

Introduction: A New Look at the Form of Government of the European Union and the Eurozone

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WHAT IS THE form of government of the European Union (EU)? And how is the institutional governance of the Eurozone evolving? These questions have become pressing during the last few years, as a result of two major constitutional transformations affecting the functioning of the EU.

First, the explosion of the euro crisis has triggered a new round of legal and institutional reforms in the EU which, together with the constitutionalisation of European budgetary constraints,¹ has produced significant changes in the horizontal and vertical allocation of powers within the EU. The European Council—the EU institution congressing the heads of states and government of the EU member states, together with its semi-permanent President, and the President of the European Commission—has emerged as the agenda-setter on how to respond to the crisis.² The European Commission has acquired new pervasive powers to police the fiscal policy of the member states, including the authority to demand changes to draft budgetary bills if they substantially deviate from EU deficit and debt rules.³ At the same time, a new inter-parliamentary assembly has been set up to offer a forum in which representatives from the budget committees of the European Parliament and national parliaments can meet and discuss issues of common concern.⁴ And the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, the so-called Fiscal Compact, has also codified the existence of the Euro Summit—a body grouping the heads of states

¹ See M Adams, F Fabbrini and P Larouche (eds), *The Constitutionalization of European Budgetary Constraints* (Oxford, Hart Publishing, 2014).

² See European Parliament Research Service, 'European Council Conclusions: A Rolling Check-List of Commitments to Date', study, 7 October 2014, PE 536.359.

³ See Art 6 Regulation (EU) 473/2013 of 21 May 2013 of the European Parliament and the Council on monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficits in euro-area Member States [2013] OJ L 140/11.

⁴ See Art 13 Fiscal Compact.

and government only of the Eurozone countries⁵—thus reproducing the same duplication existing at ministerial level between the Economic and Financial Affairs (ECOFIN) Council (congressing the ministers of finance of all EU member states) and the Eurogroup (bringing together the ministers of finance of the Eurozone countries) and complicating even further the institutional set-up of the 19-members Eurozone, and its constitutional relationship with the EU of 28 member states.

Second, the elections for the 8th European Parliament in May 2014, with the ensuing process of selection of the European Commission and its President, have unleashed a new dynamic in the EU institutional framework. Exploiting a provision of the Lisbon Treaty,⁶ which was not yet in force in the 2009 elections, European political parties decided to bring forward lead candidates for the position of Commission President, agreeing that the political group which would win a majority at the European Parliament elections was entitled to claim the presidency of the Commission.⁷ With the right-of-centre European People's Party (EPP) winning a relative majority of seats in the elections,⁸ the European Council decided—albeit not without internal resistance—to appoint the EPP *Spitzenkandidat*, Jean-Claude Juncker, as President of the European Commission,⁹ and the European Parliament approved him by a vote of its plenary in July 2014.¹⁰ Nevertheless, the pressures to politicise the presidency of the European Commission were somehow tempered by the process of appointment of the College of Commissioners.¹¹ In common accord with the President-elect, the government of every EU member state nominated a Commissioner,¹² who was then vetted through parliamentary hearings—and the new College of Commissioners was approved

⁵ See Art 12 Fiscal Compact.

⁶ See Art 17(7) TEU.

⁷ See European Parliament Resolution of 22 November 2012, 'On the Elections to the European Parliament in 2014', P7_TA (2012)0462, §1 and European Commission Recommendation of 12 March 2013 'On enhancing the democratic and efficient conduct of the election to the European Parliament', (2013)1303 final.

⁸ See European Parliament, *Result of the 2014 European Elections*, available at: www.results-elections2014.eu/en/election-results-2014.html.

⁹ European Council Conclusions, 27 June 2014, EUCO 79/14, 11 (designating Jean-Claude Juncker as President of the European Commission with 26 heads of states and government in favour, and two against).

¹⁰ European Parliament, Press release, 'Parliament Elects Jean-Claude Juncker as Commission President', 15 July 2014 (reporting vote to elect Jean-Claude Juncker as Commission President with 422 votes in favour, 250 against, and 47 abstentions).

¹¹ Within the College of Commissioners, then, President Juncker introduced a new hierarchical structure, with vice-Presidents charged to coordinate clusters of Commissioners dealing with specific themes. On this, see Editorial Comment, 'A New Commission Takes Office: On the Relevance of Union Law and the Emergence of Constitutional Conventions' (2014) 51 *Common Market Law Review* 1571.

¹² See Council of the EU, Press Release, 'Council Adopts New List of Commissioners-Candidates', 15 October 2014 (reporting the final list of Commissioners-candidates designated by the Council, in common accord with President-elect Juncker, following the resignation of one of the previous candidates in light of her negative performance during the parliamentary hearings).

as a whole in October 2014.¹³ At the same time, the European Council directly appointed the High Representatives for the EU Foreign Affairs, who is also one of the Vice Presidents of the European Commission,¹⁴ and unveiled a detailed policy plan which it tasked the new European Commission to carry through during its mandate.¹⁵

These recent constitutional developments have called for a new scholarly attention on the questions of the governance and institutional design of the EU and the Eurozone. Although with some noteworthy exceptions,¹⁶ the last decade had been characterised by a remarkable dis-engagement by legal scholars from the study of the form of government of the EU. On the one hand, the majority of EU lawyers have traditionally focused their work more on the EU judicial or administrative branches, rather than on the executive and the legislature. The failure of the grand project of the Constitutional Treaty, and the return to old-style intergovernmental negotiations to pass the Lisbon Treaty, fostered this tendency to find refuge in the analysis of the case law of the European Court of Justice, or the decisions of EU administrative agencies, as evidenced by a blossoming literature on fundamental rights, citizenship and regulation.¹⁷ On the other hand, most national constitutional lawyers have culpably omitted the analysis of the EU form of government from their research, treating the EU institutional architecture as a special type of international organisation, unworthy of comparative analysis. Political scientists have performed slightly better, since the attention on the EU institutions has remained at the heart of part of the discipline.¹⁸ Nevertheless, save for a few comprehensive studies, most political science literature has maintained a single-institutional focus, or a self-referential methodological approach, and has been unable to reach a broader audience beyond the specific confines of its discipline.

The purpose of this book is to bring back the topic of the form of government of the EU at the centre of the scholarly analysis—and to offer a new look on the system of governance of the EU and the Eurozone. If it is true—as proclaimed in

¹³ European Parliament, Press Release, ‘Parliament Elects New European Commission’, 22 October 2014 (reporting vote to approve the new College of Commissioners with 423 votes in favour, 209 against, and 67 abstentions).

¹⁴ See European Council Conclusions, 30 August 2014, EUCO 163/14 (appointing Federica Mogherini as EU High Representative for Foreign Affairs).

¹⁵ See European Council Conclusions, 27 June 2014, EUCO 79/14, Annex 1 (setting out a ‘Strategic Agenda for the Union in Times of Change’).

¹⁶ See, eg P Craig, ‘The Locus and Accountability of the Executive in the European Union’ in P Craig and A Tomkins (eds), *The Executive and Public Law: Power and Accountability in Comparative Perspective* (Oxford, Oxford University Press, 2006) 315 and D Curtin, *Executive Power of the European Union: Law, Practices and the Living Constitution* (Oxford, Oxford University Press, 2009).

¹⁷ See, eg F Fabbrini, *Fundamental Rights in Europe: Challenges and Transformations in Comparative Perspective* (Oxford, Oxford University Press, 2014); E Hirsch Ballin, *Citizens’ Rights and the Right to be a Citizen* (Amsterdam, Brill, 2014); and F Fleurke and H Somsen, ‘Precautionary Regulation of Chemical Risks’ (2012) 48 *Common Market Law Review* 357.

¹⁸ See, eg J Peterson and M Shackleton (eds), *The Institutions of the European Union*, 3rd edn (Oxford, Oxford University Press, 2012).

the 1789 French Declaration of the Rights of Man and of the Citizen¹⁹—that a society endowed with a constitution must ensure the protection of fundamental rights and the separation of powers, the question that this book seeks to address is: what kind of separation of power, if any, does the EU, and the Eurozone, have? That is, how does governance work in the EU? And what kind of institutional reform can make the EU institutional system more effective and legitimate to face the challenges of the twenty-first century? To answer these questions, the book has attempted to overcome long-standing cleavages, bringing together a plurality of scholars from several states within the EU and outside it. The result is a volume which combines authors with different backgrounds and competing views. To begin with, the book collects contributions of both EU lawyers and constitutional lawyers, with the aim of emphasising the increasing overlap between these two subjects. Moreover, the book joins the analyses of legal scholars with those of political scientists, on the assumption that the points of contact between these two disciplines are manifold—and that therefore a more explicit interdisciplinary approach to the study of institutional design in the EU should be adopted. Finally, the book breaks another divide, mixing works of both senior and junior scholars on the understanding that new generations of academics are less constrained by the scaffolds of the past, and can provide an enlightening contribution to understanding the new institutional reality of the EU.

The book does not endorse a specific thesis on the form of government of the EU and the Eurozone. In the comparative constitutional law literature the virtues of parliamentary versus presidential governments, and their hybrids, are a matter of constant debate.²⁰ And scholars of European law and governance disagree on what the EU and the Eurozone has become, and how it should evolve. While several analysts praise the efforts to politicise the presidency of the European Commission by reconnecting it to the elections for the European Parliament,²¹ others doubt that this attempt to parliamentarise the EU will succeed, and some even question the wisdom of this development.²² At the same time, while some scholars have welcomed the recent trends towards the creation of new fora for inter-parliamentary cooperation to supplement the governance of EU affairs,²³ others have raised concerns about this prospect, and rather called for a more consistent empowerment of the European Parliament as the locus of supranational

¹⁹ See Art 16 Déclaration des droits de l'homme et du citoyen [1789] (stating that 'Toute Société dans laquelle la garantie des Droits n'est pas assurée, ni la séparation des Pouvoirs déterminée, n'a point de Constitution').

²⁰ See generally G Sartori, *Comparative Constitutional Engineering* (New York, New York University Press, 1994) (discussing advantages and disadvantages of alternative forms of government).

²¹ See, eg M Maduro et al, 'The Euro-Crisis and the Democratic Governance of the Euro: Legal and Political Issues of a Fiscal Crisis' (Global Governance Programme Policy Report, May 2012).

²² See, eg H Grabbe and S Lehne, 'The 2014 European Elections: Why a Partisan Commission President would be Bad for the EU' (Centre for European Reform, October 2013).

²³ See, eg B Crum and JE Fossum (eds), *Practices of Interparliamentary Coordination in International Politics: the European Union and Beyond* (Colchester, ECPR Press, 2013).

legitimacy in the European multilevel democratic system.²⁴ Looming behind this debate about the parliamentary, or inter-parliamentary, system of governance of the EU lays otherwise a growing awareness about the central role acquired by the European Council in EU governance,²⁵ with signs of a possible presidentialisation of the EU and Eurozone systems of government.²⁶

Nevertheless, despite the inevitable divergences in the interpretation of the institutional trends occurring within the EU, large consensus exists on a number of points. To begin with, most observers agree about the fact that the euro crisis constitutes a turning point for the EU, which calls for brave institutional reforms. When the Lisbon Treaty entered into force in December 2009 many predicted that this would be the last attempt to redefine the institutional architecture of the EU in a generation. Yet the ink of the Lisbon Treaty was barely dried when the euro crisis began to extol its effects, opening the door to increasing calls for a redefinition of the constitutional settlement reached after the failure of the Constitutional Treaty. The European Parliament²⁷ and several national governments²⁸ have explicitly invoked a renegotiation of the Lisbon Treaty. And although so far the member states have only amended the Treaty at the margins,²⁹ or concluded new international agreements outside the framework of EU law,³⁰ the pressure to undertake a more comprehensive overhaul of the EU institutional set-up may not be resisted for much longer. In fact, the euro crisis has upset the original EU institutional balance, but also challenged the relations between the member states.³¹ Addressing these problems, which strikes at the heart of the anti-hegemonic nature of the EU integration project,³² constitutes a necessary step to put the EU back on a sustainable path.

Moreover, agreement exists on the fact that the Eurozone has acquired increasing autonomy vis-à-vis the EU as a whole. Because of the interdependencies generated by the Economic and Monetary Union (EMU), the member states that

²⁴ See, eg I Pernice et al, *A Democratic Solution to the Crisis: Reform Steps towards a Democratically Based Economic and Financial Constitution for Europe* (Baden-Baden, Nomos, 2012).

²⁵ See, eg U Puetter, *The European Council and the Council: New Intergovernmentalism and Institutional Change* (Oxford, Oxford University Press, 2014).

²⁶ See H De Waele and H Broeksteeg, 'The Semi-Permanent European Council Presidency: Some Reflections on the Law and Early Practice' (2012) 49 *Common Market Law Review* 1039.

²⁷ See also European Parliament Resolution of 2 February 2012 'On the European Council meeting of 30 January 2012', P7-TA(2012)0023, §7 (which '[i]nsists that the contracting parties fully respect their commitment to integrate, within five years at the latest, the Treaty on Stability, Coordination and Governance into the EU treaties and asks for the remaining weaknesses of the Treaty of Lisbon to be tackled on this occasion').

²⁸ See, eg A Merkel, German Chancellor, speech at the German Bundestag, 18 December 2013 (calling for a treaty change to put the Eurozone on stronger footing).

²⁹ See European Council Decision No. 2011/199/EU of 25 March 2011, amending Article 136 TFEU with regard to a stability mechanism for Member States whose currency is the euro, [2011] OJ L 91 1.

³⁰ See generally K Tuori and K Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge, Cambridge University Press, 2014).

³¹ See F de Witte and M Dawson, 'Constitutional Balance in the EU after the Euro-crisis' (2013) 76 *Modern Law Review* 817.

³² See also S Bunse and K Nicolaidis, 'Large versus Small States: Anti-Hegemony and the Politics of Shared Leadership' in E Jones et al (eds), *The Oxford Handbook of the European Union* (Oxford, Oxford University Press, 2012) 249.

adopt the euro as their currency have been pushed to integrate their policies to an unprecedented degree during the euro crisis. Institutional structures have tracked this development.³³ While the Eurogroup already worked as a coordinating body for finance ministers of the Eurozone member states,³⁴ the Euro Summit has been created to allow heads of states and government of the Eurozone countries to debate at highest level the future of EMU. At the same time, a new position of President of the Euro Summit has been created, along the model of the presidency of the European Council, to give continuity to the institution and steer its work.³⁵ And calls have also been made to establish a Eurozone assembly within the European Parliament,³⁶ thus reproducing also in the latter the same division *ratione monetae* existing in the European Council and the ECOFIN Council. While this last proposal is controversial, there is no doubt that the Eurozone is increasingly endowed of a system of governance which runs parallel to that of the EU. Efforts have so far been made to keep the two systems together—as evidenced by the appointment of Donald Tusk, the former Prime Minister of Poland (a non-Eurozone country) to the posts of both President of the European Council and President of the Euro Summit.³⁷ Nevertheless, the constitutional relationship between an inner, more integrated Eurozone and an outer, more devolved EU will be one of the key challenges for the coming years.³⁸

Finally, widespread awareness exists on the need for the EU and the Eurozone to improve its legitimacy. Because decisions taken at EU level increasingly affect the core of national political processes, including choices about taxing, spending, and the welfare state, adequate mechanisms must be put in place so that EU citizens have a voice to choose those who decide at European level, and to hold them accountable.³⁹ Participatory democracy is certainly important—but it is through the channel of representation, at national and EU level, that new ways to inject the fuel of democracy into the EU engine must be explored. The

³³ See JC Piris, *The Future of Europe: Towards a Two-Speed EU?* (Cambridge, Cambridge University Press, 2011).

³⁴ See U Puetter, *The Eurogroup: How a Secretive Circle of Finance Ministers Shape European Economic Governance* (Manchester, Manchester University Press, 2006).

³⁵ See Art 12(1) Fiscal Compact.

³⁶ See, eg Dutch Council of State, report presented upon request for information, on the embedding of democratic control in the reform of economic governance in Europe to combat the economic and financial crisis, by the President of the Senate of the States General, No. W01.12.0457/1, 18 January 2013.

³⁷ See European Council Conclusions, 30 August 2014, EUCO 163/14 (appointing Donald Tusk as President of the European Council) and Decision of the Heads of State and Government of the Eurozone appointing the President of the Euro Summit, 30 August 2014, Doc. 11949/14 (appointing Donald Tusk as President of the Euro Summit).

³⁸ See also S Fabbrini, *Which European Union? Europe After the Euro-Crisis* (Cambridge, Cambridge University Press, 2015).

³⁹ See generally JHH Weiler, 'The Political and Legal Culture of European Integration: An Exploratory Essay' (2011) 9 *International Journal of Constitutional Law* 678 (distinguishing between input legitimacy—ie electoral legitimacy—output legitimacy—ie legitimacy based on the results of EU integration—and Messianic legitimacy—ie the legitimacy deriving from the narrative about the good of EU integration).

regime of ‘executive federalism’⁴⁰ emerged to respond to the euro crisis, with the heads of states and governments taking decisions in the European Council and Euro Summit after night-long meetings, has produced a major problem of effectiveness and legitimacy. EU citizens have felt disempowered by a system of governance they perceive as secretive and remote;⁴¹ and the rise of extreme, anti-system parties both in the latest national and at the European elections is a confirmation of it.⁴² In this context, there is an urgent need to design strong mechanisms of decision-making which are perceived by all the EU states and citizens as leading to legitimate decision, because they allow for *ex ante* input, and *ex post* accountability. The parliamentarisation of the European Commission along a constitutional logic fusion of powers is a possible option in this regard, but it risks deepening the cleavage between large and small member states.⁴³ Alternatively the proposal to strengthen the power and legitimacy of the President of the European Council along a constitutional logic of separation of powers should also be considered.⁴⁴

The contributions of this volume individually address these pressing questions and collectively provide a map that can help scholars and policy-makers navigate the complexity of the evolving institutional architecture of the EU and the Eurozone. The book is opened by Sylvie Goulard’s Foreword, which contextualises the challenges that the EU and the Eurozone face as far as their system of governance is concerned. In her contribution, which is informed by her experience as a member of the European Parliament—and notably its powerful Economic and Monetary Affairs Committee—but also by her expertise as a scholar—framed in the study of comparative government and European politics—Goulard examines several recent European developments and outlines a way forward for the EU. In particular, Goulard discusses the new process of appointment of the European Commission, the increasing autonomisation of the Eurozone and the growing popular disenchantment towards the EU before making the case in favour of a Euro-Community: in her view, the Eurozone governance should be put on a more solid legal basis, through a separate international treaty, and endowed with a democratic form of government, which empowers citizens to genuinely express

⁴⁰ J Habermas, *The Crisis of the European Union* (Cambridge, Polity Press, 2012).

⁴¹ See D Curtin, ‘Challenging Executive Dominance in European Democracy’ (2014) 77 *Modern Law Review* 1.

⁴² See N Scicluna, ‘Politicization without Democratization: How the Eurozone Crisis is Transforming EU Law and Politics’ (2014) 12 *International Journal of Constitutional Law* 545.

⁴³ See F Fabbrini, ‘States’ Equality v States’ Power: the Euro-Crisis, Inter-State Relations and the Paradox of Domination’ (2015) 17 *Cambridge Yearbook of European Legal Studies* 1, 25.

⁴⁴ See F Fabbrini, ‘Austerity, the European Council and the Institutional Future of the EU: A Proposal to Strengthen the President of the European Council’ (2015) 22 *Indiana Journal of Global Legal Studies* 29.

their voice. As she masterfully argues with reference to Ambrogio Lorenzetti's *Allegoria del Buon Governo* in Siena's Palazzo Pubblico, Europe is at a crossroads, and decisive steps must be taken to make sure that good government is in place for the Union.

Part I of the book examines how the euro crisis has influenced the form of government of the EU and the Eurozone. The opening chapter by Paul Craig goes right to the heart of the question. It deals with two principal themes concerning the institutional concerns, triggered by the need to respond to the financial crisis: on the one hand the institutional design, on the other hand the constitutional responsibility for the choices thus made. The justification for democracy is that it allows participatory input to determine the values on which people within that polity should live. Here we are confronted with the reality of the complex distribution of power that resulted from hard-fought political battles. In the unfolding financial crisis, intergovernmental solutions came to the forefront. The European Council has taken the lead, but lacks the capacity to deal with the problems in a systematic way as the Commission and the European Central Bank (ECB) can do. Negotiation processes between the larger creditor nations and the debtor states complicate the picture further. Therefore, the focus of future considerations should include the constitutional responsibility of the member states.

In the following chapter, Christian Calliess highlights the intergovernmental nature of the economic coordination in the EU. The dominating role of the European Council in response to the financial crisis amounts to a continuing rejection of the 'Community method' with its dual legitimacy concept. The limited effectiveness of the mechanisms of prevention based on the Articles 125 and 126 Treaty of the Functioning of the European Union (TFEU) came to light when financial markets were betting on a bailout because of the systemic interdependencies between the members of the Eurozone. Calliess recommends confronting this awkward situation—a combination of democratic and technical deficits—with a direct approach: treaty reform, aimed at the establishment of a Fiscal Union, a Banking Union and a genuine Economic Union with appropriate decision-making procedures and technical rules, if necessary by a selective coalition of member states. According to the author, innovative institutional ideas, like the introduction of a Euro-Parliament consisting of members of national parliaments, might pave the way for this constitutional leap forward.

The chapter by Georgios Maris and Pentelis Sklias, instead, considers the implications of the euro crisis on EMU from a political science perspective. As Maris and Sklias maintain, the original design of EMU had been profoundly shaped by the convergence of interest between Germany and France. In their view, moreover, state interests continue to shape the framework of governance and process of reform of EMU. Nevertheless, as the authors acknowledge, the relationship between Germany and France—and between the EU member states more generally—has become increasingly unbalanced, leading to problematic developments in the governance of the Eurozone. Their contribution, which also provides a helpful overview of existing theories of European integration, endorses

therefore intergovernmentalism as the key interpretative lens to explain the form of government of the EU, but raises cautionary tales on the sustainability of this mode of governance in the long term.

Part II of the book then focuses specifically on the institutional systems which have emerged during the last few years at EU level to govern *economic, monetary* and *banking* policies. In each of these salient areas, the euro crisis has pushed for more integration, creating however complex constellation of powers and responsibilities. Alexandre de Streel takes a highly relevant approach by analysing the decision-making process for the governance of the Eurozone. His chapter includes an overview of the surveillance, the coordination and eventually the corrective procedures including imposition of sanctions, all under the watchful eye of the national and EU courts. Given the political infeasibility of a federalisation, De Streel recommends improving the surveillance and coordination of the national economic policies based on an executive dialogue between national governments, the European Commission and the Council of Ministers. At the same time, he argues that the quality of the surveillance process should be strengthened by the introduction of an EU fiscal agency, separated from the Commission, and a network of national fiscal councils.

In his chapter, Thomas Beukers discusses the changing nature of the fragmented and plural executive power governing the euro, in relationship to the ECB. The interaction between the ECB and political executive bodies is undergoing a metamorphosis, which is illustrated by the conditionality the ECB attached to its readiness, expressed in a letter to the Italian Government in 2011, to buy Italian government bonds. The question is whether this mingling into member states' economic policies is supported by the mandate of the bank. Beukers gives an analysis of the key moments and issues of Eurozone government. As he argues, the scope of the monetary instruments has gradually widened, drawing the ECB into controversial policy considerations concerning structural economic reform. Beukers highlights the constitutional question to what extent accountability of the ECB through participation in relevant Council meetings is acceptable from the viewpoint of national, democratically elected institutions—and suggests that here the independence of the ECB is at stake.

The last chapter of part II, written by Gianni Lo Schiavo, is devoted to a recent, important renewal in the Eurozone governance: the creation of the Single Supervisory Mechanism (SSM). This is one of the elements of the European Banking Union project, next to the Single Resolution Mechanism. As Lo Schiavo explains, the ECB is thus moving into new fields of activities and acquires a full array of powers as the central bank for the Eurozone, and (if they wish) other member states through a close cooperation agreement. The ECB is vested with new powers, for example, to authorise the take up of the business of credit institutions, to require the banks to hold own funds in excess of the capital requirements, to request the divestment of activities that pose excessive risks, and to remove members from the management body. Lo Schiavo also discusses the ensuing delicate relations between the ECB's new supervisory powers and that of the national

competent authorities and makes clear that the quality of their cooperation is an important condition for the success of the SSM.

After the analysis on the institutional implications of the euro crisis, part III of the book zooms back, and offers a more theoretical discussion of key concepts concerning the functioning of the EU polity. The contributions of part III, in fact, squarely address the problem of democracy in Europe, analysing its multi-faceted nature as *representation*, *participation*, and *accountability*. In her chapter Simona Piattoni identifies and elaborates the fundamental functions of representation—‘voice’, ‘will’ and ‘control’—and asks where these functions are performed at national or at EU level, and whether this division of labour is a viable one. According to Piattoni, while the euro crisis has not improved the situation, it has established conditions for a step forward in representative democracy in the EU. While the measures that have been taken have obviously compromised the roles of representative institutions at EU and national levels, they have triggered a response from both national parliaments and the European Parliament to repatriate both ‘voice’ and ‘will’. It is the fact that leaders have been concealing this interdependency from their electorates which Piattoni regards as most damaging for European democracy. Only when this veil is lifted will the European public be in a position to debate and decide about the ways in which they wish to exercise their democratic powers in an interconnected economic and political context.

In the following chapter, Christian Marxsen explores the quest for democracy and legitimacy in the EU through the lens of participatory democracy. Marxsen, in particular, considers (i) participatory measures aiming at horizontal exchange within European society; (ii) participatory measures pursuing vertical exchange within EU institutions and European society; and (iii) the European Citizens’ Initiative. While acknowledging that these participatory instruments are to be viewed as supplementary to the conventional avenues of representative democracy, Marxsen undertakes a critical assessment of their current significance and future potential. The yardstick used for that endeavour is whether political actors channel the results into the political process and communicate their conclusions back to society. Marxsen’s analysis, however, raises a cautionary tale, suggesting that as practised today the mechanisms of participatory democracy do not contribute to the legitimacy of the European political process. In fact, in many cases, participation is a rhetorical device used to imply that the European political process is more open than it actually is.

In the last chapter of part III, Deirdre Curtin focuses instead on the tensions and sacrifices which the euro crisis has produced in terms of multi-level democratic accountability. To this end, she first seeks to capture the reality of EU executive power in law and in practice. Subsequently, she asks whether, and how, formal and informal modes of accountability to national parliaments and the European Parliament have compensated for the rise of executive power within the EU. Curtin structures her argument by introducing ‘information’, ‘debate’ and ‘consequence’ as distinct stages of accountability. As she explains, working methods and secrecy of the EU executive power can seriously undermine the information stage,

albeit to varying degrees and in different ways in different institutions. Limited access to information hampers the stage of debate, particularly for national parliaments, although the fact that the European Council is increasingly doing away with formal documents significantly compromises the position of the European Parliament too. And when it comes to ‘consequence’ (for example, sanctions), the positions of national parliaments and the European Parliament differ, but in general terms are weak. Given the limited capacity of parliamentary institutions at the national and supranational level to provide accountability, Curtin concludes by outlining a possible agenda for reform—where parliaments change their working practices and start networking to counteract the reality of executive domination.

Building on the contributions of part III, part IV focuses specifically on the trends toward the parliamentarisation of the European Commission triggered by the May 2014 European Parliament elections and the subsequent appointment of the Juncker Commission. The chapter by Daniel Kelemen, which is aptly entitled ‘Towards a New Constitutional Architecture in the EU?’, provides a complete summary of the events leading towards the appointment of the Juncker Commission and offers a first assessment of their pros and cons. As Kelemen explains, the pressure by the political groups in the European Parliament to advance electoral candidates for the presidency of the European Commission has unleashed a dynamic which the European Council culpably underestimated, and although some member states (such as the United Kingdom) have loudly opposed the *Spitzenkandidaten* game, the process has now succeeded and it will be impossible to revert it in the future. Nevertheless, according to Kelemen, the parliamentarisation of the European Commission is not an unproblematic development. In particular, a parliamentary form of government in the EU is at odds with the logic of separation of powers which has characterised the functioning of the EU so far. Whether the trends towards the parliamentarisation of the Commission should be seen positively or negatively remains therefore an open question.

In their contributions, Carlino Antphöler and Anna Kocharov exemplify the diametrically opposite normative readings that can be given to the process of parliamentarisation of the Commission. While Antphöler welcomes the *Spitzenkandidaten* game as a way to politicise EU decision-making, Kocharov criticises the power grab of the European Parliament as an illegitimate constitutional development. In his chapter, Antphöler draws from the principle of democracy derived from Articles 9 to 12 Treaty on European Union (TEU) to make a normative, abstract case in favour of the politicisation of the European Commission. Antphöler, in particular, posits that, as the role of the Commission has become increasingly depoliticised in the wake of the crisis, the politicisation of the choice of the President of the Commission through the *Spitzenkandidaten* procedure is only proper compensation. Kocharov, instead, reaches the opposite conclusion. In her chapter, she argues that shifting the balance from national parliaments to the European Parliament undermines, rather than enhances, the legitimacy of the process of choosing the President of the Commission. The form in which the political agreement between the Commission and the European Parliament on the

Spitzenkandidat innovation has been couched does not legally amount to an act which can be challenged by the Council before the European Court of Justice even though, substantively, Article 17(7) TEU reserves the power to propose candidates for the presidency to the European Council. In conclusion, Kocharov contends that such a twisting of the selection procedure of the Commission President imperils the impartiality of the Commission, could result in major institutional crises, and replicates at EU level the malfunctions of national democracies against which the EU is supposed to guard.

Part V, finally, focuses on a number of other recent institutional developments which have significantly affected the form of government of the EU and which must be considered as likely candidates for possible future institutional changes. Among these, first and foremost is the role of the European Council, which is at the core of the contribution by Uwe Puetter. In his chapter Puetter explains the constitutional logic for the rise of the European Council as the centre of EU politics: as he argues, since the Maastricht Treaty, the process of European integration has been characterised by a paradox since, on the one hand, member states have been willing to push integration further into new areas of state sovereignty, while, on the other, they have refused to delegate new powers to supranational authorities. In this context, the European Council has acquired a central importance in the governance of the EU, by providing the forum in which member states could coordinate their policies. While the euro crisis may have brought to the surface the growing role of the European Council, as evidenced by its almost daily management of the economic emergency and the responses to it, the institutional change is a deeper, and permanent, one: according to Puetter, the European Council will remain the main political body in the EU system of governance, and the aim to foster deliberation and consensus-building will continue to be the defining feature of the institution.

Whereas the rise of the European Council reflects a trend towards deliberative inter-governmentalism in the EU, the recent years have been characterised also by the attempts to balance this dynamic with increasing inter-parliamentarism. In his contribution Valentin Kreilinger analyses the requirement of the Fiscal Compact to establish an inter-parliamentary assembly on economic and financial affairs, and describes the (modest) steps that have been taken so far to institutionalise this body. By comparing inter-parliamentary cooperation in the field of EMU, with the pre-existing frameworks of inter-parliamentary coordination in the areas of foreign affairs and defence, and of EU policy more generally, Kreilinger provides a comprehensive account of the difficulties encountered to ensure a meaningful cooperation between the European Parliament and national parliaments. Kreilinger maintains that inter-parliamentary cooperation in EMU has a potential role to play in involving legislative branches in the management of the Eurozone. Nevertheless, as he acknowledges, the specific function of such an inter-parliamentary assembly remains somehow uncertain, and it would be unwise to put too much trust (or power) into this institutional forum.

Finally, in his chapter Federico Fabbrini seeks to map the recent calls for a more effective and legitimate form of government for the EU and the Eurozone and to identify the possible opportunities for institutional reform in the near future. As Fabbrini maintains, the euro crisis has empowered the EU heads of state and governments, congressed in the European Council and the Euro Summit. Yet this system of executive federalism has been fraught with problems—not least due to the increasing imbalances it produced in the relationship between the member states. At the same time, recent institutional developments such as the politicisation of the President of the European Commission or the incremental strengthening of the President of the European Council (and Euro Summit), while noteworthy, have not been able to change the status quo. According to Fabbrini, therefore, a revision of the EU treaties is the main road ahead to create a strong, accountable government for the EU and the Eurozone. Nevertheless, he concludes with a note of optimism, pointing out to the fact that the Fiscal Compact requires its contracting parties to incorporate the content of that treaty within the legal order of the EU by 2018, and suggesting that this provides a window of opportunity which should be used to reform the institutional architecture of the EU and the Eurozone through reflection and choice.

The systems of governance of the EU have been evolving quickly since the beginning of the euro crisis—and additional institutional changes may be expected in the future. Our hope is that this volume will provide food for thought to scholars, policy-makers and the public at large as they continue debating about the most apt form of government for the EU and the Eurozone.