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**Dependence on Independence:
Central Bank Lawyers and the (Un)Making of the European Economy**

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Abstract

We analyze the trajectory of independence in the formation of the European Central Bank (ECB), conceptualized as a boundary organization that, by delineating the European economy, contributes to a supranational state effect. Success in the effort, however, requires the ECB to constantly assert a separate and special status, despite its embeddedness in multiple fields. Focusing on the European Monetary Institute, the ECB's predecessor, we trace how historically obscure bank-based legal experts enabled the ECB's assertion of separateness by re-working independence into a newly multivalent category that could be wielded in authority struggles with national central banks and European institutions. The ECB's dependence on independence, we argue, renders it uniquely vulnerable to the repoliticization of central banking.

Keywords: central banks ; independence ; lawyers ; eurozone

Introduction

The making of the European Central Bank (ECB) offers a window into the genesis of the European economic field—a unique, if never quite finished, historical achievement—and the place of central bank ‘independence’ therein. To this end, this article traces the trajectory of independence within the European Monetary Institute (EMI)—the precursor, from 1994 to 1998, of the ECB. We show that, thanks to the EMI’s central bank-based lawyers, independence became a newly multivalent and open-ended tool that enables the ECB to navigate the multiple arenas in which it is embedded in ways that constantly affirm its separateness. The uniquely open-ended nature of Europeanized independence expresses the complexities inherent in the task of bounding a supranational European economy, which—alongside the symbolic work done by the euro itself—depends on maintaining at least two social fictions: that Europe’s diverse national economies constitute a *unified* space (a European economy), and that the European economy is *cleanly separated* from national and European-level administrative, political, and legal institutions.

This difficult task rests heavily on the ECB. Elsewhere we have outlined the complex necessities of the ECB’s multi-field location, or ‘triple embeddedness’ (Mudge and Vauchez, 2016). The ECB is deeply embedded in at least three more established fields: (1) transnationalized professional economics, especially its trans-Atlantic branches; (2) the global field of finance, spanning public and private financial institutions; and (3) European legal, political, and administrative institutions (the European bureaucratic field). As a ‘boundary organization’ (Medvetz, 2012), its very existence constitutes proof of a singular, autonomous, European economic space, despite its interdependencies—hence the term ‘social fictions.’ Both depend on the ECB’s ability to perform separateness and singularity, which requires maintaining

authority over long-established national central banks (NCBs) while keeping both national and European governing institutions at arm's length. To the extent it is successful, as we shall argue below, the ECB exerts a supranational 'state effect' by drawing an internal, albeit tenuous, state-economy line (Mitchell, 1999).

An implication is that the ECB's bounding responsibilities are weightier than those of its peers. This weightiness, we argue, can be seen in the way 'independence' was utterly transformed in the years of the EMI when, confronted with a series of unprecedented tasks (a fact that ran against elite narratives of European market-making as a well-defined, scientifically-grounded process), formerly obscure central-bank-based lawyers transformed independence into a newly multivalent category—that is, a symbolic weapon as changeable and open-ended as the boundaries of the eurozone-to-be. If this argument is correct, then current crises of central bank independence pose a special threat: without its uniquely malleable version of independence, the ECB's ability to navigate crisis-time events, which lay bare the internally differentiated, politically and administratively dependent nature of Europeanized economies, in ways that maintain Europe's economic singularity and autonomy comes into question.

We build these arguments via an origin story of the EMI-*cum*-ECB. We first situate the EMI/ECB in the trajectory of European market-making theoretically and historically, conceptualizing the ECB as a boundary organization that exerts a tenuous supranational 'state effect.' After a brief history of central bank independence, we turn to our empirical story: how formerly obscure central bank-based legal experts within the EMI transformed independence into a multi-purpose tool of supranational economy-building. Finally, we trace how independence, thus transformed, empowered the EMI over NCBs and, later, allowed the ECB to claim that it was not beholden to European rules. In short, we show how the ECB used independence to

establish both singularity and separateness. In the conclusion, we highlight how vulnerabilities inherent in the ECB's dependence on independence came to the fore in the wake of the financial crisis: by necessitating extraordinary actions that were plainly nationally-specific, the ECB's claim to 'market-neutral' independence and, by extension, the ontological unity of the European economy, came under threat.

Boundary organizations, economic fields, and Europe effects

The late twentieth century construction of the European 'single market'—kicked off by the 1985 Single Market Project, followed by a flurry of market-promoting developments (including the Single European Act of 1987, a 1988 law liberalizing capital markets, and the 1992 Treaty on European Union [TEU, or Maastricht, signed in 1991]), and culminating in the making of the ECB and the eurozone in the 1990s—was a decisive shift away from 1960s visions of Europe as a 'community of law' (Mudge and Vauchez, 2012, p. 450). Though the European project always had a market-making dimension in the form of the 'common market'—and the euro was, for some, the realization of a longstanding aimⁱ—market-making in a 'single market' mode was a qualitatively new endeavor (Jabko, 2012).

Before we elaborate on the novelties of single market-making, some clarification on matters of economies, states, and boundaries is in order. Our concern with the genesis of the European economic field draws, first, on Bourdieu's (2012) field-theoretic interpretation of Karl Polanyi (1944 [2001]) as a theorist of a specific episode of state-driven market-making in the 18th and 19th Centuries. Departing from interpretations of Polanyi as a progenitor of general ontological claims about the (dis)embeddedness of markets (tending to leave intact, in Greta Krippner's critique, 'a vision of the social world as sharply demarcated into neatly bounded and

essentially separate realms' [Krippner, 2001, p. 777]), Bourdieu viewed Polanyi's *Great Transformation* as an account of how the British state, guided by mercantilist economic theories, built and naturalized a 'boundary between the economic and the 'domestic'' via the gold standard order (Bourdieu 2012, p. 201-202). For Bourdieu Polanyi's contribution was not a sociological concept of market embeddedness, but rather the state- and knowledge-driven processes through which economic fields take on socially factual qualities (Bourdieu, 2012, p. 201).ⁱⁱ

Read in this way, Polanyi becomes a theorist of the world out of which a 20th Century 'state effect,' in Timothy Mitchell's term, emerged. The 'state effect' is an internal line drawn between state (a 'network of institutional arrangement and political practice') and economy (Mitchell, 1998, 76, p. 92-3), prompted by capitalist crises and the beginning-of-the-end of European empire, and realized via experts and expertise, socio-technical devices, and disciplinary techniques (Mitchell, 1991, 1995, 1999, 2005). A new vocabulary of 'the economy' signaled the event—that is, 'the structure or totality of relations of production, circulation, and consumption within a given geographical space' (Mitchell, 1998, p. 93).

Highlighting the state effect's linkages with mathematical macroeconomics, Mitchell notes a certain irony: 'the state' figured in the macroeconomic imagination as a source of economic 'intervention,' and yet 'economic processes and institutions became increasingly difficult to distinguish in practice from those of ...the state' (*ibid*). Mitchell identified 'central banks and reserve systems' among the markers of this blurry line (*ibid*), and 'the mundane details of the legal process,' which endow 'the law' with the appearance of a 'structure,' as an important basis of state effects (Mitchell, 1998, p. 90).ⁱⁱⁱ

The centrality of socio-technical devices, experts, and disciplinary knowledge in Mitchell's story are useful for thinking about European economy-building, as we suggest elsewhere (albeit in a more heavily Bourdieusian theoretical register; see Mudge and Vauchez, 2012, p. 451-2), and elaborate below. First, however, we should note that construction is only a first step. Maintaining the fiction of an autonomous economic field is a perpetual task, especially since one's actual experience of the economic is that of a complex world made up of social ties, historical meanings, moral distinctions, non-economic relations, and multiple logics (as Polanyi noted), and that is patterned by state institutions and practices.

But if central banks are among those sites where the state-economy distinction is most blurry, why do they not undermine state effects? Here we mobilize Thomas Medvetz' concept of the 'boundary organization'—that is, 'boundary spanners' that 'derive their influence from their strategic locations within and among organizations' (Medvetz, 2012, p. 115). Boundary organizations' hallmark is the investment of those within them in drawing lines between fields (Medvetz, 2012, 127). In other words, a boundary organization itself—here, contemporary central banks—is a *worksite of demarcation*: a boundary organization 'is the boundary' (2012, p. 128, emphasis added). Boundary organizations thus possess a special power: an 'ability to determine where one activity 'officially' ends and another begins' (Medvetz, 2012, p. 127).

Europe effects, fictitious foundations, and triple-embeddedness

As laid out above, a Polanyi-Bourdieu-Mitchell account of the joint processes of state-making and economy-making has clear applications to the European case. Indeed, the project of common market-making and its successor, single market-making, were both exercises in defining the boundaries of 'Europe' as an economic space, separate from European administrative

institutions. Medvetz' concept of boundary organization is also usefully extended to central banks—which, especially since the rise of a new kind of central bank independence in the neoliberal era (Polillo and Guillén, 2005; discussed further below), have a special ability to define where state/political activity ends and market activities begin. Still, extending these conceptual tools to European single-market making, and the place of the ECB therein, requires some reworking.

Here we should attend, first, to the distinction between *common* and *single* market-making in the history of the European project. The common market-making mode, characteristic of pre-1980s European formation, drew a line between that which was 'internal' and 'external' to Europe, but in an asymmetrical way: the internal was made up of separate national member states whose policies regarding trade in goods and services could be aligned (or 'harmonized') with each other on a case-by-case basis; the external imaginary, however, hinged on a unified conception of Europe ('customs union'). This formulation, true to Mitchell's arguments, emerged in a specific historical conjuncture—namely, devastation in postwar Europe, rising American power, and the advent of the 1948 Marshall Plan, which spurred US-based organizations like the Carnegie Endowment for International Peace to conceive it as their responsibility to provide 'materials which would be helpful in the solution of postwar problems' on a global scale (Finch, 2014, in Viner, 1950 [2014], p. vii). The mechanics of drawing Europe's 'external' boundary owed much to the efforts of experts cross-located in professional economics, the American state, and trans- and north-Atlantic networks, who generated vocabularies, principles, and forms of measurement and analysis with which European customs union could be understood, and thus realized. A well-known case-in-point here is the economist Jacob Viner,^{iv} widely recognized for theories of 'preferential trade agreements' that were

foundational for the economic science of postwar customs unions (Viner, 1950), who framed his treatment of Western European customs union with reference to Marshall Plan-based European aid, the East-West European rift, and the way in which ‘political as well as economic unification of Western Europe, in part or in whole’ would jibe with the American principle of ‘economic recovery through self-help on a collaborative basis’ (Viner, 1950, p. 164).

Yet the singularity of the *common* market depended on the position from which it was viewed. From the outside economic Europe was unitary, but from the inside Europe’s economic fields remained multiple and nationally-centered. European institutions, especially the European Court of Justice (ECJ), bridged economic fields by mediating customs-related disputes in an otherwise nationally-organized, polycentric European terrain. Single market-making in the 1980s and 1990s, by contrast, imagined an economic Europe that was unified externally *and* internally, thanks not only to a new currency marked by the moral and historical significance of the European project (as Zelizer, [1997] might have it) but also a merging (or ‘convergence’) of national economic fields—an effort to draw, finally, the sort of internal line that Mitchell described.

Single market-making can thus be read as an attempt at what we might call a *Europe effect*: unification of European economic space not only in relation to external arenas but also internally, separating it from European and national political and bureaucratic fields in one fell swoop. As such, single market-making was a continuation *and* disruption of the autonomization of Western economic fields—a first effort to draw the state-economy line on a supranational scale.

The drawing of state-economy lines was never the sole work of economists, however. Law, lawyers, legal expertise, and mundane legal practices are, as Mitchell notes, also central.

The sociology of central banking, perhaps because of its origins in the same 20th Century world that Mitchell describes, sometimes overlooks this well-established fact.^v This tendency is especially clear in scholarship on independence, which consolidated as the dominant principle of modern monetary policy by the 1990s in *economics* (discussed further below), but had no clear *legal* definition.

Lawyers compete with other forms of state knowledge (political economy, bureaucratic know-how, etc.) but, as pointed out by Ernst Kantorowicz (1961), they are key providers of the *ad hoc* legal theories that frame political imaginaries and areas of legitimate jurisdiction (see also Bourdieu, 2012). Their classifications and procedures, critical for defining the ‘role,’ ‘functions,’ or ‘logics’ of an institution, are the *means of differentiation* between state and market, or between political and ‘independent’ institutions—a fact that situates lawyers, in turn, in-between these mutually dependent entities (Vauchez, France, 2021). The contributions of Katherine Pistor (2019) and Annelise Riles (2011) in the case of global finance are pertinent here: they highlight the constitutive role of legal knowledge in-between financial markets and states, transforming assets into capital and securing its circulation across state jurisdictions (see also Angeletti, Lemoine, 2021; Haagensen, 2020). As coders and ‘keepers of the code’ (Pistor, 2019), lawyers are integral to the symbiotic relationship between capital and state, and the delineation of the line between them. Given the magnitude of the institutional undertaking involved, we should expect lawyers, legal expertise, and legal techniques to play an especially critical boundary-delineating role.

This brings us to perhaps the most obvious difficulty for the application of a Polanyi-Bourdieu-Mitchell story of the genesis of economic fields to the European case: it is a national story. In Bourdieu’s words, a ‘unification of economic space’ alongside the construction of ‘a

fiscal power’—that is, treasuries or finance ministries endowed with ‘the right to coin money, the right to set exchange rates, the right to take economic decisions’—makes possible ‘the creation of a *national* market’ (Bourdieu, 2012, p. 201-202, emphasis added). As noted in literatures on the absence of European-level fiscal government, not to mention contention over Europe’s democratic and constitutional status, major elements of the autonomization of national economic fields were absent in the European case. Rather than providing a launching pad for economy-building, national politics and economic institutions seriously impeded European-level state/economy boundary-drawing: *e.g.*, in the initial Danish rejection of Maastricht in 1992; a mid-1990s French public opinion survey showing ‘that if a referendum was held on France’s participation in the euro, 55 per cent of the French would say no’ [Marshall, 2001, p. 4]); and, on the economic side, growing deficits and exchange rate fluctuations.

All this prompted serious uncertainties about the timing and viability of European monetary union (EMU). Contention extended even into circles of European banker-technocrats who would eventually constitute the EMI/ECB’s leadership (Marshall, 2001; see also Table 2, below). Unlike customs union, the conceptual foundation of EMU, rooted in theories of optimal currency areas, was officially ‘enshrined in the Maastricht Treaty, provided that the convergence criteria were met’ (Raymond, 2014, 73), but EMU was viewed skeptically by both national-level politicians and (especially American) economists. Recognition of national economies’ structural and cultural differences, and the resulting likelihood that a transversal economic space would result in serious cross-national ‘asymmetries,’ prompted doubt that formal convergence criteria really captured the complexities involved. In one retrospective account:

[S]cepticism was expressed by a significant part of the academic community, which added to nationalistic political reactions In [France] ... the Maastricht Treaty was ratified with a tiny majority. It was noted that the convergence criteria ... did not address the structural differences among countries seeming to converge with respect to the formal criteria. It was underlined that some elements of an optimal currency area were missing

... due to differences of language and culture and to the stickiness of social benefits. It was also clear that ... the single monetary policy would have a slightly different impact on the national economies and that external shocks would have asymmetrical effects (Raymond, 2014, p. 73).

Meanwhile, across the Atlantic, the Fed tracked progress toward EMU as measured by formal criteria with a skeptical eye, noting total lack of progress in some cases and declining overall progress toward ‘convergence’ (see Table 1) (Pollard, 1995; Maes and Moss, 2014).

Table 1 about here

Last but not least, the future European economy’s territorial reach remained an open question, with no final settlement on its eventual makeup in sight.^{vi}

In the end, the construction of a European economic field depended on at least *two social fictions*: that national economies, with a bit of structural rearranging, could be merged into a unified whole; and that the resulting field could exist separately from European- and national-level politics and administration. Both required a certain open-endedness in the definition of the ECB’s powers and prerogatives, allowing it to navigate the unavoidable realities of national economic, cultural, and political difference, not to mention the possible extension (or retraction) of the eurozone as it moved in unknown and unknowable directions. And so, as its builders recognized, the new ECB had to somehow be more European than counterpart EU institutions: a uniquely ‘supranational’ institution, ‘the first true federal move’ (Raymond, 2014, p. 73).

The social fictions underlying the ECB complicated its construction as a boundary organization endowed with the special capability to define where ‘European’ economic activity begins and ends. For national central banks—say, the American Federal Reserve, established in 1913^{vii}—the task of defining the state-economy boundary is not a sole responsibility, and matters of territorial reach are more settled. The Fed, a relatively young institution,^{viii} nonetheless

predated modern professionalized economics—a critical basis of the notion of the modern economy, in Mitchell’s account. Flanked by a Treasury and a Congress that determines fiscal policy, the Fed’s status as *the* national monetary policy-making institution, powerful over and above regional central banks, is established at least since 1933, when the Federal Open Market Committee (FOMC) was created (Pollard, 2003).^{ix} The Fed’s networks extend into international financial institutions (IFIs), but it also predates them; they are not competitors.^x

In all these respects, the ECB is different. Its construction was dependent on, but also had to keep a distance from, professional economics and national central banks (NCBs)—the latter of which retained powers (until recently) in banking supervision,^{xi} as governments’ fiscal agents and, in some cases, implementation of national consumer protection laws and management of payments systems (Pollard, 2003, p. 18). Since the ECB is a successor to the Committee of Central Bank Governors (CCBG, 1964-1993), which operated in Basel from within the Bank for International Settlements (BIS, 1930-), the distinction between the ECB and IFIs can seem blurry. The ECB is flanked by the European Parliament (EP), but not by counterparts that wield European-level fiscal power. For the ECB to bear most (if not all) of the weight of European economic boundary-maintenance, it had to constantly engage with, yet set itself apart from, at least three more established fields: transnational economics; the field of globalized finance (public and private); and national and European bureaucratic fields.

We thus return to the ECB’s *triple-embeddedness*, a location—already visible in the EMI years—that forces it to play different sorts of games, each according to distinctive logics. Symptomatic here is the way the ECB moves between fields, acquiring and expending different forms of authority in a constant game of arbitrage. For instance, as we have shown elsewhere (Mudge and Vauchez, 2016), the ECB is entangled with European and transnational economics

professions, in which an ongoing concern is the construction and maintenance of scientific prestige. Scientific prestige can, in turn, be traded for standing among institutions of financial and monetary government, including IFIs and other central banks, where eurozone NCBs are among the most important collaborators and competitors; in this field stability, growth, and technical competence are important stakes. The maintenance of the ECB's standing with financial institutions, in turn, helps it navigate administrative fields, especially of the European sort (ECJ, European Commission, EP), in which liberal principles of democracy, accountability, transparency, rule of law are foundational orientations—the first three of which, we might note, are potentially at odds with ECB priorities.

We argue that the category 'independence' is central to the ECB's navigation of its complex field locations, each of which pose different threats to its separateness. Yet, as we discuss in the next section, the category's newly scientific sheen, acquired in the 1980s and early 1990s, was not adequate to the task.

Re-working independence: from economics, back to law

Central bank independence has a long history reaching, at least, to the 1910s, when figures including Montagu Norman at the Bank of England and Benjamin Strong at the Federal Reserve Bank of New York fought to insulate central banking from politics (Blancheton, 2016). Lacking scientific legitimacy, some (including, later, the economist Milton Friedman) viewed their claims merely as efforts to bolster their power and sustain alliances with financiers. Between the 1930s and the 1960s, as Western governments asserted more control over central banks, the principle of independence was balanced against other concerns, including parliamentary supremacy and *ex*

ante coordination with treasuries (Blancheton, 2016; Feiertag, 2016). In many countries debates on central banking centered on the more modest question of ‘autonomy’—not independence.

The meaning of independence changed drastically from the mid-1970s, becoming the pivot of a scientific revolution in monetary economics in the wake of the ‘great inflation.’ A new generation of monetary economists imbued independence with scientific significance in a series of seminal late-1970s and mid-1980s articles (*e.g.*, Kydland and Prescott, 1977, Lucas and Sargent 1981; Barro and Gordon, 1983; Rogoff, 1985), arguing that handing sole responsibility for monetary policy to a politically independent agent was a *scientific* necessity. This relatively narrow version of independence focused on ‘controlling’ or ‘anchoring’ market actors’ inflation expectations via rule-based decision-making, advance communication with ‘the markets,’ and reputational signaling practices (*e.g.*, appointing scientifically reputable central bank governors).

As eurozone-builders understood at the time, the newly scientific/economistic CBI literature spoke little to the institutional and legal design of a new central bank—much less a supranational one. Indeed, as Otmar Issing (the ECB’s first Chief Economist) later explained, the 1970s-1980s CBI literature dealt too little with ‘the optimal institutional arrangement for central banks,’ especially the matter of statutory ‘independence from the government’ (Issing, 2012, 59). With Issing’s help (*e.g.*, Issing, 1993), and very much in response to the prospect of the ECB, a new phase in CBI research focused on institutional indicators of independence: Does the central bank have a clear, singular mandate? Does it have sole authority over monetary policy decisions? Do appointments prioritize scientific reputation, technocratic objectivity, and trustworthiness in the eyes of ‘the market’? Are governors’ terms limited? Is the bank’s ability to finance government debt circumscribed? Validated scientifically by analyzing independence’s correlation with inflation rates, in the early-to-mid 1990s something closer to an organizational

blueprint, an *ideal type of the ideal central bank*, emerged (e.g., Grilli, Masciandaro and Tabellini, 1991; Cukierman, Webb and Neyapi, 1992; Alesina and Summers, 1993).

Some branches of the new monetary economics, meanwhile, argued that ‘money should be an element of the constitutional framework of democracy rather than an object of political struggle’ (Lastra, 1992). Calling for the ‘constitutionalization’ of independence, this line of thought ran parallel to a longstanding ordoliberal vision of a free and competitive economic ‘subsystem’ within the legal order. Indeed, some legal scholars saw TEU as the fulfillment of the ordoliberal ideal of a ‘common economic constitution’ (a concept formulated by Freiburg School founder Franz Böhm), since it featured a separate protocol (n°4) on the Statute of the European System of NCBs and the ECB (hereafter ‘Statute’)—which set the European System of Central Banks (ESCB) apart from the ECJ and the European Commission (the design of which did not stir great interest among the 1950s Rome Treaty drafters [Vauchez, 2015]) (Brentford, 1998, p. 80-4).^{xii} By contrast, for the German economist Manfred E. Streit (an interlocutor of Böhm and Hayek), TEU fell short: despite the realization of a critical element of the ideal central bank (the EMI could ‘not seek or take any instructions from other Community institutions or bodies or the governments of Member States’), TEU moved too much in a discriminatory, ‘corporatist’ direction (Streit and Mussler, 1995, p. 21).^{xiii}

In the end, none of these lines of thought dealt with the practical problems of building a first-ever supranational central bank. What would independence require, or what *could* it require, in this case? This question, perhaps unsurprisingly, was handed to lawyers—capital’s ‘keepers of the code’ (Pistor, 2019). To this we now turn.

The EMI: central bank lawyers and the unbounding of independence

The onset of ‘Stage 2’ of EMU heralded the January 1994 creation of the European Monetary Institute (EMI), an ‘interim institution’ tasked with coordinating monetary policy and preparing the final stage of monetary union. The task was to construct the ECB, taking the place of the powerful CCBG (Mourlon-Druol, 2011; James, 2012) and merging it into a new system consisting of 11 eurozone national central banks (plus four others) by June 1, 1998.^{xiv} In the transition the CCBG moved ‘from a talking shop to proto-central bank’ (James, 2012, p. 268), acquiring exclusive power over designing the statute of the new central bank.

The EMI was a relatively small expert body, marked by continuities with the IFIs from which it was formed, and heavily dependent on recruitment from NCBs. Its Council was essentially the secretariat of the CCBG renamed, consisting of a President plus the governors of the NCBs of the 15 states that were then EU members (see Table 2).

Table 2 about here

By late July 1997 there were 296 EMI staff (EMI 1997, 13, 33); by June 1998 the count rose to 550, ‘with 200 more having already been recruited to join the ECB after the summer break’ (Raymond 2014, 72). Marking (again) the fuzzy line between the EMI and IFIs, both the EMI’s Presidents, Alexandre Lamfalussy (1929-2015, EMI President 1994-1997) and Willem (Wim) Duisenburg (1935-2005, EMI President 1997-1998), previously held leading BIS positions (again, see Table 2).

Initially hosted in Basel by the BIS, and then shifting to the Eurotower in Frankfurt (the ECB’s future home) (Raymond, 2014, p. 72), the EMI confronted the gargantuan task of unifying the monetary governance of up to fifteen countries—despite uncertainties as to the euro’s prospects in the UK, Sweden, Denmark and, most critically, Italy (see Table 1, above)—

around the singular goal of price stability. The EMI had less than five years to define and accomplish the necessary steps for launching the euro in January 1999.

The need for ‘open concepts’

EMI leadership was charged with formulating guiding concepts of a new monetary system and translating them into practical tasks and sites of jurisdiction before the scheduled launch of the euro on January 1, 1999. As described by Duisenberg, the focal task of the first three years was ‘the definition, assessment and comparison of the various options’ for ‘key monetary policy instruments and procedures’ (Duisenberg, 1997). The second phase of work, to begin in 1997, involved ‘the technical specification of the operational framework and its implementation’ (Duisenberg, 1997). The third and final phase, starting in mid-1998 and culminating in the ECB, was to make ‘the final choice of certain options that have remained open and the testing of all the technical and operational procedures... with a view to ensuring that the ESCB will be in a position to perform its functions in full as of 1 January 1999’ (Duisenberg, 1997).

Though the EMI had ‘no historical precedent,’ Duisenberg insisted that the Council could draw on the lessons of ‘monetary theory and practice.’ These included a conception of money’s role as one determined by the ‘interplay between authorities’ actions and the behaviour of market participants’ and of monetary development as driven by ‘a market in which supply and demand conditions can be expressed’—that is ‘a market for the euro’ that did not, at that time, exist (Duisenberg, 1997). In Duisenberg’s estimation the EMI’s dual task of currency-making and market-making necessitated, in turn, a ‘dual approach’: building a new system of monetary authority that would provide the infrastructure of a new currency, while also bringing a market for the euro—understood as a space of self-organizing economic forces—into existence (*ibid*).

Uncertainty over the territorial reach of the imagined European market made matters more complex, requiring that the ‘concepts’ and the ‘instruments’ of ESCB governance were ‘as flexible as possible’ (Duisenberg, 1997, p.19). This task, as we recount in the next sections, was handed over to a particular kind of expert: central bank lawyers.

Enter the lawyers

The EMI’s Working Group of Legal experts (WGLE)—a continuation of the CCBG’s legal committee, which formulated the constitution of the EMU and the institutional architecture of the Euro-system (Boerger, 2012). Established to supervise the process of ‘legal compatibility’ of NCBs vis-à-vis Maastricht’s requirements, the WGLE confronted precisely the problem of constructing a supranational central bank over and above its national counterparts.

The prospect was viewed, still, with skepticism. The 1992 coming into force of TEU opened a series of controversies regarding the role of the EMI in the lead-up to the euro and, later, the scope of the ECB’s institutional powers. TEU did not have answers, but its making laid important foundations by drawing together central bank lawyers whose role had traditionally been limited to technical issues of private law (whether financial, banking, or commercial) (Perassi, 2005). One TEU-involved central bank lawyer from the Bank of Italy, Paolo Zamboni Garavelli, reportedly assuaged the doubts of prospective WGLE recruits by arguing that the decision to get lawyers involved meant that, at last, ‘things are taking a serious turn’ (Perassi, 2005, p. 20, quoting Garavelli).

The centrality of lawyers in this founding period for the EMU owes much to the tight social structure of a ‘small circle of legal experts’ (Fazio 2005, p. 8) marked by continuous membership for almost the entire period from the first legal drafts of the EMU in the late 1980s

(via the CCBG's Legal Committee), to the supervision of 'legal convergence' of NCB's in the context of the WGLE and, finally, the Legal Department of the ECB from 1998 onwards.^{xv} This relatively small, tight-knight group of professional peers acted simultaneously as *European* lawyers designing the broad framework to be applied to NCBs and *national* experts facilitating the 'adaptation' of national legislation required to enter the Euro-system. For instance, in a *Festschriften* offered to the former head of the legal service of *Banca d'Italia*, Paolo Zamboni Garavelli, peers praise his dual role shaping the European 'legal convergence' framework (Perassi, 2005, p. 23) while, on the national level, adapting Italian law to TEU convergence requirements (see Figure 1). In a fifteen year-long process of constructing the EMU and the ECB, central bank lawyers like Garavelli moved between European and national-level networks, playing a brokering role that defined the Euro-system's legal 'requirements' on the one hand, while pushing national governments and civil services to endorse the single market conception of the European economy on the other.

Figure 1 about here

The moment would later be recalled as 'extraordinary' and 'unforgettable' by central bank lawyers (Perassi, 2005, p. 22). Usually tasked with providing advisory legal expertise on reforms in banking and financial law, they were seldom directly associated with the core business of central banking. A large majority were finance lawyers who had spent time in private legal practice or commercial banks (or sometimes international financial institutions, such as the IMF) before joining an NCB legal department. With the exception of Jean-Victor Louis, a renowned EU Law professor from the Université Libre de Bruxelles—who tirelessly promoted the idea of a federal monetary union and had been, for decades, a legal adviser at the Belgian

central bank—most of the central bank lawyers involved in the EMI had close to no experience in EU law.

Among the problems confronting the WGLE was the ‘sensitive issue’ of intervening in the constitutional standing of NCBs to render them more independent, and the question of what kind of authority the ECB would have within the ESCB. Attempts by EMI civil servants to question nationally-specific idiosyncrasies of NCBs—critical to the making of unified European economy—were met with resistance. Robert Raymond, EMI Director General, later noted

... the reluctance of the member countries and their central bank to reduce their autonomy and a desire to limit as far as possible the scope of the ‘communitisation’ of ... systems. The fashionable word at that time was ‘subsidiarity’, which was used to explain that what can be done properly at the local level should not shift to the centre. It is not often mentioned any more.... However, it would frequently be raised in our debates about how to organise the burden sharing, the practical tasks and the operational competences between the ECB and the national central banks (Raymond, 2014, p. 73).

Disagreements grounded in national difference soon emerged. The question of the EMI’s powers was particularly acute when it came to assessing compliance with ‘statutory requirements to be fulfilled for NCBs to become an integral part of the ESCB.’ Bundesbank representatives flatly rejected any move beyond consultative recommendations (‘binding decisions from the EMI would not be acceptable to the Bundesbank’) and refused majority-voting on the grounds that it ‘would create political problems in Germany.’^{xvi} Pushed by the European Commission and some member states, the EMI nonetheless took an expansive view of its authority vis-à-vis NCBs.

Another site of contention was the matter of ‘public accountability’—an issue that threatened to expose the ECB to the impositions of national parliaments and European-level institutions. Again, in Raymond’s account:

Right from the start, the diversity and ... volatility of public opinion in Europe drew attention to the issue of public accountability. Not only would the ECB be independent, but it would also be so vis-à-vis not one government, but many. ... How to ensure public

accountability within each country became a popular topic, although in principle the Treaty had actually provided for it. The President would have to go to the European Parliament for occasional hearings. His communication policy, both for speaking in his own name and on behalf of the Council, was of paramount importance from the beginning. ... The question of hearings at the level of national Parliaments was raised, too, but discarded, ..., so as to avoid interfering with negotiations among governments on the one hand, and central banks on the other hand, on how to build up the ECB (Raymond, 2014, p. 74).

In short, at the EMI's inception at least two boundary-making problems sat at the forefront: establishing power over NCBs and freedom to operate at distance from political and administrative institutions, national and European.

Extending independence over NCBs

With the Delors Committee (April 1989) having sidelined a proposal to establish a central bank that would replace all NCBs, the ESCB was vaguely defined in TEU: 'the term 'System' should be understood to describe the existence of the ECB and the national central banks as integral parts of the System, governed by a common set of rules and committed to the objectives and tasks assigned to it' (ICG, 26th April 1991). Whether the 'System' would be centralized was unclear. The EMI had no direct power to change or harmonize NCBs' statutes; it could only assess 'compatibility' with TEU and deliver opinions on the subject. The extent to which independence would also apply to the NCBs remained unspecified: the ESCB Statute referred only to the independence of NCBs' *governors* in their role as members of ECB's Council of Governors.

The WGLE had neither the legitimacy nor legal competence to interfere in member states' constitutional arrangements and redesign *motu proprio* long-established national legal frameworks. It needed to navigate a fine line between paying respect to NCB's traditions yet strengthen the EMI's capacity to push for statutory convergence. The notion of independence,

having been inscribed into EU primary law, offered a legal avenue to fostering harmonization among NCBs.

Mundane legal practices paved the way. As early as 1995, the WGLE opened the discussion with a Memorandum on the ‘Criteria for Assessing Central Bank Independence,’ arguing that the ‘EMI’s position concerning central bank independence had not yet been institutionally discussed and agreed.’ The Memo suggested ‘a maximalist approach for discussion purposes written with respect to previous debates in the Committee of Governors and academic doctrine on this issue.’^{xvii} A series of reports outlined the legal and institutional implications of the commitment to independence enshrined in TEU.^{xviii} Going beyond the prohibition of ‘instructions’ from member governments, the WGLE used its power of definition to expand independence into four dimensions: ‘institutional independence,’ ‘personal independence,’ ‘functional independence,’ and ‘financial independence.’

Each dimension had a long catalog of institutional features with which NCBs would need to comply. ‘Institutional independence’ meant governments had no ‘right to approve, suspend, annul or defer decisions,’ ‘censor decisions on legal grounds,’ ‘participate in decision-making bodies of an NCB with a right to vote,’ or consultation ‘(*ex ante*) on an NCB’s decisions.’ ‘Some legal experts,’ the 1995 Memo notes, ‘considered the attendance of government officials in the governing bodies of NCBs in Stage Three to be unacceptable.’^{xix} ‘Personal independence,’ meanwhile, referred to statutory and contractual provisions, and actions of ‘decision-making bodies’ on a ‘basis of professional exclusivity.’^{xx} ‘Financial independence’ referred to whether the bank’s budget, accounting process, and profit distribution created possible ‘mechanisms’ through which ‘third parties’ could ‘directly or indirectly and at their own discretion exercise influence on the NCB’s means’ of fulfilling its mandate.

Central bank lawyers later denied engaging in ‘the creation of a kind of secondary Community legislation without a basis in the Treaty,’ but in fact this new version of independence *multiplied* its meanings. In a mode Foucault may have found familiar, this symbolic multiplication expanded EMI lawyers’ mandate to include supervision of both NCB and governmental ‘legal convergence’ (a term taken from EMI economists monitoring ‘economic convergence’).^{xxi} In this endeavor EMI lawyers refused to take a strictly legal (or black-letter law) approach, which would have confined their role to merely checking statutory obligations. Instead, the multiplication process continued: they elaborated ‘benchmark criteria’ for evaluating case-by-case compliance, since independence cannot ‘be expressed in arithmetical formulae, nor applied in a mechanical manner.’^{xxii} As the deadline to the euro approached, EMI lawyers delivered opinions on NCBs’ progress, singling out laggards and countries that made good progress—for instance, Portugal, which the EMI praised in an Opinion of August 15, 1997 for ‘the comprehensive fashion in which the adaptation of the Bank’s statute is foreseen in the draft law, whilst at the same time the different situations are accommodated which may occur dependent on the moment at which Portugal adopts the single currency’ (Duisenberg, 1997).

Just prior to the third phase of EMU and the establishment of the ESCB, starting 1 July 1998, opinions on member states’ progress became an important means of integrating NCBs into the Euro-system. Between 1994 and 2009 the EMI (and later the ECB) delivered no fewer than 454 opinions on national draft legislation (ECB, 2009). While the concerns and responsibilities of the EMI-cum-ECB were certainly many (means of payments, foreign exchanges, banknotes, banking supervision, stability of financial institutions, etc.), issues of independence emerged as primary: more than a quarter of the 454 Opinions between 1994 and 2009, 118 in total, dealt with independence.^{xxiii} ‘Financial independence’ was most frequent (64), followed by

‘institutional independence’ (44), ‘personal independence’ (44), and ‘functional independence’ (17).^{xxiv} In a few years, then, EMI lawyers multiplied independence and repurposed it into an expansive means of monitoring and oversight, through which the EMI-*cum*-ECB affirmed its regulatory capacity and its Eurosystem position over and above NCBs and member state governments.^{xxv}

Maintaining separateness from Europe

Another critical test-case for the authority of the ECB, once established, was its positioning vis-à-vis the governing institutions of the EU. As mentioned above, TEU prohibited the ECB and NCBs from either seeking or taking ‘instructions from Community institutions or bodies, from any government of a Member State or from any other body’ (ECB, 1999, p. 130)—wording taken directly from language used in the Treaties to define the independence of the members of the European Commission. Yet, as the experience of the European Commission had shown, this legal formula was ‘strong in paper’ but not ‘in practice’ (van den Berg, 2004, p. 105)—especially since there was no possibility of sanctions for violations.

The degree of coordination between the ECB and EU political institutions was a matter of uncertainty in the relations between national leadership, as well. The French government still advocated a key role for the European Council in determining the broad guidelines for EMU, but Duisenberg refused any form of *ex-ante* coordination with EU institutions (Sacriste, Vauchez, 2019, p. 36). The legal matters involved were murky, given that the ECB—neither an EU ‘agency’ (since its powers had not been ‘delegated’) nor an ‘EU institution’ (since it was not listed among these in TEU)—was essentially an unidentified institutional object.

In this context the matter of independence became a proxy for all institutional battles (Baroncelli, 2000), mobilized by the ECB's new Legal Department—which, like the WGLE, engaged in considerable conceptual entrepreneurship. Together with Martin Selmayr, at the time an 'external legal adviser for the ECB' who was completing a Ph.D. on 'The Law of the Economic and Monetary Union' (defended in 2001 at the University of Passau), the Head of the 'Institutional law' division at the ECB's Legal service, Chiara Zilioli (a former member of the WGLE) crafted a daring legal theory of the ECB that gave the notion of independence unprecedented scope. Presented as a 'specialized organization of Community law' (Zilioli, Selmayr, 2001, p. 29), the theory cast the ECB as not only as an entity that is independent from politics, but also 'the European Community' itself (Selmayr, 1999, 70; Torrent, 1999). This position was consistent with that taken by CCBG legal experts, who insisted during the preparation of Maastricht that the new central bank *should not* be considered an 'institution' of the European Community (James, 2012, p. 265).

In Luxembourg this daring doctrine became a basis of a series of legal claims. In a lawsuit raised by an ECB employee to annul a decision of the Executive Board that suspended him (*X v. ECB*, Case T-333/99), the ECB refused to recognize the competence of the European court, arguing that the ECB's relationship with its employees had a different legal basis than the one 'between the Community and its employees.'^{xxvi} In a second case, which went to court the same year (*Commission v. ECB*, Case C-11/00), the Commission quarreled with the ECB for refusing to recognize the jurisdiction of its anti-corruption office (OLAF) over its own services, since the ECB's interpretation of independence seemed to suggest that it is 'not committed to pursuing the 'objectives of the Community'.^{xxvii} In response, the ECB Legal Service Director, Antonio Sainz de Vicuna, seconded by Chiara Zilioli and Alan Dashwood (a lawyer and EU law

professor who had formerly been a *référéndaire* at the Court), presented a definition of independence that set it apart from the EU: ‘Conformément à l’article 107, paragraphe 2 CE, la BCE est dotée d’une *personnalité juridique propre, distincte de celle de la Communauté*.’^{xxviii} While the ECJ’s decision in this case eventually defeated some of the most daring parts of this in-house theory of independence, it did recognize the concept as legitimate grounds for very broad ‘institutional discretion’ and self-determination in terms of the ECB’s mandate, thereby rejecting claims made by the German Constitutional court since its 1993 decision on Maastricht that independence as a ‘*limitation* of democratic legitimation’ had to be strictly interpreted as a *derogation* and an exception to constitutional commandments.^{xxix}

Conclusions

By the time the Eurozone crisis started, then, independence had acquired unprecedented importance as a means by which the EMI/ECB established and maintained itself as an autonomous, unified (and unifying) boundary organization, claiming for itself broad jurisdictions and wide freedom of action. The mundane nature of the legal practices that made this possible is evident in much existing scholarship, which tends to treat the ECB as merely implementing a model of central banking taken from outside (whether from the *Bundesbank*, or from the monetarist professional mainstream). But this treatment overlooks the extraordinary conceptual creativity, in the hands of central bank-based legal experts, that underpinned the entering into force of the euro in the two decades that preceded the eurozone crisis. As the EMU was progressively coming into existence, the notion of independence was weaponized and revamped with a view to securing the ECB’s authority in the very arenas that brought it into existence: the worlds of monetary government on the one hand, and European government on the other. On the

eve of the financial crisis, the ECB, by giving itself supervisory authorities and claiming independence from European laws and regulations, had achieved a kind of state effect—but one that left it uniquely dependent on independence.

The ECB's extraordinary independence came up against post-crisis problems that were undeniably nationally-specific—as became evident, in particular, in the ambiguous legality of secondary *and primary* bond-purchasing activities, in which the ECB acquired a disproportionately large amount of Italian sovereign debt: 341 billion euros worth by the end of April 2020, estimated in 2018 to rise 'by roughly 3.5 billion euros a month' (Koranyi, 2018).^{xxx} Running afoul not only of treaty-based limitations but also the independence-related requirement that it remain 'market neutral' in its transactions with national governments, the ECB's efforts to manage the Eurozone crisis left it vulnerable to criticism and legal challenge on multiple fronts, even as events forced it into a course of action that laid bare the specifically national character of Eurozone economies. Ever since, in particular with the current pandemic crisis in which it played again a leading role, the ECB has been pulled further into the gravity of European politics, confronting expectations that it contribute to a variety of pressing issues (green transformation, inflationary pressure, energy crisis, etc.) and coordinate monetary, economic, financial and climate policies.^{xxxi} As governing position in-between financial markets and EU democracies becomes increasingly central in dealing with contemporary crises (Tooze, 2020), its independence-dependent construction tends to relentlessly point at its narrow legitimacy-basis and democratic shortcomings (Monnet, 2022).

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Tables and figures

Table 1. Progress toward ‘convergence’—the view from the Fed

	Number of Criteria Met				
	1990	1991	1992	1993	1994
Belgium	2	3	3	3	3
Denmark	5	4	4	3	3
France	5	5	4	4	4
Germany	5	4	4	3	5
Greece	0	0	0	0	0
Ireland	4	4	4	3	3
Italy	0	0	0	0	0
Luxembourg	5	5	5	4	5
Netherlands	3	4	3	3	3
Portugal	0	0	0	0	0
Spain	1	1	1	1	0
United Kingdom	3	3	2	2	3
Austria	4	4	3	2	3
Finland	2	2	1	1	2
Sweden	2	3	2	1	1
Number meeting criteria	4	2	1	0	2

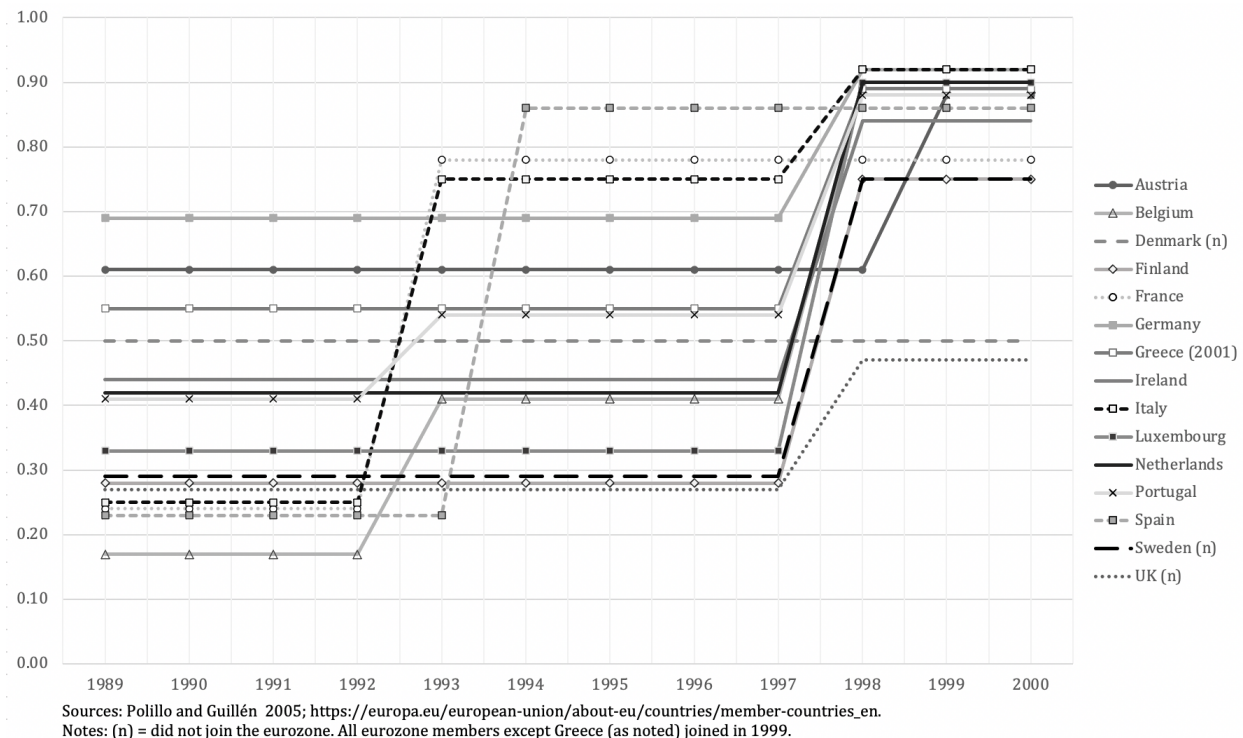
Source: Pollard 1995, ‘EMU: Will It Fly?’ *Review*, Federal Reserve Bank of St. Louis: Table 1, p.6.

Table 2. Members of the EMI Council

Last Name	First Name	Birth/Death	Bank/Position
Lamfalussy	Alexandre	1929 / 2015	EMI President, January 1994-June 1997 (formerly General Director of the Bank for International Settlements [BIS])
Duisenberg	Willem F. (Wim)	1935 / 2005	EMI President, July 1997-May 1998 (formerly President and Chairman of the BIS, head of the Dutch Central Bank)
Rojo	Luis Ángel	1934 / 2011	EMI Vice-President / Bank of Spain / Banco de España
Andersen	Bodil Nyboe	1940 / na	Danish Central Bank / Danmarks Nationalbank
Bäckström	Urban	1954 / na	Swedish Central Bank / Sveriges Riksbank
Fazio	Antonio	1936 / na	Bank of Italy / Banca d'Italia
Fernandes de Sousa	António José	1955 / na	Bank of Portugal / Banco de Portugal
George	Edward (Eddie) A. J.	1938 / 2009	Bank of England
Hämäläinen	Sirkka	1939 / na	Finnish Central Bank / Suomen Pankki
Jaans	Pierre	.	Luxembourg Monetary Institute / Institut Monétaire Luxembourgeois
Liebscher	Klaus	.	Oesterreichische Nationalbank
O'Connell	Maurice	1936 / 2019	Central Bank of Ireland
Papademos	Lucas D.	1929 / 2015	Bank of Greece
Tietmeyer	Hans	1947 / na	German Central Bank / Deutsche Bundesbank
Trichet	Jean-Claude	1942 / na	Bank of France / Banque de France
Verplaetse	Alfons	1930 / 2020	National Bank of Belgium / Nationale Bank van België/Banque Nationale de Belgique
Wellink	Nout	1943 / na	Dutch Central Bank / De Nederlandsche Bank

Source: Duisenberg 1997

Figure 1. Trends in central bank independence in the EU15, 1989-2000



ⁱ The long history of the notion of a single European currency—appearing in the 1958 writings of Jean Monnet (Raymond 2014, 71)—tends to obscure the novelty of the 1990s single market initiatives. An established narrative depicts the euro teleologically: the culmination of a steady process starting with the Rome Treaty, to the pro-single currency arguments of Robert Marjolin in the early 1960s, to ‘the Werner Report, the Single Act and the Delors Committee,’ and finally to Maastricht (*ibid*). Such an account surely makes sense from the perspective of the relatively narrow set of elites who, born in the 1930s-40s, were deeply involved in the European project for decades. Yet one also finds hints of contingency in their stories, including recognition that the political, economic, and geopolitical context of the 1980s and 1990s was fundamentally new, creating new institution-building possibilities (*ibid*).

ⁱⁱ This formulation bears close similarities to the Durkheimian view of markets—on this, see Steiner 2010.

ⁱⁱⁱ Though Mitchell’s own analysis is heavily economics-focused, law-as-structure and its underlying legal practices and techniques figure prominently in his conceptual discussion of state effects (*e.g.*, Mitchell 1998, 84-5, 87, 90).

^{iv} Trained in economics at Harvard and McGill universities, Viner became Professor of Economics at the University of Chicago, and then Princeton University. He also had associations with the U.S. Tariff Commission, Shipping Board, Treasury Department and State Department. Viner was linked into trans-Atlantic networks including Lionel Robbins (LSE) and the Stockholm School economist and politician Bertil Ohlin.

^v On the genesis of the intricate relationship between the autonomization of law and the consolidation of political systems, see Bourdieu’s *On the State* (2016).

^{vi} ‘Eight years after the Delors Plan set the EU on the road to monetary union, opinions remain divided. As the British Chancellor of the Exchequer, Gordon Brown, recently wrote, ‘the issues involved are complex and reasonable people may disagree about them’ (Currie 1997, cited in Healey 2000, 19).

^{vii} Due more to financial instability and populist domestic politics than war-making, unlike its pre-1850 predecessors at home and abroad (North and Weingast 1989; Broz 1998).

^{viii} The Swedish *Riksbank*, the Fed's oldest counterpart, was established in 1668; the Bank of England was established in 1694. The Fed's creation in 1913 made it the twenty-first national central bank in existence in that colonial moment; by 1997, a year before the ECB's establishment, the Fed was one of 172 national central banks (Pollard 2003, 11).

^{ix} The Federal Reserve Banks of Boston, Chicago, Cleveland, New York, and Philadelphia 'established an Open Market Investment Committee to coordinate open market operations' in 1923, later replaced by the Open Market Policy Conference. A 1935 amendment to the Federal Reserve Act prohibited regional banks from conducting open market operations (Pollard 2003, 11, fn3, citing Meulendyke 1998).

^x The World Bank and International Monetary Fund (IMF) were established in 1944; the OECD's predecessor, the Organisation for Economic Co-operation (OECE), was established in 1948.

^{xi} 'The ECB was not directly responsible for bank regulation and supervision, having only a consultative role. ... No mention was made of a potential role for the ECB as a lender of last resort, a question ... raised by academics at the time' (Raymond 2014, 76).

^{xii} Notable also is what some saw as *de facto* 'constitutionalization' of 'the Community legal order' with the 1986 ECJ *Les Verts* decision, which referred to the Treaty as a '*basic constitutional charter*' (Brentford 1998, 74-5; see also *Parti écologiste 'Les Verts' v. European Parliament* [1986] E.C.R. 1339).

^{xiii} For this reason Commission President Romano Prodi reference to TEU in 1997 as a 'common economic constitution' in a speech celebrating the Rome Treaty's 40th anniversary touched a scholarly nerve (Brentford 1998: 74).

^{xiv} Initial members of the euro were Belgium, Germany, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal and Finland. The other four non-euro-area EU members (at that time) were the banks of Greece, Sweden, England, and Denmark.

^{xv} Many also continued in the LEGCO, the Legal Commission of the ESCB after 1998.

^{xvi} European Monetary Institute, Summary Report of the Meeting of Legal Experts Held in Frankfurt on 27th June 1995, EMI Archive.

^{xvii} EMI's Legal Service Memorandum of 6th June 1995, 'Criteria for assessing Central bank independence' (EMI Archive).

^{xviii} Progress towards Convergence, EMI, November 1995, Progress towards Convergence, EMI, November 1996, and Legal Convergence in the Member States of the European Union, EMI, October 1997.

^{xix} EMI's Legal Service Memorandum of 6th June 1995, p. 4.

^{xx} EMI 'Questionnaire on Independence of NCBs and on Measures with a View to the Integration of NCBs in the ESCB,' April 1, 1996, pp. 1-2 (EMI Archive).

^{xxi} See also EMI, *Convergence Report*, March 1998, p. 289.

^{xxii} Working Group of Legal Experts, European Monetary Institute, Note 23rd August 1996, on 'Statutory requirements for NCBs to become an integral part of the ESCB: progress report' to be discussed at the forthcoming EMI Council on 3rd Sept 1996.

^{xxiii} Data built from <https://www.ecb.europa.eu/pub/pdf/other/ecbsadvisoryrole200905en.pdf>. The data available from the 1998-2014 period indicate an average of 30 opinions per year in response to consultations by national authorities up until 2007 and a sharp increase due to 'the number of Member States since 2004 and due to the turmoil in the financial markets from 2008' (but not only), with a peak of 95 in 2012.

^{xxiv} Numbers built from the data made available by the ECB (2009).

^{xxv} On the ECB 'consultative experience', see the overview by the member of the executive board Lorenzo Bini Smaghi (2008).

^{xxvi} Rejoinder submitted by the Legal service of the ECB in the *X v ECB* case (Case T-333/99) before the Court of first instance, 20 June 2000 (on file with author).

^{xxvii} Memo in defense, to the president and members of the Court of Justice of the European Communities, 86 pages, 27 April 2000, point 50 and Rejoinder C-11/00, 6 Sept. 2000 (on file with author).

^{xxviii} *Ibid.*

^{xxix} BVerfGE, Maastricht ruling, Judgment of 12 October 1993.

^{xxx} <https://www.reuters.com/article/us-italy-politics-ecb-explainer/italian-debt-held-by-the-ecb-in-focus-as-populists-sign-governing-pact-idUSKCN1IJ15Z>, accessed June 26, 2020.

^{xxxi} For a critique, see Stark, Mayer, Schnabl (2022).