Introduction

In THE SPRING OF 2001, Mr. Steven Thoburn, a greengrocer from Sunderland in the northeast of England, was convicted in district court of selling one pound of bananas. His conviction, which earned him a criminal record, was a result of a European Union (EU) directive requiring all loose fruit to be sold in kilos and grams. Mr. Thoburn—the "Metric Martyr," as the British tabloids were to call him—argued in his defense that the British Weights and Measures Act of 1985 permitted the sale of goods in both imperial and metric measures. Mr. Thoburn insisted that he would continue to sell his fruit in imperial measures until the British parliament in Westminster introduced a new weights and measures act to replace the old one.

On a point of law, Mr. Thoburn was clearly mistaken. As a member of the EU, Britain, like every other member state, is required to recognize both the "direct effect" and "supremacy" of European law over competing national laws.[1] The district judge who found Mr. Thoburn guilty applied the law correctly.[2] But Thoburn's case raises questions that go beyond the letter of the law. Thoburn and his eurosceptic supporters saw themselves as raising a fundamental question—a philosophical question—concerning the justification of Europe's legal and political authority over its member states. The novelist Frederick Forsyth, one of Thoburn's prominent supporters, has posed this question in the following way: "How, and by whom, do you wish to be governed?"[3]

The nationalist—and many eurosceptics are nationalists—has a ready answer to Forsyth's question. "We wish to be governed by those we trust, those like us, people with whom we share a common nationality." Proponents of European integration—"europhiles," as I will call them—have a more difficult time with the question. Few would want to argue that Europe ought to be governed by "Europeans," because European identity remains relatively thin and insubstantial when compared with most national identities. Furthermore, there is no general agreement about where the boundaries of Europe lie, nor even about what constitutes a European identity. Perhaps a more promising strategy is to focus on the "how" part of the question. "How do you wish to be governed?" Europhiles assume, not unreasonably, that all Europeans want to be governed effectively. Effective government, so they contend, is now no longer possible at the level of the nation-state. This answer,

unfortunately, does little to persuade those who believe that the efficacy of a government matters less than its nationality. These eurosceptics (much like Milton's Satan in *Paradise Lost*) would rather govern their own national hell than serve in the new European heaven.[4]

While Mr. Thoburn and his supporters were readying their appeal to the British courts, the European Council meeting at Laeken (December 2001) decided that European integration could proceed no further without a Constitutional Convention to reexamine Europe's existing political architecture.[5] This decision was taken in response to two different challenges. First, the European Union faced the problem of incorporating ten (and possibly thirteen) new members, many of them impoverished, ex-communist countries. Second, the European Union faced a crisis of popularity. Voters in a number of European countries had expressed their dislike for the post-Maastricht EU in a number of embarrassing referendum defeats. Euroscepticism, in short, was showing signs of spreading, much like soccer hooliganism, from England to the Continent. Something had to be done.

The remit of the Constitutional Convention, which was chaired by Valéry Giscard d'Estaing, was both broad and narrow. It was broad in that it sought "to propose a new framework and structures for the European Union."[6] Yet it was narrow in that it neither addressed nor resolved Europe's raison d'être. The eurosceptic challenge to the very idea of a European level of government was thus never confronted. This avoidance strategy was evident in the Constitutional Treaty that emerged from the Convention in June 2003 and was signed (after some modifications) in October 2004. The Preamble—where we might ordinarily expect some account of the reasons why a European polity is desirable—brushed aside basic questions of Europe's existence in favor of vague generalities designed to balance the concerns of those seeking tighter and those seeking looser forms of political integration.[7] Perhaps not surprisingly, neither the Convention nor the Constitutional Treaty managed to put an end to the debate over Europe's political future.[8] If anything, the Convention and the subsequent negotiations over the Constitutional Treaty have exposed new divisions within Europe, including those between larger and smaller states, and between pro- and anti-US states.

It remains to be seen when Europe's national electorates—acting either through their elected representatives or through popular referendums—will ratify the Constitutional Treaty. Even if the treaty is rejected by one or more national electorates, the effort to bring some coherence

to Europe's current legal and political institutions is unlikely to disappear. Perhaps there remains some clever institutional solution that will satisfy federalists and antifederalists, big states and small states, US-friendly states and US-allergic states. The assumption of this book, however, is that the European project of political integration is less in need of an institutional than a justificatory fix. Proponents of European political integration need to pay more attention to the fundamental question posed by eurosceptics: What is the justification for European political integration? Unless this question can be answered satisfactorily, there is no good reason for citizens to lend their support to parties, governments, and political leaders who favor European political integration.

This book presents the debate over this justificatory question as a three-sided quarrel between eurosceptics, postsovereignists, and federalists. Eurosceptics alone remain attached to one or another of Europe's nation-states. They seek to maintain (or perhaps return to) a Europe of relatively independent nation-states. Postsovereignists and federalists, in contrast, favor the transfer of political authority away from Europe's nation-states. Both envisage a Europe that distributes political authority among the local, national, and European levels of government. Postsovereignists and federalists disagree, however, about the degrees of centralization, hierarchy, and internal homogeneity desirable in a European polity. Where postsovereignists (also sometimes referred to as "postnationalists") seek a radically new multilevel, decentered polity, European federalists favor something akin to a "United States of Europe." Federalists, in other words, insist that a federal Europe must concentrate the most important political tasks (including defense, foreign policy, and taxation policy) at the European level of government.

These different preferred outcomes—a Europe of many nation-states, a postsovereign polity, and a federal European state—reflect a fundamental disagreement over the facts and values that belong in the debate over European political integration. Different people can and do evaluate European political integration from the perspective of different reference groups. Some evaluate European political integration solely with reference to its impact on their own nation. Others evaluate integration from the perspective of "Europeans" in general. And still others evaluate integration from the perspective of "the world" or humanity writ large. Complicating further the task of justifying European political integration is the fact that people disagree about the criteria of evaluation. Some evaluate European integration on economic grounds. Others eval-

uate European integration solely on nationalist grounds. And still others evaluate European integration on democratic grounds. In light of these disagreements, this book places special emphasis on the question of justification. Before I say something more about justification, I want first to clear up certain difficulties with the language and concepts that people employ when discussing European integration.

European Integration: Project, Process, and Product

When talking about European integration, it is helpful to draw a distinction between the project, the process, and the product of integration. The *project of European integration* refers to the efforts of intellectuals, political elites, and popular movements to create some form of European polity. The *process of European integration* refers to the actual step-by-step transformation of Europe's separate-nation states into a more integrated political, legal, and economic system. The *product of European integration* refers to the current outcome of this process, the political institutions, policies, and practices of the European Union itself.

Until Joschka Fischer raised the topic in a controversial speech in June 2000, Europe's political leaders tended to remain silent about the *project* of European integration.[9] Thus the "changes to the Union's basic treaties," as Lenaerts and Desomer have noted, "have been brought about without explicit consideration of the final goal of European integration. Rather, the overall approach of European integration has been one of piece-meal engineering."[10] While this "piece-meal engineering" has proven remarkably successful in constructing a common European market, European integration has reached a stage where its next steps, if taken, would involve the EU taking control of many of the core functions of national governments—including defense, foreign affairs, and personal taxation. This stage of European *political* integration requires, so Fischer and others have argued, something more than "piece-meal engineering." Unfortunately, the terms of the Convention were drawn too narrowly to allow an open-ended debate over the merits of various possible conceptions of the European project.[11]

This book focuses on two different conceptions of the European project: a *federalist project of European integration*; and a *postsovereignist project of European integration*. Conceived as a federalist project, the telos of European integration is to be found in a "United States of Europe." This project spells the disappearance of sovereign nation-states in Europe.

Europe's current nation-states would exist only as subordinate units
of a federal Europe, much in the same way that the fifty states exist as
subordinate units in the United States of America. The most important
functions of government (foreign policy, defense, and taxation) would
be—and ought to be—in the hands of the federal (or European) level of
government. While few proponents of European political integration
would admit that this is their goal, many eurosceptics have long feared
that European integration is moving ineluctably in this direction.

Conceived as a postsovereignist project, the telos of European inte-
gration is to be found not in a European federal state but in a new, com-
plex political entity that distributes political authority among various
levels (local, national, and European) depending on the policy issue in
question.[12] In a postsovereign Europe, Europe's nation-states would not
be sovereign, nor would the political authorities located in Brussels. For
postsovereignists, sovereignty is an outmoded concept that does not fit
the complex systems of "governance" that would characterize an ide-
ally integrated Europe. Animating the postsovereign project are the
principles of subsidiarity, asymmetrical incorporation, and constitu-
tional flexibility.[13] Briefly stated, the principle of subsidiarity requires
policy making to take place at that level closest to those affected by that
policy. The principle of subsidiarity, in other words, entails a strong pre-
sumption in favor of the local and against the federal level of govern-
ment. The principle of asymmetrical incorporation allows that the local
and national communities that make up the constitutive elements of the
European polity can have different rights and responsibilities. Some re-
gions, in other words, could be incorporated into the union on different
terms than others. The principle of constitutional flexibility allows that
the application of the principles of subsidiarity and asymmetrical in-
corporation must itself remain open to further revision and—favorite
word of postsovereignists—"contestation." For the postsovereignists,
the European project never reaches a fixed and final destination. The
postsovereignist project marks a radical departure from both the "Eu-
rope of nation-states" favored by eurosceptics and the "United States of
Europe" favored by federalists.

The *process* of European integration is controversial for different rea-
sons than the project of European integration. The actual transformation
of postwar European nation-states has proceeded, chrysalis-like, from
the European Coal and Steel Community to the European Economic
Community to the European Community to now the European Union.
Running alongside this process of "deepening," as it is known, "Eu-

rope"—which originally consisted of France, Germany, Italy, and the Benelux countries—has added members: Ireland, Denmark, and the United Kingdom in 1973; Greece in 1981; Spain and Portugal in 1986; Austria, Sweden, and Finland in 1995. A decision was taken in 1993 by the European Council to admit, subject to certain qualifying conditions, a large number of central and eastern European states. At Laeken the decision was taken to admit ten countries in 2004 (the three Baltic states, Cyprus, the Czech Republic, Hungary, Malta, Poland, Slovakia, and Slovenia) and to delay the accession of three remaining so-called candidate countries (Bulgaria, Romania, and Turkey). Bulgaria and Romania are expected to join the EU by 2007, but Turkey's accession has not yet been time-tabled. All of which is to say that the process of European integration—a process that involves both the "deepening" and the "widening" of Europe—continues.

It is helpful to distinguish this process of integration from the project of European integration, because they are controversial for somewhat different reasons. It is possible, for instance, to be critical of the process of integration while remaining an ardent proponent of the project (however conceived). In illustration of this point, it is helpful to keep in mind descriptive and normative understandings of the process of European integration. Descriptively, scholars have documented the actual mechanisms and procedures by which postwar Europe has adopted a more integrated economic, legal, and political system.[14] Normatively, people often assess these mechanisms and procedures against some standard of how they *ought* to function. For many critics of the process of European integration, these mechanisms are too elitist, too undemocratic, and insufficiently transparent. The European Convention of 2002–3, which involved a wide variety of different people representing a spectrum of opinions, might be seen as an effort, however inadequate, to overcome some of these criticisms by drawing into the process a wider range of participants.

The current *product* of the process of European integration is the EU itself. From a normative standpoint, it is especially important to distinguish this product—an ever changing political, legal, and economic system—from both the project and the process of European integration. Thus someone who is deeply critical of the current product of European integration—perhaps because of, say, the EU's agricultural policies or because of its structural and cohesion policies—could nonetheless support various conceptions of the project of European integration, including the idea of a federal Europe.[15] Conversely, someone very happy

with the current product could conceivably reject the very idea of a project to construct a more politically integrated European polity, whether conceptualized in federal or postsovereignist terms.[16]

To suggest (as I have done at the end of the previous paragraph) that the current product of European integration is distinguishable from both a "federal Europe" and a "postsovereign Europe" does, however, beg an important ontological question concerning the current nature of the EU. If it is not now federal or postsovereign, then what is it? Jacques Delors once described the EU as "un objet politique non-identifié." Many scholars make the same point, albeit less elegantly, through their employment of various neologisms to describe the EU: quasi state, intergovernmental organization, supranational polity, federation, confederation, multilevel system of government, and so forth.[17] Rather than add yet another term to the list, I intend to describe Europe's current political architecture as envisaged by the Constitutional Treaty signed in October 2004.

Europe in the Eyes of Its Constitutional Treaty

The Constitutional Treaty of October 2004 was the product of a lengthy, elaborate European Convention (chaired by Valéry Giscard d'Estaing), which consulted elected representatives from all of Europe's member states, the European parliament, the European Commission, and most shades of European public opinion. The European Convention met from March 2002 to June 2003, when it produced a document (a "draft Constitutional Treaty") that was supposed to be signed by all member states at the end of 2003. This "draft Constitutional Treaty" was not, however, signed, because of a disagreement over the relative voting weights to be accorded to the larger and smaller states. Spain and Poland refused to give up the relatively generous weightings they had earlier secured in the Treaty of Nice (2000). A new Constitutional Treaty, which contained minor modifications of the earlier draft, was later agreed on in June 2004 and was signed in October of that year. This Constitutional Treaty will not take effect until it has been ratified—whether by the approval of national parliaments or in national referendums—by all twenty-five member states. If the process of ratification fails—a distinct possibility—Europe's political leaders will either have to go back to the drawing board to produce a new Constitutional Treaty or muddle through on the basis of preexisting European treaties. Yet even in the event that ratification

fails, the Constitutional Treaty will remain for a very long time the point of departure for all future efforts to design an appropriate set of European political institutions.

The Constitutional Treaty of 2004 is (even as constitutions go) a lengthy document (328 pages). The treaty, which is nothing if not complicated, is clearly divided over the nature and future direction of the EU. These features hinder efforts to "sell" the EU to Europe's more skeptical electorates. Furthermore, they make a complete mockery of the initial intention of the European Convention to render the EU more transparent and bring it closer to the ordinary citizen. Leaving aside for the moment the detailed provisions of the Constitutional Treaty, it would be useful to begin by noting the disagreements that emerged during the efforts to produce, sign, and ratify the treaty. At any given time in the future, the product of European political integration will be a function of how these disagreements are resolved.

One disagreement centered on the *division of competences* between local, national, and European levels of government. Here we can draw a distinction between *member-statists*, who wanted to ensure that the most important powers (or "competences") remained in the hands of national-level governments (France, Britain, Spain, and so forth), and *federalists*, who wanted to place those powers in the hands of European-level political institutions.[18]

A second disagreement concerned the *distribution of power* both within and between European-level political institutions. Here we can draw a distinction between *intergovernmentalists*, who wanted to concentrate power in institutions (such as the European Council and the Council of Ministers) that the member states themselves control, and *supranationalists*, who wanted to distribute power to institutions (such as the European parliament and the Commission) that member states as such do not control.[19] A related disagreement between intergovernmentalists and supranationalists concerned the status of national vetoes and majority voting. Intergovernmentalists generally favor national vetoes; supranationalists generally favor majority voting.[20] It is important to recognize here, however, that political leaders might be intergovernmentalists on one issue—as, say, the French are on agricultural policy— while being supranationalists on other issues (the harmonization of taxation policy, for instance).

In addition to these two institutional disagreements, two deep-seated policy disagreements must be mentioned, even if the Convention itself

had no remit to discuss policies. One policy disagreement concerned the question of market-constraining regulatory policies. The other policy disagreement concerned Europe's foreign and security policies and, more generally, Europe's relationship with the United States. Disagreements on these topics, even though they were never discussed by the Convention, hovered over many of the discussions concerning the reform of Europe's political institutions.[21] The disagreement over market regulation, for instance, drives much of the aforementioned disagreement over the division of competences between European and national levels of government.[22] A principal reason why British political leaders—even those who, like Tony Blair, are (at least by British standards) relatively well disposed to European integration—cling to member statism and intergovernmentalism is that they fear that any step toward federalism and supranationalism will give rise to a set of market-constraining regulatory policies that will hinder Britain's economic performance.[23] Political elites in France and to a certain extent Germany have the opposite worry. They fear that the EU regulatory regime will limit the capacity of national governments to impose such market-constraining policies as a minimum wage and antitakeover regulations.[24]

The disagreement over Europe's foreign, security, and defense policies remains the greatest unresolved issue in European politics today. The Convention took place against the background of deep divisions within Europe over the legitimacy of military intervention in Iraq.[25] Federalists sought to make foreign, security, and defense policy one of the core competences of the EU. Indeed, supranationalist federalists sought to enable European political institutions to reach decisions in this area on the basis of a majority vote. Given the far-reaching aspirations of these federalists, it is surprising that the changes envisaged by the Constitutional Treaty remain so minor. It is certainly difficult to understand how anyone could interpret the treaty as a victory for those in favor of a "federal superstate."[26] Certainly the document contains some language and provisions designed to appease those seeking a more politically integrated European polity. Thus the Preamble retains some of the earlier language found in the Treaty of Rome that promised "an ever closer union" for Europe. "[W]hile remaining proud of their own national identities and history, the peoples of Europe," as the Preamble puts it, "are determined to transcend their former divisions and, *united ever more closely*, to forge a common destiny" (emphasis added).[27] But these federalist sentiments coexist, as is evident in the quoted passage,

with a reaffirmation of Europe's separate nations and peoples. Furthermore, the treaty stipulates that the EU derives its authority from both Europe's citizens and Europe's member states:

> Reflecting the Will of the citizens and States of Europe to build a common future, this Constitution establishes the European Union, on which the Member States confer competences to attain objectives they have in common.[28]

The EU, in other words, is a joint creation of citizens and member states: it is *they* who confer competences on *it*.

Like other constitutions, the Constitutional Treaty defines the role and responsibilities of key political institutions. Here there is little new. For the most part, the Constitutional Treaty merely reaffirms the institutional status quo ante. Briefly described, the European Union will retain its familiar tripartite division of a Council, a Commission and a Parliament.[29] The "Council"—a shorthand term sometimes employed to refer to two rather different institutions, the "European Council" and the "Council of Ministers"—provides Europe's member states with a large measure of control over the outcomes of Europe's political system. The "European Council"—which consists of the presidents or prime ministers of each member state and president of the European Commission—defines the "general political directions and policies" that the EU is to follow. In an important institutional innovation of the Constitutional Treaty, the European Council will in future be chaired by a president, with limited powers, appointed for a period of two and a half years. The other important institutional innovation is the creation of a Union minister of foreign affairs, who will represent the EU internationally.

In addition to the control they exercise through the European Council, member states also control the all-important Council of Ministers, a body made up of ministerial representatives of each member state. Voting in the Council of Ministers proceeds—except in certain crucial areas (such as taxation) where unanimity is still necessary—by a qualified majority vote. The weighting of this vote proved to be the most difficult task in the negotiations over the Constitutional Treaty. The compromise reached involves a procedure whereby a double majority (of both member states and people) is necessary to reach a Council decision. A qualified majority will henceforth require the support of 55 percent of the member states representing 65 percent of the population of the EU. Furthermore, in an effort to check the power of the "big three" (France, Ger-

many, and the United Kingdom), a blocking minority will require a minimum of four member states.

The Constitutional Treaty does little to either expand or diminish the role of the European Commission as Europe's executive and administrative agency. The European Commission now (as before) has a president—who is selected by the European Council and approved by the European parliament—and commissioners drawn from each country. [30] The European Commission is more, however, than a bureaucratic agency: it alone has the right to propose legislation. Given this right of legislation, the European Commission plays a role that in any other democratic political system would be played by a parliamentary or legislative body. The Constitutional Treaty does something (albeit not much) to bolster the power of the European parliament by increasing its authority over the budget and in policy areas (such as agricultural policy) from which it has hitherto been excluded.

It remains to be seen how Europe's political institutions will be modified over the following years. No one knows how these institutions will function when Europe comprises twenty-five (and perhaps eventually twenty-eight or more) member states.[31] It is likely that some further institutional reforms will take place in 2008 when the EU tries to come up with a new budget. There is nothing, it should be noted, exceptional about a political system that remains in a state of flux. The Philadelphia Convention of 1787 certainly did not resolve all disagreements concerning the precise configuration of US political institutions. Both those who favored greater centralization of political authority in the federal government in Washington, D.C., and those who favored "states' rights" continued to press their cause. Even after a Civil War, this disagreement remained—and continues to remain—a central cleavage in US politics. The same is likely to prove true in the case of the European Union.

Some Difficulties with the F-word

The distinctions drawn above between the project, the process, and the product of European integration are helpful in clarifying one of the most difficult and controversial terms in the debate over European political integration: federalism. In the previous section, federalists were contrasted with member-statists. But a lot more needs to be said about the

ambitions of federalists and the nature of a federal Europe. In euroseptic circles, the term "federalist" is generally employed only as a pejorative. For the eurosceptic, the federalist favors a "European superstate," a "United States of Europe," and the abolition of Europe's independent nation-states.[32] Indeed, for some of the more nationalistically inspired eurosceptics, the term "federalist" describes anyone favoring any form of European political integration. From this fevered perspective, even the defender of the EU status quo—a member-statist and intergovernmentalist who opposes any further European political integration—would nonetheless be branded as a "federalist." So controversial is this term "federalism" in Britain that Tony Blair initially welcomed the Draft Treaty establishing a Constitution for Europe on the grounds that it had ruled out, once and for all, a "federal superstate."[33]

The popular usage of the term "federalist" to suggest someone who favors a centralized state represents a complete transformation of the term as it has been understood in the history of political thought. So marked is the difference between these two usages of the term that it is helpful to distinguish the European federalist who seeks a unitary federal superstate from the genuine *federalist* who seeks a decentralized, multilevel federal polity. (In other words, federalism [unitalicized] as envisaged by eurosceptics is very different from the genuine *federalism* [italicized] that figures in the history of political thought.) Genuine, self-described *federalists* seek the dispersal rather than concentration of power in a centralized political authority. These *federalists* are critical of the sovereignty principle and the modern nation-state, which they seek to replace with a decentralized *federal polity*. In this context, it is well to bear in mind Daniel Elazar's definition of (genuine) *federalism*:

> In the broadest sense, *federalism* involves the linking of individuals, groups, and polities in lasting but limited union in such a way as to provide for the energetic pursuit of common ends while maintaining the respective integrities of all parties. . . . [F]ederalism has to do with the constitutional diffusion of power, so that the constituting elements in a federal arrangement share in the processes of common policy-making and administration by right, while the activities of the common government are conducted in such a way as to maintain their respective integrities [emphasis added].[34]

Although Elazar further notes that "a wide variety of political structures can be developed that are consistent with *federal* principles," the form of centralization advocated by alleged proponents of a "European

superstate" clearly does not count as an example of such a structure.[35] Indeed, there is a difference, so he argues, not just of degree but of kind between "a unitary state" and "a federal polity."[36] It is worth dwelling on this difference, because it underscores the difference between what I have termed the federal and postsovereign conceptions of the European project.

The precise nature of the difference between a "unitary state" and a "*federal polity*" (the goal of genuine *federalists*) is not easy to describe. One way of capturing the difference is to focus (following Istvan Hont) on the form of "representation" employed by the "unitary state" compared with its alternatives.[37] From this perspective, the modern unitary state has two distinct analytical components. First, the unitary state presupposes the idea of popular sovereignty, which is to say the idea that the people—conceived as free and equal individuals—form the constituting power (*pouvoir constituant*) of that state. Second, the unitary state, once constituted, becomes the representative of the people, who now (qua people) exercise their "sovereignty" only indirectly. Thus, in the modern unitary state, the sovereignty of the people is exercised on their behalf, not directly by themselves. Think, for instance, of the US courts, which prosecute individuals on behalf of "We the People." In providing the people with this "indirect" form of sovereignty, the modern unitary state differs both from earlier participatory republics and from mixed or composite forms of government.[38]

The *federal polity* modifies the form of representation present in the unitary state in an important way. It retains the two aforementioned analytical components but adds a third: the idea that the *federal polity* directly represents a number of constitutive "member states." A *federal polity*, in other words, establishes a double form of representation. It represents citizens conceived as free and equals members of the whole polity; it also represents citizens conceived as members of territorially more limited "member states." In its ideal form—rarely achieved in practice—the relationship between these two levels of representation is one of strict, constitutionally entrenched formal equality rather than (as in the unitary state) a relationship of hierarchy between a central political authority and its subordinate jurisdictions.

Viewed from this perspective, it becomes possible to distinguish the *federal polity* from both the unitary state and the so-called federation, which lack this double form of representation. In the unitary state, representation is one-dimensional and coterminous with the polity as a whole. In a federation—which can be thought of as a loosely knit

cooperative arrangement of otherwise independent states—citizens are not represented at the level of the federation as a whole. In this respect, representation is also one-dimensional, but it takes place at the level of each state in the federation. In a federal polity, representation is two-dimensional: citizens are represented at the level of the polity as a whole; they are also represented via their membership of constitutionally defined member states.

The distinctions drawn here between the different forms of representation present in a "unitary state," "*federal polity*," and "federation" allow us to conceptualize more clearly the EU as it is imagined both in its Constitutional Treaty and by those who wish to transform it. In its proposed constitutional form, the EU might appear, at least at first glance, to qualify as a genuine *federal polity*. Its constitutional principles establish the dual form of representation that defines what I have described above as a *federal polity*. Article 1 of the Constitutional Treaty, for instance, acknowledges "the will of the citizens and States of Europe to build a common future." Likewise, the political institutions of the EU represent citizens of the Union as a whole in the European parliament; and they represent the member states in the European Council and Council of Ministers.[39] The representation of the citizens of Europe is further reinforced by a Charter of Fundamental Rights that applies to all individual members of the Union.

Notwithstanding these classic features of a *federal polity*—a two-dimensional form of representation organized at the Union and national levels—the EU (as presently constituted) otherwise falls short. Given the current division of competences between member state and Union levels and the distribution of power among European political institutions themselves, it would be misleading to describe the EU as anything other than a member-state-dominated political arrangement. The two-dimensional form of representation is thus notional rather than actual, because the institutional level defined by the Union is relatively weak. As envisaged by the Constitutional Treaty—and in direct contrast to what many eurosceptics allege to be the case—the member states retain all of the most important competences, including foreign policy and taxation policy.

Having clearly distinguished between two diametrically opposed meanings of the term "federalism," it is possible to summarize the differences between federalists (who seek "a unitary state" in Europe) and *federalists* (who seek a European federal polity). A European federalist seeks a Europe that locates the most important political functions at the

European level of government, even if this requires considerable centralization of power in Brussels. A European *federalist*, in contrast, seeks to disperse power to multiple (different) centers and to the lowest, most decentralized levels possible. While a European federalist could support what I called above the sovereignist project of European integration, a European *federalist* is more likely to favor the postsovereignist project of European political integration.

The final point I wish to make about the concepts and language employed in current debates over European integration concerns the term "United States of Europe"—with its implied analogy to the United States of America—and the term "superstate." Eurosceptics who speak of a "United States of Europe" fear that Europe will come to resemble the United States of America, and that their nation-states will thus be reduced to the (nonsovereign) status of a California or a Texas. The implicit assumption here is that the United States, despite its separation of powers and its distinction between federal and state levels of competence, remains de facto a unitary state rather than what I described above as a *federal polity*.[40] Setting aside the normative judgment that there would be something regrettable about European political institutions coming to resemble those of the United States, the description of the United States as closer to a unitary state than to a *federal polity* is—given the conceptual distinctions adopted here—accurate. The United States of America is certainly closer to a unitary state than to what *federalists* think of as a *federal polity*. True, the US Constitution describes a system of government with a clear division of competences between the state and federal levels. But the federal level is clearly the more important, both constitutionally and in practice. The US Constitution, for instance, more or less excludes states from federal decision making; there is no equivalent in the US Constitution to the European Council or the Council of Ministers. Moreover, the US Constitution gives the federal level of government most of the important "competences," including the right to raise armies, levy taxes, and regulate interstate commerce. Indeed, Article I, Section 8, of the Constitution assigns, as David McKay has noted, "eighteen specific powers to Congress, which, in contemporary eighteenth century terms, amounted to the equivalent of the sort of powers exercised by unitary governments at the time."[41] In addition to the legal competences of the federal level of government, the United States has, over the course of its history, experienced an extensive process of nation building, a process that has, in effect, increased the significance of the federal level at the expense of the state level.[42] In

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short, when eurosceptics speak fearfully of the EU turning into a
"United States of Europe," which is to say adopting the form of gov-
ernment that we see today in the United States of America, their fear is
not misplaced. The United States of America *is* closer to a unitary state
than to a *federal polity*.

The final conceptual term that I wish to clarify is the term "super-
state." The most famous usage of this term comes from Margaret
Thatcher's Bruges speech—a speech that forms the manifesto of many
British eurosceptics—where she argued, "We have not successfully
rolled back the frontiers of the state in Britain, only to see them reim-
posed at a European level, with a European superstate exercising a new
dominance from Brussels."[43] From this perspective, the "superstate"
signifies, not only a European level of government with authority over
a wide range of important policy issues, but also a European level of
government that enacts market-restricting (or in Thatcher's terms "so-
cialist") policies. When eurosceptics complain about the "superstate," it
is not always clear whether they are objecting to a federal European
state, to market-restricting policies, or to both. In light of this ambigu-
ity, I intend to use the term "superstate" to refer only to a federal Euro-
pean state. Given this usage, it remains an open question whether a
federal European state ought to pursue market-restricting or market-
expanding policies. It simply confuses the issue to employ (as many
eurosceptics do) the term "superstate" to criticize the EU's market-
restricting regulatory policies.[44]

I have gone to some trouble to clarify these two contrasting meanings
of federalism because this book defends the very federalist project that
eurosceptics condemn. This book argues, in short, that the much decried
"European superstate" is actually a more justifiable goal than either
the so-called Europe of nation-states (favored by eurosceptics) or "the
postsovereign form of governance" (favored by Europe's self-described
federalists).

A Democratic Standard of Justification

Descriptions, no matter how detailed, of the desired destination of the
European project do nothing to justify that project. Europhiles often
overlook this point and discuss European political integration as if the
project were self-justifying. Even European political theorists—who

might have been expected to place the question of justification at the head of their intellectual agenda—tend to neglect the question of justification, focusing instead on the democratic legitimacy of Europe's political institutions.[45] While this approach has yielded a rich literature devoted to the diagnosis and remedy of the EU's democratic failings, this literature does little to address the more fundamental misgivings of eurosceptics—such as the "Metric Martyr" and his followers—who object to the very idea of a European level of government. To address these misgivings, the question of justification must assume center stage.

The question of justification, as I understand it in this book, is not the same as either the question of legitimacy or the question of popularity. Briefly stated, the question of the justification of European political integration concerns the point or purpose of a European polity.[46] The question of legitimacy, in contrast, concerns the rightful claim of European institutions to issue binding commands. Some people believe that European institutions lack this rightful claim; a subset of these people believe that European institutions lack this rightful claim because these institutions fail to measure up to a minimal standard of democracy. The questions of justification and legitimacy, understood in this way, are clearly different. It is logically possible to think that the European project, process, and product have no good justification but nonetheless to concede that current European political institutions are legitimate. By the same token, it is logically possible to think that Europe's current political institutions lack legitimacy—perhaps because they are deemed insufficiently democratic—but nonetheless to think that the European project to, say, construct a unitary European state has a compelling justification.

The question of the EU's popularity—which fluctuates across countries and over time—stands in a complex relationship to these questions of justification and legitimacy. Clearly, some of this unpopularity can be attributed to the perception that the EU in its current form lacks democratic legitimacy. But it would be a mistake to exaggerate the importance of this concern, not least because the EU's democratic credentials are not obviously any worse than the democratic credentials of Europe's member states.[47] A more important cause of Europe's problems, so I argue in this book, is that proponents of European political integration have failed to provide the European project with a compelling justification. In this respect, Claus Offe gets it right when he notes, "The European public needs a normatively convincing defense of the integra-

tion project, and that need grows more pressing as the project moves
forward."[48]

Yet while the European project is in need of justificatory arguments
("a normatively convincing defense," in Offe's terms), it is in even
greater need of a prior standard of justificatory adequacy. Disagree-
ments over the European project run deep; they extend—as I noted at
the start of this chapter—not just to the relevant communities of justifi-
cation but also to metrics of evaluation. In light of this problem, this
book proposes a standard of justification that arguments in support of
European political integration must satisfy. The standard of justification
defended in this book—I call it a *democratic standard of justification*—
holds that any adequate justification for the project of European inte-
gration must satisfy three requirements: a requirement of publicity, a re-
quirement of accessibility, and a requirement of sufficiency.

Chapter 1 defends this *democratic standard of justification*. The most im-
portant element of this standard of justification, as will become appar-
ent, is the requirement of publicity. This requirement is a feature of all
contemporary theories of politics—especially those influenced by the
later work of John Rawls—that take seriously the fact that the citizens
of modern democratic societies disagree about the merits of substantive
(or "comprehensive") ways of life.[49] The requirement of publicity filters
out all arguments that presuppose the truth of a substantive way of life.
The requirement of publicity would, for example, rule out all efforts to
justify the European project on the grounds that it constitutes the ful-
fillment of God's mission for mankind. The requirement of publicity is
not self-justifying, nor is it beyond all disagreement itself. One of the
aims of Chapter 1 is to offer some defense both of the concept of public
justification and the specific conception of public justification employed
in this book.

One of the implications of adopting a standard of justification that in-
cludes a requirement of publicity is that any particular justification for
the European project will have to appeal to values that all Europeans
can accept. This requirement applies with equal force to eurosceptic ar-
guments in support of a Europe of nation-states. Given the current prod-
uct of European integration, the aim of eurosceptics to return to a Eu-
rope of nation-states marks no less of a departure from the institutional
status quo in Europe than the project to construct some form of Euro-
pean polity. Given the transformative aspirations of eurosceptics, it is
essential that their own arguments satisfy the requirements of a demo-
cratic standard of justification.

Chapters 2 and 3 focus on the eurosceptics' challenge to European political integration. Eurosceptics come in a variety of different forms, but principled euroscepticism—which is opposed to the very idea of European political integration—draws its support and much of its strength from nationalism. Chapter 2 situates euroscepticism in the context of sociological, conservative, and liberal forms of nationalism. Chapter 3 examines what I take to be the two most potent and intellectually powerful forms of euroscepticism: the conservative nationalist euroscepticism of Enoch Powell and the liberal nationalist euroscepticism of various contemporary British social democrats. This chapter argues that, whatever their intellectual coherence, these forms of euroscepticism rely on arguments that fail to satisfy a democratic standard of justification.

Chapters 4 and 5 consider arguments that might be advanced in justification of the European project. Broadly stated, the case for European political integration has always appealed to some conception of peace (more broadly understood as "security") and some conception of prosperity (more broadly understood as "welfare"). Chapter 4 examines two influential versions of the welfare argument: the social democratic argument of Jürgen Habermas and the classically liberal argument of Friedrich Hayek. Chapter 5 considers security-based justifications for European political integration. The success of welfare-based and security-based arguments for European political integration turns in large measure on whether it is possible to offer conceptions of, respectively, "welfare" and "security" that can satisfy the requirement imposed by a *democratic standard of justification*. Chapter 5 offers a view of security that does, I think, satisfy this requirement. No individual or state can be "secure," so I argue in this chapter, while vulnerable to uncontrolled, unbalanced, and unrepresentative concentrations of power.

Working with this conception of "security," chapter 6 and 7 argue that the form of political organization most capable of producing security (so defined) is a unitary state. To take security seriously, in short, is to recognize the advantages of a European superstate and the disadvantages of either a "Europe of nation-states" or a "postsovereign Europe." Chapter 6 examines the case for a postsovereign European polity. Many of the arguments put forward in justification of this type of polity fail to meet the requirements of a democratic standard of justification. Such is the failing, so I contend, of arguments that rest on the value of ethnocultural diversity, which—if a value at all—is certainly not a public value. There is, however, a "republican" justification for this type of polity that de-

serves more careful consideration, because it seems quite compatible with this standard of justification.[50] "Republicans" rightly recognize the importance of security as a form of nondependence. In this respect, the "republican" justification for a postsovereign polity appears to run along the same tracks as my own justification for a European superstate. Where these "republicans" run off the rails is in their failure to meet the challenge posed by the threat of "hegemony"—the concentration of power in the international state system. Whereas proponents of a European superstate are prepared to do what is necessary to balance against hegemonic forms of power, advocates of a "postsovereign polity" tend to hide behind the skirts of a hoped-for multilateral legal order.[51] Indeed, once the international ramifications of the European project are grasped, many of the arguments put forward in favor of a postsovereign Europe appear not only naive but positively dangerous in their disregard for the security of Europe's citizens.

In considering the security dimensions of the choice for and against a European polity, the position adopted in this book draws together the debate over European political integration with the debate over US-European relations. A sad irony of the European Convention was that while its delegates were sitting in a hall discussing how to draw Europeans together, events outside the hall were pulling them apart.[52] The Iraq War of 2003 exposed deep disagreements between European countries over the propriety of the use of military force. Exploiting these disagreements, the American media popularized the idea of a New Europe and an Old Europe, a Europe loyal and a Europe disloyal to the Atlantic Alliance. Since European political integration has historically been animated by a desire to overcome security differences between European countries, these new divisions cannot but be perceived as profoundly troubling. Unfortunately, beyond a rather vague endorsement of a common foreign, security, and defense policy, Europe's Constitutional Treaty has done little to address these problems. A Europe of twenty-five member states, some with venerable and much cherished traditions of neutrality, is unlikely to become a global military power, especially when military action requires the unanimous approval of all twenty-five presidents or prime ministers.

Not all Europeans, it must be noted, are troubled by the fact that Europe lacks the capacity for independent military action. Advocates of a "Europe of nation-states"—most British eurosceptics, for instance—think that Europe's security needs can be taken care of by NATO. Such people are relatively untroubled by the fact that NATO is an alliance that

the United States largely dominates. Nor do they worry that the United States seems increasingly able and willing to act in a unilateral fashion. NATO, so British eurosceptics like to think, enables Britain and other European powers to share in the power of "the West" and to influence US actions.[53]

In addition to their membership in NATO, European countries, so some observers contend, should focus their energies on becoming a "civilian power."[54] From this perspective, Europeans ought to let the United States dominate the world militarily. Europe's comparative advantage lies in supplying the world's troubled regions with a police force, humanitarian aid, and the blueprints for reconstruction. Europe, in short, is to play "Robin" to America's "Batman."[55]

Against the idea of Europe as either a subordinate member of an Atlantic Alliance or a mere "civilian power," chapter 7 argues that Europe needs to develop the capacity to take independent military action. This line of argument does not proceed from a crude form of anti-Americanism but from the philosophical account of security developed in chapter 5. Security, as I understand it, requires appropriate safeguards against "hegemony" and "dependence." A "unipolar world"—the world we currently inhabit—is, from this perspective, insecure.

There is nothing terribly controversial in the observation that something needs to be done to address Europe's military imbalance with the United States. In recent years, we have seen efforts to bolster European military spending, to rationalize defense procurement, to create a "Rapid Reaction Force," and even—under French urging—to develop a military structure independent of NATO.[56] Chapters 6 and 7 argue that the effort to equip Europe with an effective foreign, security, and defense policy will, however, prove inadequate while Europe remains anything other than a unitary state. Part of the argument here turns on the claim that a unitary state remains a necessary condition for wielding power effectively. The United States was unable to act effectively on the world stage until it acquired a more centralized, unitary form of government than envisaged by the Founding Fathers. The same point holds true today for Europe.

One of the principal implications of my security-based argument for a unitary European state is that the existing normative debate over European political integration needs to pay a lot more attention to issues typically left in the hands of international relations scholars. The choice between a Europe of nation-states, a unitary European state, and a postsovereign Europe is, in short, a choice that bears on world order.

21

POLITICAL THEORY AND EUROPEAN INTEGRATION

In its emphasis on a security-based justification for the European project, this book shifts the focus of normative inquiry away from the issues of legitimacy that have preoccupied most political theorists who write about European integration. There is now a substantial literature by political theorists devoted to the task of diagnosing and remedying Europe's problems of legitimacy.[57] As a result, we now know a great deal about Europe's alleged "democratic deficit" and the compensatory promise of European citizenship. Unfortunately, we know considerably less about the question that really matters: What is the justification for a European polity? Eurosceptics like the "Metric Martyr" remind us that many people in Europe today do not think that this question has been satisfactorily answered.

In recent years, a number of legal and political theorists have introduced a more differentiated conception of legitimacy that seems better able to address the more fundamental questions raised by eurosceptics about the existence of a European polity.[58] Neil Walker, for instance, draws a distinction between the "performative legitimacy" of the EU, the "regime legitimacy" of the EU, and the "polity legitimacy" of the EU.[59] Performative legitimacy, as he employs the term, refers to "whether the EU has the right priorities and policies and how well it pursues them"; regime legitimacy refers to the institutional framework of the EU; and polity legitimacy—which he acknowledges is of increasing significance—refers to "the overall support for and stability of the polity in question as a self-standing political community."[60]

The notion of "polity legitimacy" represents a significant advance over earlier concepts, because it recognizes the possibility that people evaluate the EU in terms other than the goods it produces and the quality of its institutions. Yet even this notion of "polity legitimacy" does not go far enough. The reason for this is that the EU cannot vindicate its own claims to "polity legitimacy"—its status as "a self-standing political community"—without delegitimating its conceptual rivals: the nation-state and a federal Europe (whether conceived as a unitary European state or a postsovereign polity). All three types of polity—the "EU" (however it is described), the "sovereign nation-state," and a "federal Europe"—cannot coexist in Europe; they are mutually incompatible. Once this point is recognized, political theorists are in a position to conduct an evenhanded inquiry into the relative merits of each. Unfortu-

nately, by focusing exclusively on the legitimacy of the EU, political the-
orists have tended to foreclose prematurely a debate over the merits of
a "Europe of nation-states" (the preferred option of eurosceptics) or a
"federal Europe" (the preferred option of federalists). This debate, so I
argue in this book, is better conducted in the register of justification than
in the register of legitimacy. Political theorists, in short, ought to exam-
ine the justificatory arguments that might be put forward in defense of
these different types of polity. A convincing justificatory argument in
support of any one of these types of polity will go a long way toward its
legitimation and toward the delegitimation of its rivals.

The preoccupation of political theorists with the legitimacy of the EU
goes hand in glove with a similar preoccupation over Europe's alleged
"democratic deficit." Democratic government, as we all know, is better
than its alternatives; democracy is a component of any modern, legiti-
mate political system. But it is not the only component. Chapter 7 ar-
gues that a minimal procedural conception of democracy is a necessary
requirement of political institutions, whether they are located at the
local, national, or European levels. Since this requirement can be met
fairly easily, democracy does not provide a reason for preferring a Eu-
rope of nation-states to some form of federal Europe. In sum, an ade-
quate political theory of European political integration requires a shift
of attention away from the current preoccupations with Europe's "le-
gitimacy" and its alleged "democratic deficit." To engage fully the cen-
tral normative issues posed by European political integration (project,
process, and product), political theorists must turn their attention to the
problem of justification.