

# **FROM THE MARSHALL PLAN TO NGEU: THE ROLE OF THE POWER-LEGITIMACY NEXUS**

Keynote Speech

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## Abstract

Consistent with the broader aims of this conference, my assigned task here is to draw a linkage between the Marshall Plan and NextGenerationEU (NGEU) and more particularly the latter's key components, the Recovery and Resilience Facility (RRF) and its associated planning process built around National Recovery and Resilience Plans (NRRPs). This of course explains the assigned title for this talk: 'From the Marshall Plan to NGEU'. However, if I may, I would like to add a brief subtitle to my remarks—'The Role of the Power-Legitimacy Nexus'. My purpose in doing so will hopefully become more evident as we proceed through this discussion.

There are, of course, any number of ways one could go about the task of drawing linkages between the Marshall Plan and NGEU.<sup>1</sup> Perhaps most obviously, one could approach the question in terms of political economy, and more particularly in terms of the economics *tout court*. This might involve focusing, for example, on the counter-cyclical effects of the two initiatives, their impact on growth (short-, medium- and long-term), or their success in facilitating reforms. I am not, however, an economist, so it should surprise no one that the last thing I want to do is to step into debates about, say, the economic impact of the Marshall Plan, a topic about which I have no particular expertise.

I do know enough, however, to know that there is considerable debate in the literature on this point. At the risk of greatly oversimplifying, I will exemplify the debate by looking to the work of some prominent economic historians: Alan Milward, representing the more skeptical side, and Brad De Long and more particularly Barry Eichengreen, representing the more favorable side.

Milward, famously, was among the first to challenge what he saw as the economic mythology around the Marshall Plan. In his 1984 book, *The Reconstruction of Western Europe, 1945-51*,<sup>2</sup> Milward questioned, among many other things, whether Marshall aid was ever really large enough to significantly stimulate Western European growth, either in the immediate postwar years or over the subsequent boom years of the *trente glorieuses*.

De Long and Eichengreen, by and large, agree with Milward on that basic point.<sup>3</sup> Nonetheless, they still insist on the long-term significance of the Marshall Plan, which they see primarily in the conditionality attached to aid and its impact on promoting structural reform in Western European economies over subsequent decades. As De Long and Eichengreen put it, the US-imposed conditions ‘left Western Europeans with no choice [but] to agree to balance government budgets, restore internal financial stability, and stabilize exchange rates at realistic levels. Europe was still committed to the mixed economy. But the U.S. insisted that market forces be represented more liberally in the mix’.<sup>4</sup>

The differences between the two sides of this historiographical debate, however, go well beyond strictly economic questions. They extend also to political and legal ones, and it is on these latter dimensions of the debate that I will focus my remarks here.

Eichengreen, in particular, has written very favorably of the long-term positive impact of the Marshall Plan on European integration.<sup>5</sup> He has argued that recipients of Marshall Aid ‘were required to create an institution, the Organisation for European Economic Cooperation [OEEC], the forerunner to today’s OECD, to jointly formulate plans for the utilization of aid. **That encouragement in turn helped [Western Europe] to proceed down the road to European integration**’ (my emphasis).<sup>6</sup>

On this key point, Milward (who is sadly no longer with us) would no doubt strongly disagree. For Milward, the US vision for European integration, reflected in the original design of the Marshall Plan built around the OEEC, **utterly backfired**. The US hope was that Western European countries would, as a first step to the

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<sup>1</sup> For a different perspective from the one presented here, see, e.g., Elena Kempf and Katerina Linos, ‘NGEU: A New Marshall Plan for Europe and a Template for Global Finance’ (2024) 118 AJIL Unbound 151.

<sup>2</sup> Alan S Milward, *The Reconstruction of Western Europe, 1945-51* (University of California Press 1984).

<sup>3</sup> J Bradford De Long and Barry Eichengreen, ‘The Marshall Plan: History’s Most Successful Structural Adjustment Program’ (National Bureau of Economic Research, November 1991) <<https://www.nber.org/papers/w3899>> accessed 28 October 2024; Barry Eichengreen, ‘Lessons from the Marshall Plan’ (World Bank Group 2011) 62042 <<http://documents.worldbank.org/curated/en/907961468155715855/Lessons-from-the-Marshall-Plan>> accessed 28 October 2024.

<sup>4</sup> De Long and Eichengreen (n 3) 48.

<sup>5</sup> Eichengreen (n 3).

<sup>6</sup> *ibid* 3.

creation of a United States of Europe, in effect delegate the power to make economic policy to the technocratic OEEC. As Milward famously argued in *The Reconstruction of Western Europe*, the OEEC—the institutional centerpiece of US plans—instead became increasingly marginalized, devolving into little more than ‘a forum for registering international agreements made elsewhere, increasingly of a minor kind’.<sup>7</sup>

The reason, according to Milward, was that the major Western European states simply refused to work with (or through) the OEEC in the manner that the US had originally envisioned. Milward argues that European integration emerged as it did—first with ECSC under the Treaty of Paris in 1951, and later under the Treaties of Rome in 1957—as ‘a total rejection of integration within [the] particular political framework’ advanced by the United States via the OEEC.<sup>8</sup>

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It is this point of disagreement between Milward and Eichengreen that I would like to use as the frame for the remainder of my remarks. As a legal scholar and historian of public law and governance with a strong interest in the integration project, I feel quite comfortable in taking sides in this particular debate, because implicates several topics on which my own work has focused.<sup>9</sup> And, as you will see, the position I elaborate here, centered around the ‘power-legitimacy nexus’, will be more strongly influenced by Milward’s position than that of Eichengreen.

As a threshold matter, this debate about the Marshall Plan and European integration involves the evolving balance of power between the national and supranational levels of governance, as well as between parliaments and executive/technocratic actors, both national and European. Perhaps more importantly, it touches on the nature and extent of legitimacy enjoyed by these various levels of governance or institutions—whether democratic and constitutional, on the one hand, or merely technocratic and therefore ‘administrative’, on the other.

In my view, the nature and extent of an institution’s legitimacy is crucial, because, much more than its intended legal design, that legitimacy ultimately defines, as a socio-political and socio-culture matter, the scope of power that an institution can successfully exercise. My work describes this relationship as ‘the power-legitimacy nexus’.<sup>10</sup>

My main argument here will therefore be this: If you want to understand why and how the governance structures of the NGEU have emerged as they have—in particular, why NGEU has given rise to what Nicola Lupo and Cristina Fasone have aptly called the ‘Euro-national method of government’<sup>11</sup>—you need to understand the power-legitimacy nexus. And as we shall see that nexus played a significant role, first, in shaping the design and implementation of the Marshall Plan, particularly as to the fate of American plans for the OEEC. And as we shall also see, it has similarly played a significant role in shaping the design and implementation of the NGEU and especially the RRF and the NRRP process. The power-legitimacy nexus is

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<sup>7</sup> Milward (n 2) 207.

<sup>8</sup> *ibid* 209.

<sup>9</sup> See, most prominently, Peter L Lindseth, *Power and Legitimacy: Reconciling Europe and the Nation-State* (Oxford University Press 2010).

<sup>10</sup> See, e.g., Peter L Lindseth, ‘The Perils of “As If” European Constitutionalism’ (2016) 22 *European Law Journal* 696; Peter L Lindseth, ‘The Democratic Disconnect, the Power-Legitimacy Nexus, and the Future of EU Governance’ in Francesca Bignami (ed), *EU Law in Populist Times: Crises and Prospects* (Cambridge University Press 2020); Peter L Lindseth, ‘The Constitutional Imaginary and the Metabolic Realities of European Integration’ in Jan Komárek (ed), *European Constitutional Imaginaries: Between Ideology and Utopia* (Oxford University Press 2023).

<sup>11</sup> Cristina Fasone and Nicola Lupo, ‘Learning from the Euro-Crisis. A New Method of Government for the EU Economic Policy Coordination after the Pandemic?’ (*STALS Research Paper* 4/2023, 2023) <[https://www.stals.santannapisa.it/sites/default/files/1Stals\\_Fasone\\_Lupo.pdf](https://www.stals.santannapisa.it/sites/default/files/1Stals_Fasone_Lupo.pdf)> accessed 7 October 2024.

crucial to understanding, in particular, the complex interplay of ‘national ownership’ and supranational ‘steering’ in this emergent Euro-national method of government to which NGEU has given rise.

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The starting point of any analysis of this type must be the intensity of the functional demands that a particular institution or program was designed to address. For the Marshall Plan, its aim was to assist in the huge challenge of Western European reconstruction in the postwar years. For NGEU, the aim was not merely to address the economic dislocations of the Covid shutdowns but also to adopt such add-ons as combatting climate change and promoting green energy transition and digitalization. Operating in the background of each crisis, however, was another, more political ‘specter haunting Europe’, if you will. In the case of the Marshall Plan, it was the emergent Cold War and growing attractiveness of communist parties in certain Western European countries (not least Italy). In the case of NGEU, it was the “new” Cold War with Russia and the growing attractiveness of populist parties in several European countries (at least some of which are open in their admiration of Putin’s Russia).

The intensity of these political and economic challenges gave urgency to both the Marshall Plan and NGEU. As Milward aptly put it, in terms applicable to both eras: ‘...there was indeed an imperative toward wholly new forms of interdependence and to the transfer of national “sovereignty” to non-national institutions, which the nation-state had to follow to make itself once more an accepted and strong unit of organization’.<sup>12</sup> But as Milward stressed with regard to the Marshall Plan, the process never entailed a one-way ratchet toward ever greater supranational power. Quite the contrary, it involved a complex interplay between the functional advantages of delegating certain powers to supranational institutions, on the one hand, and the desire to preserve certain essential attributes of national power (and legitimacy), on the other.

The metaphor that Milward used to describe this complex interplay was that of a ‘house’, in which the ‘foundations’ and ‘walls’ remained national, but the new ‘roof’ was supranational. As he put it (describing the process of European integration more generally): ‘In some cases, the walls had to be altered ... to meet [the specifications of] the roof, while in others the roof had to correspond to the firm determination of the [national] architects to put the walls where they wanted them [to be]’.<sup>13</sup> The challenge of European integration has always been to build a supranational ‘roof’ that meets the functional demands of ‘interdependence’ (or, more recently, emergent notions of ‘solidarity’)<sup>14</sup> while also respecting the constraints imposed by national ‘foundations’ and ‘walls’.

In terms of the foundational constraints, the most important is that only the Member States have had the robust democratic and constitutional legitimacy to mobilize the resources—particularly through taxation, as well as through leveraging that taxing authority via borrowing—to actually fund the integration project. Extending out from those fiscal ‘foundations’ (if you will) are the economic ‘walls’ of the house; that is, the core national prerogatives of economic policymaking, which remain at the national level because, again, the core democratic and constitutional legitimacy to exercise such powers resides there.

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<sup>12</sup> Milward (n 2) xix.

<sup>13</sup> *ibid* 464.

<sup>14</sup> Päivi Leino-Sandberg, ‘Constitutional Imaginaries of Solidarity: Framing Fiscal Integration Post-NGEU’ in Ruth Weber (ed), *EU Integration through Financial Constitution: Follow the Money?* (Hart Publishing 2023).

Now, as we turn to our task at hand—undertaking a comparison of the Marshall Plan and NGEU—we see that there are important lessons to draw from the former in terms of these national ‘foundations’ (resource mobilization) and ‘walls’ (ultimate control over economic policy).

First, even De Long and Eichengreen agree with Milward that Marshall aid was insufficiently large to create real leverage for the US vis-à-vis the recipient states.<sup>15</sup> In short, national resource mobilization capacities, even under the incredibly challenging circumstances of postwar reconstruction, remained important sources of autonomy. Second, as Milward effectively shows, the US mistakenly believed it could **override the power-legitimacy nexus** by granting a technocratic supranational body (the OEEC) power in precisely the domain where, as Milward puts it, ‘national sovereignty was most staunchly upheld, the choice of domestic economic policy’. In other words, the attachment to national walls remained strong. Indeed, many of the attributes of Marshall Plan governance that Eichengreen deems most favorable—particularly decentralized disbursement and administration of aid<sup>16</sup>—arguably emerged only as a **second-best option** after the US’s preferred option—increased centralization through the OEEC—had failed. And that failure was an object lesson in what can happen when there is a **disconnect between the intended legal power of an institution and the legitimacy it actually possesses in exercising that power**.<sup>17</sup>

We turn our attention now to the NGEU, exploring whether the power-legitimacy dynamics that manifested themselves in the design and implementation of the Marshall Plan have also manifested themselves in NGEU. The answer to that question, as we will see, is yes. But to understand why, it is important not to analyze the NGEU in isolation. Rather, we need to view it as the product of developments that preceded it. I am speaking here of such things as EMU and its infamous ‘asymmetry’, the SGP, the eurozone crisis, the European Semester and country-specific recommendations (CSRs), the evolution of conditionality, the quest for ‘national ownership’ of structural reforms, the shift from a punitive approach to ‘positive incentives’ (‘money for reforms’), and hence the RRF, the NRRPs, etc.

This is a long and complicated story, and it will be impossible to provide anything more than a general summary here of certain key highlights. Crucial to this story—in particular as it regards the European Semester and the CSRs—involves the changing role of the Commission in EU economic governance. The original SGP framework consisted of common benchmarks set out in the Treaties—3% annual deficits and 60% total debt as a percentage of GDP—accompanied by very general broad economic policy and employment guidelines. But what had been established as an emergency brake in the Treaties, to be invoked when a Member State’s policies posed a direct threat to the stability of the single currency, became under the European Semester a broad vehicle that could hopefully guide the Member States towards economic and fiscal policies deemed adequate on a continuing basis.<sup>18</sup>

The European Semester operationalized Treaty requirements into a comprehensive fiscal framework accompanied by much more detailed CSRs, and then asked the Commission, in effect, to enforce them. The focus was on ‘compliance’—essentially the polar opposite ‘ownership’—in which success was defined as transferring ideas from the supranational to the national level instead of allowing national institutions to determine their own priorities. The sort of authority needed in such circumstances—cutting close to the most

<sup>15</sup> See generally De Long and Eichengreen (n 3); Eichengreen (n 3).

<sup>16</sup> Eichengreen (n 3) 4.

<sup>17</sup> See generally Lindseth, ‘Perils of “As If” European Constitutionalism’ (n 10); Lindseth, ‘The Democratic Disconnect, the Power-Legitimacy Nexus, and the Future of EU Governance’ (n 10); Lindseth, ‘Constitutional Imaginary’ (n 10).

<sup>18</sup> The procedure is described in detail in Päivi Leino-Sandberg and Tuomas Saarenheimo, ‘Discretion, Economic Governance and the (New) Political Commission’ in Joana Mendes (ed), *EU Executive Discretion and the Limits of Law* (Oxford University Press 2019); Päivi Leino-Sandberg and Fernando Losada Fraga, *How to Make the European Semester More Effective and Legitimate?: Euro Area Scrutiny* (Directorate-General for Internal Policies of the Union (European Parliament), Publications Office of the European Union 2020) <<https://data.europa.eu/doi/10.2861/3181>> accessed 16 February 2023.

robust forms of democratic and constitutional legitimacy—was well beyond what the Commission was able to muster given its primarily technocratic and administrative ‘legitimacy resources’.<sup>19</sup> The result was an infamous disconnect between seemingly demanding (albeit complex) rules and ultimately lax enforcement.

This eventually led to calls for greater ‘national ownership’, seen as a vehicle ‘to better enforcement of commonly agreed rules’ by ‘remov[ing] the perception that [the] rules are hierarchically imposed’.<sup>20</sup> The Commission’s inability to play the sort of command-and-control role that the European Semester effectively envisioned for it was another object lesson in what can occur when there is a break in the power-legitimacy nexus (again, the necessary connection between an institution’s delegated power and the nature of its underlying legitimacy). This is precisely akin to what we saw with regard to the ultimately failure of the OEEC under the Marshall Plan.

How did the NGEU, and more particularly the RRF and the NRRP process, attempt to address this disconnect?

The RRF is a system of ‘positive incentives’ on steroids, serving as a political deal which (outside of rule-of-law concerns particular to Hungary) effectively promises **each Member State** a pre-defined share of the proceeds of the common borrowing to augment supranational influence across a variety of regulatory domains.<sup>21</sup> These domains are set out in the ‘six pillars’ of the RRF Regulation, which defines a set of ‘policy areas of European relevance’ that the spending must pursue (green transition, digital transformation, smart and inclusive growth, productivity, competitiveness, resilience, and so on).<sup>22</sup> The definitive selection of investments and reforms to be funded is accomplished, however, through a technocratic process of negotiation between the Commission and national executive and administrative actors, which are then memorialized as ‘milestones’ and ‘targets’ in the Member State’s National Recovery and Resilience Plan (NRRP).

The NRRPs are the vehicle by which the RRF seeks to promote ‘national ownership’ of the investment and reform process. They operate formally as a voluntary mechanism through which a Member States may seek funding from the EU, under the administrative oversight of the Commission. The effective premise of the NRRPs is that the EU can, through spending, steer the exercise of national competences even without necessarily having supranational competence in ‘policy areas of European relevance’ that are supposed to be the NRRP’s target. All that is required is that the EU steering takes place within a seemingly transactional framework, in which the Member State voluntarily applies for support and accepts the oversight and control of the supranational level. This is arguably the reason why the RRF Regulation, despite the Commission’s quite significant oversight role, compels the Commission to respect the Member State’s ultimate ownership over its NRRP.<sup>23</sup>

Finally, disbursements under the NRRPs are ‘performance based’; that is, they ‘depend on the delivery of the pre-agreed investments and reforms rather than the final costs incurred’.<sup>24</sup> In this sense, the RRF operates within the framework of Article 125(1) of the Financial Regulation, a reform quietly introduced in 2018. Payments under the RRF are thus offered as pure incentive, designed to reward Member States for achieving

<sup>19</sup> On the concept of legitimacy resources and its impact on European integration, see Lindseth, *Power and Legitimacy* (n 9) 11, 52–53, 186, 224, 227–28, 249, 265, 275. See Päivi Leino-Sandberg and Tuomas Saarenheimo, ‘Fiscal Stabilisation for EMU: Managing Incompleteness’ (2018) 43 *European Law Review* 623, 645.

<sup>20</sup> Cinzia Alcidi and Daniel Gros, ‘How to Strengthen the European Semester?’ (CEPS 2017) Research Report No. 2017/15 <[https://www.ceps.eu/wp-content/uploads/2017/12/RR2017\\_15\\_CAandDG\\_EuropeanSemester.pdf](https://www.ceps.eu/wp-content/uploads/2017/12/RR2017_15_CAandDG_EuropeanSemester.pdf)> accessed 29 March 2024.

<sup>21</sup> Regulation (EU) 2021/241 of the European Parliament and of the Council of 12 February 2021 establishing the Recovery and Resilience Facility, 2021 OJ L 57/17 [RRF Regulation], art 11 and Annexes I-IV, <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0241>> accessed 30 April 2023.

<sup>22</sup> *ibid* art 3.

<sup>23</sup> *ibid* recital 41.

<sup>24</sup> European Commission, ‘Communication on the Recovery and Resilience Facility: Two years on—A unique instrument at the heart of the EU’s green and digital transformation’, COM (2023) 99 final (21 February 2023), 1 <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52023DC0099>>, accessed 8 October 2024.



‘previously set milestones or ... performance indicators [i.e., targets]’.<sup>25</sup> Of course, by breaking the connection to actual costs, this mode of financing opens the way for highly subjective (and potentially quite variable) determinations by the Commission as to what any particular milestone or target might actually be worth, or by what metrics the Commission could determine whether a milestone or target has actually been achieved.<sup>26</sup>

I will leave the question of Commission discretion under the RRF for others to discuss in this conference. Certainly, one can say that it adds a significant supranational dimension to a process that is supposed to be characterized by ‘national ownership’. To return to Milward’s ‘house’ metaphor for European integration, Commission oversight provides the supranational ‘roof’ to the national ‘walls’ provided by the NRRPs. In this sense, the NRRPs have helped to mute, at least in the NGEU context, some of the power-legitimacy tensions that the Commission’s outsized discretion might otherwise raise, serving as a means to draw on the power and legitimacy of the Member States to make up for EU’s own shortfalls along these crucial dimensions.

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As the old saying goes, history does not repeat itself, but it sometimes rhymes. In the case of the Marshall Plan and NGEU, the rhyming occurs, at least a very high level of generality, as a consequence of these power-legitimacy dynamics that continue to provide a broad constraint on how integration must be structured lest it fails. This was as true of the US’s misguided (and ultimately failed) plans for the OEEC under the Marshall Plan as it was for the Commission’s misguided (and ultimately failed) role in EU economic governance under the European Semester. The changes in that role under the NGEU, the RRF, and the NRRP process were, at least in part, meant to address those failings. Whether those changes created a process that actually advances European interests through projects with real European Added Value, or simply funds national priorities, that is also an issue I will leave to debate and discussion in this conference.

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<sup>25</sup> Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union, amending Regulations (EU) No 1296/2013, (EU) No 1301/2013, (EU) No 1303/2013, (EU) No 1304/2013, (EU) No 1309/2013, (EU) No 1316/2013, (EU) No 223/2014, (EU) No 283/2014, and Decision No 541/2014/EU and repealing Regulation (EU, Euratom) No 966/2012, 2018 OJ L 193/1 [Financial Regulation], art 125(1), <<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A32018R1046>> accessed 28 June 2023.

<sup>26</sup> For a discussion of this subjectivity and lack of metrics, see European Court of Auditors, ‘Special Report 21/2022: The Commission’s Assessment of National Recovery and Resilience Plans – Overall Appropriate but Implementation Risks Remain’ (2022) <[http://www.eca.europa.eu/en/publications/sr22\\_21](http://www.eca.europa.eu/en/publications/sr22_21)> accessed 11 July 2024.

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