate key economic agents, especially Central Banks, from interference by elected politicians’ (Gill, 1992: 168). His view has much to recommend it by. Nevertheless, it is based on a misleading historical premise, that is, democratic market regulation is replaced by de-democratised technocratic forms of market regulation. In Western Europe, liberal-democracy became an accepted political form only after the Second World War. Its democratic capacity was always more apparent than real (cf. Agnoli, 1990). Furthermore, economic relations of liberty were placed firmly within a European context during the 1950s (Moss, 2000). In addition, ‘concentration of unaccountable decision-making lies precisely in those areas where the capitalist nation-state itself has always resisted democratic encroachment most trenchantly: monetary policy’ (Gowan, 1997: 97). The importance, then, of the European transformation of democracy is not that it makes democratically unaccountable what previously had been democratically accountable. Rather, its importance is that national states will no longer be able to accommodate democratic aspirations through monetary expansionism or fiscal profligacy. The Euro is a depoliticised currency and European law is depoliticised law—better: political power is wielded by a combination of technocratic elites whose conduct is far removed from the democratic sovereigns, the people, and a plurality of national states whose liberal-democratic systems are anchored in transcendent structures of law and money.

In analogy to Marx’s argument that ‘democracy is the truth of monarchy; monarchy is not the truth of democracy’ (Marx, 1975: 29), democracy is the truth of the Union

and the Union is not the truth of democracy. Democratic elements are of course evident. Its constituent member states are liberal-democratic states. There is also the directly elected European Parliament—a largely decorative institution. Then there is the indirectly elected Council of Ministers that consists of the relevant members of national executives. This however also means that European law is not parliamentary law but law made by national executives who, at the European level, transform into European legislators!

Some commentators relish this combination of emasculated parliamentary democracy and national elites working together with technocratic experts at the European level because it detaches legal norms from coercion by sovereign political states. Although the absence of unitary sovereign power from the legal and political setting of the EU 'seems the enemy of popular sovereignty' (MacCormick, 1995: 102), subsidiarity is a 'better vision of democracy than all-purpose sovereignty ever did' (MacCormick, 1999: 126). It consists of a set of entities, principally the 'no longer fully sovereign' states of Europe and the still not sovereign Union (ibid.: 142). The 'democratic' elements of subsidiarity 'will help assuage any alarm [that the limitation of sovereign power] may have aroused' (ibid.: 126).

Against the much lamented democratic deficit of the Union, Weiler (1997) and MacCormick (1999) are right to argue that the Union was not meant to be democratically constituted. It was to advance legal equality and secure extra-state civil rights, liberal rights par excellence, belonging to individuals. It was not to be based on the democratic idea of one person, one vote; and thus on government by shifting majorities. Against unfettered democratic alternatives to liberal-democracy, the 'de-coupling' of legal equality, the so-called sovereignty of legal norms, from sovereign political power was to secure the liberal utility of the rule of law. The sovereignty of law is to restrain the liberal-democratic government from non-market intervention. The constitution of a non-sovereign European entity is, then, 'just not the sort of thing that can be run democratically, and therefore has to be reckoned a kind of political entity to which may be entrusted only those functions in relation to which non-democratic governance seems acceptable' (MacCormick, 1999: 145). MacCormick thus endorses a 'balanced' manifestation of distinct forms of governance, one democratically constituted at the level of the nation state, the other constituted on the basis of law and operated by an elite of largely autonomous, that is, non-state bearing experts.

Just as Emerson (1992) and Padoa-Schioppa (1994) argue in favour of a 'credible', that is expert-led monetary governance, MacCormick holds that bureaucratic experts can be entrusted to pursue the common good much better than their democratic alternative. As he puts it, 'given that wisdom in practical affairs, *prudentia*, seems to be very differently distributed among us, and possessed in exalted degree only by a few, there is something of an argument for aristocracy. Identifying the common good and the means of its pursuit is not an easy task, and only wise and experienced persons are likely to be good guides' (1999: 146). Since the aristocracy is no longer in possession of the administrative apparatus, 'bureaucracy gives us another possibility for benign oligarchy' (ibid.). The mixed constitution, then, of Europe provides for prudential bureaucratic governance founded on law, conducted in a politically disinterested manner and thus guided in accordance with the norms of best practice, just and fair. Matters of governance are here decided by technical and economic experts according to allegedly purely objective, technical and economic points of view. Although MacCormick agrees that the mixed constitution of the Union is not a perfect democracy, it expresses the wisdom of the Rule of

Law. 'Democracy and its particular virtues make a critical contribution to the good ordering of any well ordered Commonwealth, but a satisfactory democratic form of government does not necessarily submit every single decision to the vote on a basis of one person, one vote. A well-ordered polity may have other elements in its constitution' (ibid.: 148). These are the extra-democratic elements of the rule of law that sustain, regulate, and support the relations of liberty, freedom, equality and utility. MacCormick's separation of legal sovereignty from political sovereignty underscores economic liberalism's abhorrence of unfettered democracy. Unfettered democracy and the rule of law are said to collide in as much as democratic activism is feared to politicise the rule of law, undermining its credibility and normative force, leading to the politicisation of economic relations to the detriment of competitive adjustment based on private initiative itself guided and regulated by the much praised 'price mechanism'.

In short, subsidiarity is endorsed as the best possible organisational form of liberal-democracy. Democratic political rights at the national level co-exist in parallel with negative economic rights at the Union level. European law organises the structure of the free market, enables negative economic rights, and checks democratic intrusion into the operation of the free market. Subsidiarity also facilitates the formation of Union law by democratically elected national elites who also check the 'enlightened bureaucracy' (MacCormick, 1999: 155). The exception is the ECB which remains unchecked, although for reasons of legitimation 'a degree of democratic accountability' is required, and 'regular reports to the European Parliament might actually facilitate its task' (Emerson, 1992: 98).

III

The issue is not whether the Union is totally or completely democratic but whether it is adequately so given the kind of entity we take it to be. (Neil MacCormick)

Subsidiarity highlights the central role of member states in the enforcement of negative economic rights. EMU reasserts this structure of enforcement but did not introduce it. According to the former French Prime Minister, Pierre Mendes-France, the Treaty of Rome was based 'on the classical liberalism of the 19th Century' and that is, that competition pure and simple is the best of all worlds (quoted in McAllister, 1997: 17). The Rome Treaty had introduced 'legal structures which would enable the opening of the market through the competitive process. The Common market is based on a system of undisturbed competition and frees the common market from the need to find a comprehensive democratic basis for its legitimation' (Everson, 1995: 150). De Gaulle's support for the Treaty of Rome was motivated by the useful competitive pressure it was expected to bring to French industry. As he put it (1971: 143), 'international competition ... offered a lever to stimulate our business sector, to force it to increase productivity ... hence my decision to promote the Common Market which was still just a collection of paper'. The Common Market was seen to secure the domestic management of labour with an extra-national, market-based anchor. The other side, then, of the domestic reality of mass democratic participation was the depoliticisation of economic relations through the Common Market—an arrangement that was only fully realised with the SEA. The earlier account of subsidiarity shows its theoretical justification, the example of EMU illustrates

its practical significance, and the quotation from de Gaulle reveals its political importance. The lucid prophet of this project was Hayek (see Anderson, 1997; Bonefeld, 2001).

During the 1930s, Hayek advocated that national states should combine to create a federal interstate system. Such an arrangement was endorsed as preventing inflationary demands which, for him, were a consequence of the polarisation of class relations within independent national states. The establishment of a supranational political framework was endorsed as a means of encouraging competitiveness, against a national politics of economic protectionism; support the de-politicisation of economic relations, against the power of 'special interests' to subject the national state to a politics of inflationary demand management; and do away with restrictions on the movement of capital, labour and commodities. Furthermore, it would narrow the scope for the regulation of economic life; discourage the solidarity of the working class through its national fragmentation; and 'render possible the creation of common rules of law, a uniform monetary system, and common control of communications' (Hayek, 1939: 255). Supranationalism was thus endorsed as a way of limiting the effect of democracy on the centre of political decision-making and as a device that would disempower the working class to force governments to moderate its aspirations through welfare and employment guarantees.

Supranationalism, then, was espoused as 'providing a rational framework within which individual initiative will have the largest possible scope' (ibid.: 268). Nothing would stand in the way of what, today, is termed the de-regulation and flexibilisation of the wage relation. As Hayek saw it 'even such legislation as the restriction of child labour or of working hours becomes difficult to carry out for the individual state' (ibid.: 260). Within a supranational union, individual states 'will not be able to pursue an independent monetary policy' (ibid.: 259). Politicians, he seems to suggest, are always governing with the next election in mind perverting even those committed to the free market to give in to 'popular pressure', leading to the politicisation of economic relations and so harming the self-regulating capacity of the market. Furthermore, monetary policy always requires an element of judgement and thus discretion that government might abuse to retain legitimacy. A supranational operation of monetary policy, with an independent bank removed from domestic considerations, would thus limit the role of political decisions and that is, it would insulate economic policy-making from a 'Keynesian' response to social conflict. Monetary policy would instead be rule-based and therewith protected from the 'distorting' influence of working class demands. The removal, then, of monetary policy from political influence would accord its conduct a quasi-judicial status independent of the established liberal-democratic systems, expelling the 'mob' from the seat of government.⁴ Monetary policy would thus be shielded from mass democratic interference. Liberty would be restored and with it, the real democracy of the market, that is the democracy of demand and supply, where private vices are magically transformed into public virtues. In short, a domestic policy of austerity would be anchored in a supranational community, a community designed to provide 'stability' (cf. Müller-Armack, 1971). In Müller-Armack's view, 'stability' stands for low inflation, a strong currency, competitive labour markets, and an effective and efficient labour force whose ability to demand conditions is checked by 'Europe'.

Müller-Armack—'probably the most influential German at Brussels' (Moss, 2000: 258)—was opposed to economic *dirigisme* but not adverse to a 'consciously steered market economy' (Müller-Armack, 1947: 95) and, as Secretary in the Economics Ministry of the FRG, argued that centrifugal forces had become 'visibly greater in the situation of

prosperity', necessitating 'an additional effort towards the integration of society' (Müller-Armack, 1960) so as to contain the nightmare of unfettered mass democratic aspirations that tend to politicise economic relations. Müller-Armack's programme of a social-market economy that was anchored in Europe focused the resolution (Moss, 2000). It set out to fetter mass democracy by reconciling it with 'technocratic' government, perverting the democratic majorities to objects of socio-economic 'steering' (Müller-Armack, 1947). Technocratic government does not mean that the 'machinery' of the state replaces the rule of the invisible hand, that is the so-called 'market mechanism'. Rather, it battles democratic encroachment on the conduct of market regulation and thus its politicisation. It seeks thus to regulate the market through a rule-based system of law and extra-democratic forms of political regulation.

In sum, Pinder's (1968) characterisation of European integration as 'negative integration' is apt. In today's language, negative integration is called deregulation. However, a closer look at the so-called deregulation of economic relations reveals that the exact opposite is happening and that is, the harsh and disciplinarian control of the labour market by the political state. The free market and the strong state belong together as each other's presuppositions. According to Hayek (cited in Cristi, 1998: 168), the limited state is, in contrast to a democratic assembly that knows no democratic limits, a strong state that restores and preserves the rule of law and thus imposes limits on to itself in favour of that individual liberty through which the free market subsists. Government by extra-political rules is a form of state regulation, introduced and maintained by legislative and coercive means. It is a deliberate policy, conscious of its own ends and not the spontaneous, automatic expression of either economic laws or rational legal systems. This, then, is the so-called neo-liberal transformation of the state to a limited state. The limited state is a state that battles against the encroachment of democratic politicisation of economic, social, and political relations—the so-called 'non-market' distortion of economic relations. The limited state thus reveals itself as a strong state that, based on the rule of law, safeguards and preserves the spontaneous order of the market where nobody is personally dependent upon anybody else, but where everybody is obliged to everybody else as more personification of economic categories.

The European structures of law and money emphasise the limited state, limited that is to the enforcement of the enabling rights of the market, regardless of contesting democratic majorities. In other words, the structure of subsidiarity appears to offer a resolution to the political crisis of the state that emerged, in the context of stagflation and entrenched class relations, during the 1970s and was discussed by neo-liberal commentators as a crisis of governability. This crisis was seen as the direct consequence of the—democratic—politicisation of economic relations. Brittan (1976: 97) argued that 'excessive expectations are generated by the democratic aspect of the system' and that these curtailed the relations of liberty. The basic trouble, then, was '*the lack of a budget constraint among voters*' (ibid.: 104). King concurred, arguing that government had come 'to be regarded ... as a sort of unlimited-liability insurance company, in the business of insuring all persons at all time against every conceivable risk' (King, 1976: 12). Democratic interference into economic relations had thus undermined the 'steering capacity' of the state (Brittan, 1977), politicising economic relations at the expense of their political protection. The neo-liberal demand for the state to be rolled back aimed at limiting the 'economic costs of democracy' (Brittan, 1977), substituting discretionary policy-making through, for example, corporatist means of so-called interest intermediation, with a rule-based system that anchors key areas

of policy-making in extra-democratic processes of decision making.⁵ Thus, neo-liberalism's call for the freeing of market relations from democratic meddling asserted both the depoliticisation of economic processes and the concentration of the political in the limited but strong state as key to the effectiveness of competitive markets.

IV

Democracy is the solution to the riddle of every constitution. (Karl Marx)

Whatever the specific form of government of the bourgeois state, one principle stands out, the principle of constitutionality. Its *raison d'être* consists in the need for the capitalist mode of production to adhere to rules.⁶ The specific form of liberal-democracy successfully combined mass democratic means of social incorporation with the rule of law. The former mediated mass democratic political rights through a system of representation which kept mass democratic participation to a minimum; the latter provided the constitutional framework for the operation of representative democracy. 'Liberal democracy' allowed the exercise of political power to adhere to certain democratic rules. The question, then, is whether the developing supranational oligarchies (from MacCormick's benign bureaucracy of non-democratic governance to rule by the virtuous few, whether a bench of supreme court judges, or a Council of Ministers deliberating in private, or a board of central bankers regulating the fine detail of monetary conditions) will consider it necessary to submit themselves to the inherited form of liberal-democratic constitutionality. The example, as Agnoli (2000: 202) argues, of the 'Council of Ministers in Brussels may serve as an unfriendly signpost of things to come; since, despite all its legal proviso, it stands completely removed from its alleged—nationally regimented—sovereigns, that is, the population and its demands and aspirations'. The social conflict in France and Germany does indeed indicate that the existing structure of subsidiarity lacks political legitimisation. Unlike in France, the German political class seeks a European resolution to the problem of political legitimisation. The French political arena is divided on this issue, as shown by the strength of Le Pen's demand for the reassertion of authoritarian forms of political power. The state of democracy, not necessarily in its form but in its substance, does appear to be in distress.

MacCormick's notion that democracy works best when fettered by transcendent structures of law poses a number of issues that his keen embrace of the rule of law obscures. According to him, Union law curtails the political sovereignty of the unitary state and limits political power to the enforcement of transcendent structures of law and money. His argument appears to target those authoritarian conceptions of state power that are associated with Carl Schmitt. However, like Schmitt he suggests that a properly ordered 'commonwealth' has to limit the democratic sovereignty of the people. Popular sovereignty is a democratic virtue only when combined with extra-democratic forms of legal regulation. The true sovereign then is the law. Against that Schmitt had argued that the true sovereign is who decides on the state of emergency. There is of course no European sovereign power. However, does the law enforce itself? And what sort of enforcement is required when the going gets tough? Law does not resolve political and social conflicts. It provides for the rules of conduct but does not police the conduct. Which state possesses, in the Weberian perspective, the monopoly of the legitimate use of violence to secure Union rules, regardless of domestic democratic majorities? What, in other words, is the state's name that, in the Schmittian perspective, has the power of authoritative enforcement?

One of the richest societies in the world, Germany, appears unable to guarantee existing levels of welfare, and this against the background of mass unemployment and an economy that was the biggest exporting economy in 2003. The political upheaval in Germany over the reform of the welfare state and the restructuring of its system of industrial relations, persistent high levels of unemployment, and the judicial review by the ECJ concerning its breach of European fiscal rules, does not inspire confidence that Europe is moving towards a benevolent political age. Germany's economic woes are not singular. Negt (2002: 85) reports that, on average, 50,000 people were made redundant in Europe on a daily basis in the late 1990s. This is a frightful figure which, however, does not tell the whole story. It excludes all dependent family members of the now redundant bread-winner.

The debate, then, on the 'questionable legitimacy' of the Union is connected with the material nature of the negative economic rights afforded to the European citizens, rights that stand divorced from that same citizens' democratic rights. The democratisation of Europe is thus important. Democratisation, however, entails politicisation. In distinction, then, to conventional proposals for a democratic Europe, I would suggest, by way of conclusion, that the proper recognition of democratic rights cannot be limited to institutional or constitutional reforms. Radical democratic ideas are not currently *en vogue*. Still, democratisation has to recognise the actual basis of democracy, the actual people. Proposals for a democratically constituted Europe hardly ever touch on the social preconditions of democracy. Democracy, if taken seriously, depends on the democratic organisation of social time. Democratic participation entails not only a different conception of time from that which holds that time is money. Time as the measure of wealth is not the time of democratic deliberation, participation and co-operation.

I therefore suggest that the democratisation of Europe has to entail the democratic organisation of socially necessary labour time. The democratic organisation of economic relations of necessity and the reduction of labour time belong together as each other's presupposition. How much labour time was needed in 2003 to produce the same amount of commodities that was produced in 1993? Twenty percent? Forty percent or fifty percent? Whatever the percentage might be, what is certain is that labour time has not decreased. It has increased. What is certain too is that the distribution of wealth is as unequal as never before. At the same time, ever greater labour flexibility is demanded to overcome economic problems. This conquest of atoms of additional labour-time entails the 'corrosion of character' (Sennet, 1998) and thus stands in direct opposition to the character of the democratic personality. No doubt, the democratisation of existing Union institutions and procedures might well enhance its liberal-democratic character. Whether it will accord dignity to the democratic sovereign is, however, an entirely different question. In sum, the effort of democratisation has to be brought back to its actual basis and that is, to those upon whose sovereignty the structures of social organisation are said to rest already: the democratic personality of the people. Democratisation without the freeing of the democratic sovereigns from corrosive conditions of work is a contradiction in terms.

Notes

¹ Please note that the final version of this essay was completed in February 2004.

² On this, in relation to the SEA, see Grahl and Teague (1990); in relation to EMU, see Grahl (1997) and the contributions to Bonefeld (2001).

³ Schumpeter's liberal conception of the virtues of mass democratic forms of participation can, as Scheuerman (1999: 183–207) rightly suggests, be read as an attempt to respond to Carl Schmitt's

diagnosis of the crisis of parliamentary democracy. While Schmitt favoured an authoritarian solution, Schumpeter argued that capitalism and liberal-democracy can work together well if democracy is structured as a political market where rival teams of political managers compete for electoral market shares.

⁴ This formulation derives from Bernard Baruch's protest against Roosevelt's decision to abandon the gold standard in 1933. He stated that 'it can't be defended except as mob rule. Maybe the country doesn't know it yet, but I think that we've been in a revolution more drastic than the French Revolution. The crowd has seized the seat of government and is trying to seize the wealth. Respect for law and order is gone' (quoted in Schlesinger, 1958: 202). Baruch was a leading Democrat. On the significance of Baruch's argument, see Holloway's (1996) assessment of the rise and fall of Keynesianism.

⁵ On this replacement, see Burnham (2000); and see Bonefeld and Burnham (1996) for an assessment of its significance for economic policy-making in Britain during the 1990s; also Bonefeld (2001) for an analysis of neo-liberal conceptions of ungovernability and European integration.

⁶ This part draws on Agnoli (2000).

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