2 Imaginaries of Prosperity

2.1 Introduction

How does one study what comes after 'neoliberalism'? The challenge that one faces, I would suggest, is first to identify what (if anything) neoliberalism is, in order to articulate what it would take to change it. Neoliberalism is many things to many people: an ideology,[1] a paradigm,[2] a rationality,[3] a governmentality,[4] a conspiracy,[5] and more. And there shall be no doubt that there are aspects to what we call neoliberalism that squarely fit some of these concepts.

Yet at the same time, all these understandings undersell what has made neoliberalism *stick*. Critics understood its importance in having reshaped everything from state institutions, public services, the ways in which business is conducted, to how we understand ourselves as human beings. What they tended to overlook was its socially integrative function. As any 1980s or 1990s native would keenly remember, neoliberalism gave many people across the world a sense of optimism, while also providing a clear direction to democratic politics and governmental action (Section 2.2).

[1] David Harvey, *A Brief History of Neoliberalism* (Oxford University Press, 2005); Slavoj Zizek, *The Sublime Object of Ideology* (Verso Books, 2019).

[2] Poul F. Kjaer, *The Law of Political Economy: Transformation in the Function of Law* (Cambridge University Press, 2020).

[3] Marija Bartl, 'Internal Market Rationality, Private Law and the Direction of the Union: Resuscitating the Market as the Object of the Political', *European Law Journal*, 21, no. 5 (15 January 2015): 572–98.

[4] Michel Foucault, *The Birth of Biopolitics: Lectures at the Collège de France, 1978–1979* (Picador, 2010).

[5] Belen Balanya et al., *Europe Inc.: Regional & Global Restructuring and the Rise of Corporate Power* (Pluto Press, 2000).

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There is little doubt, however, that neoliberalism (or any other imaginary of prosperity for that matter) has had a beginning and thus it will also have an end. In the EU, neoliberalism reached the peak of its integrative function between the end of the 1990s and the great financial crisis of 2008. It provided a temporary basis for societal integration around an imaginary of prosperity that advocated the empowering of capital, market, and competition as the best route to prosperity. As its integrative functions weakened after the 2008 crisis, we should have seen a democratic transition to a new imaginary of prosperity (Section 2.2).

Yet the democratic shift to a new imaginary of prosperity – the same one that took place in the 1970s and 1980s to neoliberalism – has not taken place (yet). Instead, in the years following the great financial crisis, political institutions and actors have doubled down on the neoliberal imaginary of prosperity, taunting its successes – while neglecting that there is a growing number of people whose reality had little in common with the official story of economic recovery and prosperity[6] (Section 2.2).

This institutional drift fostered a growing mistrust in the chosen route to prosperity, and the institutions that advocated it, with modern societies gradually losing the (always temporary) *shared* foundation around which they were constituted. The mistrust, however, undermines the basic constitutional structures and values of liberal democracies, through polarisation, conspiracies, and a growing sympathy for authoritarianism. Many new tribal imaginaries that are anti-democratic (nativism, supremacist thinking, revisionist imperialism, or religious fundamentalism) have emerged and even booked electoral successes, in Europe and elsewhere. But these imaginaries cannot provide, I argue, a stable foundation for modern societies, as they neither aim to provide solutions to problems they face nor deal with the inescapable pluralism of modern societies (Section 2.3).

What is needed to replace a neoliberal imaginary of prosperity is again a new, *credible imaginary of prosperity*. Fundamentally, we should not mistake prosperity for economic growth. Or material consumption. Prosperity, I want to argue, is an understanding of political economy that lays out a credible route to material and social basis of a good life, today and in the future, for oneself and one's children and grandchildren. 'Pro/sperare' – or that what we hope for – should thus *not* be reduced to the historically limited, and perhaps even empirically

[6] Andrew Haldane, 'Whose Recovery?', Speech at the Bank of England, 2016. Available at www.bankofengland.co.uk/speech/2016/whose-recovery, last accessed 14 January 2024.

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incorrect, understanding of prosperity as mass consumption[7] (Section 2.4).

It is important to realise that the new articulation of prosperity has not emerged only due to the unwillingness of institutions. In fact, unlike the (relatively) peaceful and smooth shift[8] to the neoliberal imaginary of privatised prosperity in the 1970s and 1980s, the shift to what should be a new imaginary of *shared* prosperity has serious countervailing forces. On the one hand, big capital, well-resourced and well-integrated into law-making, has benefited and continues to benefit from neoliberal prescriptions. On the other hand, the measures to make the economy more environmentally sustainable have thus far focused to a large degree on consumers and consumption, creating another rift – both ethical and distributive – among those who can and who cannot pay for sustainability (Section 2.2).

In this chapter, I aim to do several things. First, I will articulate why we should think in terms of 'social imaginaries', rather than other compelling concepts, as the temporarily shared foundations of modern society. I then go on to argue why in modernity it was the imaginaries of prosperity that provided the most stable foundations of social integration. I will argue that imaginaries of prosperity are both capable of bridging the plurality of positions and identities and at the same time playing into the strength of modernity, namely democracy and knowledge governance. However, particular imaginaries of prosperity are only temporary hegemonic articulations, as they will sooner or later produce too many constitutive outsides to be able to fulfil their integrative role. In such a case, when contradictions become apparent, they become subject to their own dialectics, between privatised and collective imaginaries of prosperity. If such a transition is not enabled via democratic channels, we may see illiberal and undemocratic tribal imaginaries taking hold.

2.2 Social Imaginaries

2.2.1 Defining Social Imaginaries

The question of what holds societies together, after the demise of God, has been the core question in social theory. Some thinkers contemplated

[7] Tim Jackson, *Prosperity without Growth: Foundations for the Economy of Tomorrow* (Taylor & Francis, 2016).

[8] Of course, in the US and the UK, we have seen rather violent suppression of labour unions and collective action.

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social cohesion under modernity;[9] others, in a more critical tradition, stressed that social integration relies on deception, as ideology[10] and hegemony.[11] Social imaginaries are one entrance point to this discussion, which does not immediately place itself in either of these traditions and requires an "open mind" to consider how societies are actually instituted and changed.

For Castoriadis, societies do not emerge as products of historical necessity, but rather as the result of a radically new idea of the world, which, when 'signified' and 'instituted', provides society with '*singular ways of living, seeing and making its own existence*' in each historical period.[12] While no society can exist without a social imaginary, which enables 'symbolic mediation of action',[13] Ricoeur argues that the imagination of alternative ways of living is never as radically novel as Castoriadis suggests. Rather, novelty is always socially embedded, constituted, or 'pre-figured', by the elements of the old.[14] This does not, however, turn (re)imagination into imitation, but rather imagination remains 'productive'[15] as long as it is producing new meanings and ways of being, with the intention of imagining radical alternatives to the status quo.

In Anglo-American tradition, Benedict Anderson explores the making of nations and nation states, showing how nations were produced as 'Imagined Communities',[16] via historical memory, museums, maps, language, and other sociocultural artefacts.[17] In fact, the long arch of modernity can be seen as the imagination and institution of a particular

[9] Emile Durkheim, *The Division of Labour in Society*, trans. George Simpson (The Free Press of Glencoe, London 2015), http://archive.org/details/in.ernet.dli.2015.126617, last accessed 5 January 2024.

[10] Karl Marx and Friedrich Engels, *The German Ideology: Including Thesis on Feuerbach* (Prometheus Books, 1 November 1998); Zizek, *The Sublime Object of Ideology*.

[11] Antonio Gramsci, *Prison Notebooks: Selections* (International Publishers, 1971); Ernesto Laclau and Chantal Mouffe, *Hegemony and Socialist Strategy: Towards a Radical Democratic Politics* (Verso Books, 2014).

[12] Cornelius Castoriadis, *The Imaginary Institution of Society* (MIT Press, 1997), 465.

[13] Paul Ricoeur, *Lectures on Ideology and Utopia,* ed. George H. Taylor (Columbia University Press, 1986), 258.

[14] Suzi Adams, *Ricoeur and Castoriadis in Discussion: On Human Creation, Historical Novelty, and the Social Imaginary* (Rowman & Littlefield, 2017).

[15] The reference to productive as opposed to reproductive imagination goes back to Kant. J. Michael Young, 'Kant's View of Imagination', *Kant-Studien* 79, nos. 1–4 (1988): 140–64.

[16] Benedict Anderson, *Imagined Communities: Reflections on the Origin and Spread of Nationalism* (Verso Books, 2006).

[17] Anderson's book is one of the central texts in nationalism studies. It has, however, also influenced Science and Technologies Studies, and in particular its American (Jasanoff's) tradition, who will develop the concept of 'co-production' of the social and technical.

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(Western) 'modern social imaginary'.[18] What Taylor calls 'modern social imaginary' stands for a moral and institutional order, instituted via several crucial political boundaries: between economy and politics, the separation of the public sphere as a space for non-dominated political communication, and finally the idea and practice of (collective) self-determination.

It is the first boundary, between economy and politics, that will later become the central subject of the work of political economists Sum and Jessop in their exploration of how 'economic imaginaries' co-constitute social whole. That academic intervention is part of a broader trend that appropriates the concept of social imaginaries outside of the general theory of society, in the fields of political science,[19] science and technology studies,[20] law,[21] and political economy.[22]

[18] Charles Taylor, *Modern Social Imaginaries* (Duke University Press, 2004).

[19] Paul Blokker, 'The Imaginary Constitution of Constitutions', *Social Imaginaries* 3, no. 1 (2017): 167–93; Blokker, 'Populism as a Constitutional Project', *International Journal of Constitutional Law* 17, no. 2 (2019): 536–53.

[20] The concept of 'sociotechnical imaginaries', for instance, has been used to articulate how 'innovative technological projects' are turned into the future social order. Such sociotechnical imaginaries are made, or instituted, in the exercise of both public and private power, via '*the selection of development priorities, the allocation of funds, the investment in material infrastructures, and the acceptance or suppression of political dissent*'. From Sheila Jasanoff and Sang-Hyun Kim, 'Containing the Atom: Sociotechnical Imaginaries and Nuclear Power in the United States and South Korea', *Minerva* 47, no. 2 (2009): 119–46. See also David J. Hess and Benjamin K. Sovacool, 'Sociotechnical Matters: Reviewing and Integrating Science and Technology Studies with Energy Social Science', *Energy Research & Social Science* 65 (1 July 2020).

[21] Jan Komárek, *European Constitutional Imaginaries: Between Ideology and Utopia* (Oxford University Press, 2023); Päivi Leino-Sandberg, 'Constitutional Imaginaries of Solidarity: Framing Fiscal Integration Post-NGEU' (University of Helsinki Working Paper, 2023), available at https://helda.helsinki.fi/bitstreams/6c044fbd-a8ee-4bb1-a884-baf52446888a/download; Valeria Ferrari, 'The Platformisation of Digital Payments: The Fabrication of Consumer Interest in the EU FinTech Agenda', *Computer Law & Security Review* 45 (2022); Marija Bartl, 'Imaginaries of Progress as Constitutional Imaginaries', in *European Constitutional Imaginaries: Between Ideology and Utopia* (Oxford University Press, 2021); Komárek, 'European Constitutional Imaginaries: Utopias, Ideologies and the Other', *SSRN Scholarly Paper* (Social Science Research Network, Rochester, NY, 29 October 2019).

[22] Being part of a broader 'cultural turn' in political economy, exploring the performative role of practices, institutions, and devices in the making of a particular type of economy, or a particular type of capitalism. See, for instance, Michel Callon, 'Introduction: The Embeddedness of Economic Markets in Economics', *The Sociological Review* 46, no. S1 (1998): 1–57; Donald MacKenzie and Yuval Millo, 'Constructing a Market, Performing Theory: The Historical Sociology of a Financial Derivatives Exchange', *American Journal of Sociology* 109, no. 1 (2003): 107–45.

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Sum and Jessop understand economic imaginaries as 'semiotic ensembles' that reduce the complexity of the social world by focusing on *relevant* economic problems, relations, practices, spaces, and subjectivities. Such a reduction of complexity operates at the level of *imaginary* and at the level of *structures* (technologies, institutions, and actors), shaping the grounds for possible futures by setting '*limits to compossible combinations of social relations*'.[23] What is more, while such a reduction of complexity may be necessary to enable action, it remains a reduction – constituting often invisible but ultimately *constitutive* outsides, which strike back as a source of crises.

2.2.2 How Social 'Imaginaries' Change

While the aforementioned paragraphs introduce the reader to some of the core uses of the concept of social imaginaries, they say little about how imaginaries actually change. To do so, I will rely on the work of Paul Ricoeur on utopia and ideology: the two faces of social imaginary.[24] In '*Lectures on Ideology and Utopia*', Ricoeur describes utopias and ideologies as the emanation of the symbolic:[25] '*where human beings exist, a nonsymbolic mode of existance, and even less a nonsymbolic kind of action, can no longer* [obtain]'.[26] Like Mannheim, Ricoeur suggests that both ideology and utopia are deeply *social*, in the sense of being shared cultural templates. What distinguishes them is their main orientation: the orientation of ideology is towards the preservation of the status quo, whereas the orientation of utopia is towards the transformation of power relations.

Ricoeur goes on to develop his theory of social imaginaries on the basis of his engagement with several different thinkers, over the past 200 years. He starts with Karl Marx, who argues that ideologies operate to distort the meaning of human action, in order to facilitate the power and

[23] Ngai-Ling Sum and Bob Jessop, *Towards a Cultural Political Economy: Putting Culture in Its Place in Political Economy* (Edward Elgar Publishing, 2013).

[24] Ricoeur, *Lectures on Ideology and Utopia*.

[25] Ricoeur argues that symbolic systems are both external to the human being, inasmuch as they predate them, 'pre-figuring' the space for meaning making. However, at the same time, this externality is only apparent, since these symbolic systems are *constitutive* of the human being, a sine qua non of human existence. It is the faculty of imagination then through which we relate to such symbolic systems, not only to reproduce them ('reproductive imagination') but also to engage with them creatively ('productive imagination'). It is through such creative, transformative engagement in productive imagination that humans transform symbolic systems and their shared imaginaries (Ricoeur, *Lectures on Ideology and Utopia,* p. 258).

[26] Ricoeur, *Lectures on Ideology and Utopia*, p. 12.

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domination of the ruling classes. Indeed, Ricoeur agrees that ideologies will often, perhaps most of the time, be deceptive, inasmuch as they aim to provide the surplus of meaning that should legitimate the power of the rulers. But this, Ricoeur suggests, is only one possible function of ideology. In fact, we need to understand its prior functions in order to appreciate when and why deception creeps in. Two other functions of ideology, from a more superficial to a more original one, are that of *legitimation* and, further, that of *social integration*.

To discuss the legitimatory role of ideology, Ricoeur relies on Max Weber and his conception of 'Herrschaft', or domination. On this account, we need to understand ideology in relation to legitimation, that is as a way to *motivate* obedience. Ideology provides a set of understandings that bridge the gap between *the claim to power* by the rulers on the one hand and *the actual belief* in the (legitimacy of that) power by the ruled on the other hand – a gap, which is always bigger than those in power would wish for. Ideology thus aims to produce justifications for the status quo, and it is in this sense an exercise in reproductive imagination.

On a deeper level, however, Ricoeur suggests that ideology has an integrative function as well. If symbolic systems that mediate human action are constitutive of human life, then there must be a moment when they mediate *truthfully*, without deception. To develop the integrative function of ideology, Ricoeur draws on the anthropologist Geertz, who argues that sharing a symbolic system is the resource that integrates a community.[27] In turn, once any community develops the class of the rulers and the class of the ruled, the legitimatory function of ideology emerges, with a heightened possibility of it becoming deception.

What distinguishes ideology from utopia, even in its more innocent version, are the properties of imagination. As ideology either aims to justify the status quo or give meaning to what is, it remains within the ambit of reproductive imagination, that is of '*derivative presentation of the object, which brings to mind an empirical intuition that it had previously*'.[28] Utopia, in contrast, is an exercise in 'productive imagination', meaning here '*an original presentation of the object*' that creates the conditions for further thinking.

[27] Ricoeur, like Lefort, suggests that it may not be suitable to talk about ideology when it comes to pre-modern communities, since ideology – as utopia – is a modern phenomenon, whose emergence should be properly placed in conflict with other ideologies and utopias.

[28] Young, 'Kant's View of Imagination'.

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Ricoeur sees utopia as a particular kind of 'critique' – a critique that does not focus on uncovering the deceptions of ideology, but rather orients itself towards imagining a different reality. It is a glance at our reality 'from nowhere'[29] that everything in the status quo starts to look strange, nothing more can or needs to be taken for granted. In terms of subject matter, '*Utopia introduces imaginative variations on the topics of society, power, government, family, religion*', presenting alternative ways of living.[30]

To discuss utopia, Ricoeur draws mainly on the work of Mannheim, underlying three important characteristics of utopia. First, utopia is social in that it expresses a '*structural condition of a particular group, a* "*social substratum,*"[31] *which espouses it*'.[32] This social substratum does not have to be only a class but can also represent another substratum – such as women, racialised peoples, and ethnic or religious minorities. Second, utopia needs to be seen as a particular mentality, a *Geist*, that permeates a whole range of ideas and feelings. It cannot be expressed in a propositional form, but rather it presents a symbolic system, a social imaginary, of its own. Third, like ideologies, utopias are always expressed as antagonism with regard to other utopias; thus they are a particularly modern phenomenon.

Ricoeur concludes his lectures by drawing out some important parallels between ideology and utopia. As ideology operates on three levels – distortion, legitimation, and integration – so does utopia operate on three levels. Where ideology distorts, utopia is a mere fancy, lacking the core dimension of realisability, even bordering on madness. Where ideology is concerned with legitimation, utopia is an alternative to the present power. At this level, utopia is always concerned with hierarchy. Finally, where ideology is about integration, and thus about the present identity of a person and a group, utopia presents the exploration of a possible, the '*lateral possibilities of reality*',[33] '*identities in suspense*'.[34]

The *imaginaries of prosperity* that I discuss in this book are potentially both ideologies and utopias: they may have emerged as utopias and, if successful, end up as ideologies. At the moment, however, when they fail to fulfil their integrative function, that is, when they fail to be able to

[29] Ricoeur here refers to Thomas Moore's *Utopia*. Ricoeur, *Lectures on Ideology and Utopia,* pp. 16 and 17.
[30] Ricoeur, *Lectures on Ideology and Utopia,* pp. 16 and 17.
[31] A concept of class is here replaced with a particular 'social substratum', a concept that could include a broader range of groups, such as women, racialised peoples, and ethnic or religious minorities.
[32] Ricoeur, *Lectures on Ideology and Utopia,* p. 310. [33] Ibid. [34] Ibid., p. 311.

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provide the basis for the ideological integration of a society, they will have to be gradually replaced with other imaginaries. There is no guarantee, however, that new social imaginaries will necessarily be what Ricoeur understands as utopias: products of productive (rather than reproductive) imagination that present alternative ways of being and aim to transform any current power relations. In moments of interregnum such as the present moment, actors may try to maintain social integration by providing imaginable and realisable fixes (social or technological) to the existing "system". Or offer imaginaries that are explicitly not aiming to reimagine society but instead aiming to conserve identities and the ways of life, with a view to return to the (usually more glorious) past.

2.2.3 *On the Problem of 'Institution': What It Takes to Change a Social Imaginary*

If in the previous section, we focused foremost on the changes in social imaginaries at the level of the *imagination*, in this (longer) section we will grapple with the question of *institution* of social imaginaries. There is an ambiguity in the word 'institution' that is central to the entire conceptual framework of social imaginaries. Social institutions, on a most general level, are regularised ways of doing things. Sometimes they come with much more elaborate material and institutional elements – buildings, laws and procedures, employees, technologies, particular practices, discourses, etc. – all of which make such social institutions more stable and more entrenched. Yet, at the same time, any regularised way of doing things is always at least partially open, as smaller and bigger changes will take place over time, changing the social institution in the process.

But it goes further: the degree to which we are *open* as people to reshaping institutions and how far we can imagine transformative change, that is utopias and new worlds, has also changed throughout history. In the brilliant small book 'Institution', Roberto Esposito explores the changes in what he calls the *instituting praxis*, from Roman times onwards. Esposito argues that for Romans, law – 'ius' –was a tool that could *denaturalise* and *institute* even nature itself.[35] The Middle Ages,

[35] Esposito discusses here the legal institution of slavery, which was considered as unnatural by Roman jurists but turned into reality via law. Roberto Esposito, *Institution*, trans. Zakiya Hanafi, 1st ed. (Polity, 2022).

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however, dispossessed 'man' from this world-making capacity.[36] Nature and various social institutions were seen as given by God and were thus both good and desirable by default. They were also not for 'man' (including a sovereign!) to change, but had to defer to God's natural order. The acceptance of institutions as 'given and immutable' will be, according to Esposito, challenged only in modernity, as modernity makes 'self-determination' into one of the central elements of the 'Western modern social imaginary', to paraphrase Taylor.[37] Yet, Esposito laments, even in modernity, societies have not truly come to terms with this inherent ambiguity of the instituting praxis, which requires living with the continuous tension between stability and change, if it is to fully thrive.

This ambiguity is particularly present, I argue, with regard to one specifically modern invention, namely the separation of (market) economy and politics. This separation, identified by Taylor as one of the crucial political boundaries making Western modernity and criticised by Karl Polanyi in its 'laissez-faire' institutionalisation as the most radical social experiment, has been the object of political struggles ever since (see Section 2.2.3.1). The struggles about the boundary between economy and politics have particular dynamics in democratic societies, which try to translate (without revolutions) the discontents into institutional change (Section 2.2.3.2). In democratic capitalism, however, such institutional change is always made more difficult due to the structural dependence of the state on industrial and financial capital (Section 2.2.3.3).

Finally, we encounter the ambiguity of *instituting praxis* once again with regard to the institution of law. Law is central to instituting praxis in a very practical sense of being the central vehicle for translating the imaginary into governing rules. But law also captures how society relates (or not) to its own power to *institute* itself, by developing different kinds of legalities. Lastly, being an institution in its own right, law, with its own imaginaries, edifices, and actors, works according to its own rhythm while it also enjoys the capacity to push or resist change (Section 2.2.3.4).[38]

2.2.3.1 The Trouble with Instituting Economy

Clearly, people have always materially reproduced themselves, and in this very basic sense, there has always been an economy. But what we

[36] Esposito refers to Saint Agustin's 'City of God'. [37] Taylor, *Modern Social Imaginaries*.
[38] There are too many to name, going in both the direction of naturalising (Lochner line of cases in the US Supreme Court at the beginning of the twentieth century) and socialising economy (a growing number of climate cases at present).

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refer to as 'economy' today emerged as a figure of thought – as an imaginary – only in modernity. The paradox of the economy's birth is that in order to be known and governed, the economy had to be seen as a sphere *separate* from society or politics.[39] The initial embarrassment of this separation has been recognised by early economists by using the term 'political economy' – 'the discomfort will later disappear within the discipline of economics.[40] The reason to separate, know, and govern (political) economy stemmed from the conviction that it is somehow fundamental for the 'wealth of nations',[41] for prosperity.

The meaning and degree of separation of the economy will become the object of intense political and intellectual struggle over the following centuries. How much 'economic freedom', and for whom, is beneficial? Shall power and resources be privatised, in the hope that market actors acting in their self-interest will deliver prosperity? Or shall the power and resources be (partially) collectivised and democratic and public institutions made responsible for the distributive outcomes? Who, if anyone, is answerable for the distributive outcomes of the economic 'system'?

With the progress of the industrial revolution, the first imaginary of prosperity that clearly places entrepreneurs – rather than state, government, or public institutions – into the driving seat of prosperity was tagged as 'laissez-faire'. This imaginary, the origins of which can be located according to Keynes in the period between 1750 and 1850 England,[42] sees prosperity as stemming from letting private actors 'do' as they deem fit, guided by their rational self-interest and personal morality. Whatever the social ill at hand, legislators and (democratic) politics, or state intervention more generally, were best left out of the economic process – as violating the boundary between state and market was either going to be futile or perverse.[43]

This first imaginary of prosperity has contributed to the expansion of economic activity in this period,[44] while also leading to a significant privatisation of power and resources. It was the entrepreneur himself

[39] Foucault, 'The Birth of Biopolitics'.
[40] Mariana Mazzucato, *The Value of Everything: Making and Taking in the Global Economy* (Penguin UK, 2019).
[41] Adam Smith, *The Wealth of Nations* (Aegitas, 2016).
[42] John Maynard Keynes, 'The End of Laissez-Faire', in *Essays in Persuasion*, ed. Keynes (Palgrave Macmillan UK, 2010), 272–94.
[43] Albert O. Hirschman, *The Rhetoric of Reaction* (Harvard University Press, 1991).
[44] Carl Benedikt Frey, *The Technology Trap: Capital, Labor, and Power in the Age of Automation* (Princeton University Press, 2019).

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(at this time usually a man) who could decide how the accumulated surplus would be distributed, with little interference from the state in terms of taxation, health and safety rules, labour rights, or environmental standards. Entrepreneurs also had the power to decide what was being produced or done, how, and with what technologies: shaping thus the future in line with their own interest, without interference but the competition of other private actors.[45]

According to Keynes, several factors aided the institutionalisation of this particular imaginary of privatised prosperity in the relevant period.[46] First, the ineptitude of public administrators strongly prejudiced the 'practical man' in favour of *laissez-faire.* Second, other classes also had what appeared as their own idiosyncratic reasons to support this imaginary of prosperity. For instance, the class of lawyers readily embraced laissez-faire as it followed from, and cohered with, the highly formalist understanding of the institutions of property and contract that were developing around this time.[47] Ultimately, laissez-faire permeated even cultural institutions, entering into the educational books for the youngest, when, to quote Keynes, '*the political philosophy, which the seventeenth and eighteenth centuries had forged in order to throw down kings and prelates, had been made milk for babes, and had literally entered the nursery*'.

Yet just as Keynes was discussing the slow demise of laissez-faire, another fundamental invention emerged that will work to enforce the separation of the economy in social imaginary. Namely, the birth of the gross domestic product (GDP) measure enabled the representation of the economy with a single digit, containing the sum of all the processes of – commodified – production, distribution, and consumption in the formal economy of a particular territory.[48] And even if the makers of this measure realised the limitation of the GDP, the GDP soon became the

[45] This has not passed entirely without workers' protests. See Frey, *The Technology Trap*.

[46] It is not unthinkable that laissez-faire as a social imaginary was shared mostly by the middle and higher classes, the governing layer so to say. It was only imaginaries of prosperity post-WW2 (first shared and then privatised) that were shared throughout political communities – leading also to critique, however, of mass society, mass culture, consumerist society, pacification of working classes, and similar.

[47] This is, of course, not an accident: as I argue later, law is co-constitutive of imaginaries of prosperity. Each imaginary of prosperity produces its own legality, while law as an institution will continue to exercise some degree of independent influence provided that society adheres to the rule of law broadly understood. See this eminent Marxist historian for a cautious defence of the rule of law, E. P. Thompson, *Whigs and Hunters: The Origin of the Black Act,* 1st ed. [reprinted with a new postscript] (Harmondsworth [etc.]: Pantheon, 1975).

[48] Timothy Mitchell, 'Fixing the Economy', *Cultural Studies* 12, no.1 (1998): 82–101.

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main measure of prosperity: the continuous growth of this magical number indicating the success of the government in delivering prosperity, while its decline meant recession and difficult times ahead for any political party in power.

The boundaries of (political) economy drawn by the GPD served to reinforce the commodified and patriarchal conceptions of prosperity. Until this very day, the GDP disregards unpaid care (work) as something that produces value in the economy, and thus worth growing or investing in – despite the fact that the whole economy depends on it.[49] The GDP also fundamentally devalues nature and in contrast fosters extraction, attributing value primarily to what is commodified and exchanged – rather than to what is cared for and preserved. Trees, waters, fish, and air have value only if (cut and) sold.[50] Finally, in the system of national accounts, public spending in public administration, health, education, infrastructure, or care is in this framework considered to be consumption rather than investment – and thus something of a luxury, to "save on" in every crisis.[51] These *constitutive outsides* will however come to haunt the imaginaries of prosperity, as care, environmental, and infrastructural crises that we are currently experiencing.

Now, it took two world wars until the argument that the economy is not simply a self-regulating system, working in the general interest, became powerful enough to lead to real-world changes across many continents. There are, of course, institutional and material reasons for that, which I discuss in the next section. Here it suffices to say that around mid twentieth century, we see a different family of imaginaries of political economy taking hold: from experiments with the "actually existing" socialisms in "the East" to the welfare states in "the West". What these approaches shared is that they saw the state, the public, and collective actors as the core drivers of prosperity – if in different measures. The East fully nationalised the 'means of production', dispensing

[49] Nancy Folbre, 'The Unproductive Housewife: Her Evolution in Nineteenth-Century Economic Thought', *Signs: Journal of Women in Culture and Society* 16, no. 3 (1991): 463–84, https://doi.org/10.1086/494679.

[50] Frank Ackerman and Lisa Heinzerling, *Priceless: On Knowing the Price of Everything and the Value of Nothing* (The New Press, 2005). A questionable response is commodification and assetisaton of 'environmental services'; see Diana Liverman, 'Who Governs, at What Scale and at What Price? Geography, Environmental Governance, and the Commodification of Nature', *Annals of the Association of American Geographers* 94, no. 4 (1 December 2004): 734–38.

[51] Mariana Mazzucato, *The Entrepreneurial State: Debunking Private vs. Public Sector Myths*, 1st ed. (Anthem Press, 2013).

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with 'market economy' altogether (with the exceptions of Yugoslavia and Hungary in Europe).[52] The welfare states in the West nationalised considerable industries, owing often up to 25 per cent net national wealth in the 1970s (n.b. a number that today would be negative in countries such as the US or the UK[53]) and further focused on predistribution and redistribution, via tax, strong trade unions and democratic lawmaking.[54]

This period came to an end in the 1980s with another, this time peaceful democratic transition in the imaginaries of prosperity. Neoliberalism is best understood as a new imaginary of *privatised* prosperity, which postulated that the privatisation of power and resources – via deregulation, privatisation, liberalisation, flexibilisation, and financialisation – is the best route to prosperity. While many usually pinpoint Hayek and Friedman as the ideational leaders of neoliberalism, others have argued that far more consequential was a large infantry found among neoclassical economists and public administration graduates who have steadily introduced market-thinking into most fields of policymaking.[55]

This institutional transformation made 'efficiency' the central preoccupation of policymaking. First via the innocent objective of finding the most 'cost-efficient' way of realising public objectives, only to later turn efficiency itself into the public objective, by increasingly entrusting market mechanism ('allocative efficiency') to deliver on any remaining social or environmental objectives.[56] The central elements of the neoliberal policy recipe were the trio "deregulation, liberalisation, and privatisation", which rather than leaving private actors *alone* required governments to *expand* markets and competition to new areas, so that they could do their magic of delivering socially optimal (efficient) outcomes. Four central directions were taken: first was the privatisation and liberalisation of public utilities. Second, the support for the growth of finance via both deregulation and globalisation of finance. Third, the cutting of taxes as a means to introduce even more dynamism and

[52] Tony Judt, *Postwar: A History of Europe since 1945* (Penguin, 2006).
[53] For data, see this blog by Thomas Piketty. Thomas Piketty, 'Public Capital, Private Capital' *Le Monde* (2017), www.lemonde.fr/blog/piketty/2017/03/14/public-capital-private-capital/, last accessed 5 January 2024.
[54] Thomas Piketty, *Capital and Ideology* (Harvard University Press, 2020).
[55] Elizabeth Popp Berman, *Thinking Like an Economist: How Efficiency Replaced Equality in U.S. Public Policy* (Princeton University Press, 2022).Bram Mellink, Merijn Oudenampsen, and Naomi Woltring, *Neoliberalisme: Een Nederlandse Geschiedenis* (Boom Amsterdam, 2022).
[56] Berman, *Thinking Like an Economist*.

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attract investment. Finally, the 'new public management' aimed at transforming public institutions themselves, in order to deliver more "customer value" and "choice" on the one hand and to behave more efficiently (outsource and cut costs) on the other.[57]

To become successful, the privatised imaginary of prosperity had to tell a credible story of prosperity. It was promised that markets and competition will raise all boats – and that convinced many. Neoliberalism also gave a free pass to governments not to worry about justice, fairness, power, or financial stability: in this new brave win-win world, all that one hopes for (pro/sperare) will be taken care of by the well-functioning markets.[58] Enabling access to such well-functioning markets, as Micklitz and Patterson argue, has thus turned into the vehicle of justice ('access justice'), while non-discrimination has become important both as a matter of justice and optimising market functioning.[59]

Many thought that the 'great financial crisis' of 2008, as it has come to be known in recent years, made clear that the neoliberal imaginary of prosperity had left too many issues unattended to. But curiously, with the exception of the regulation of the banking sector in Europe, not much has changed in the imaginary of prosperity embraced thereafter. The EU and its member states (MSs) still believed in the salutary effects of (international) competitiveness, privatisation, liberalisation, and deregulation– this time around, combined with austerity'.[60] The first shake-up of this "zombie neoliberalism" came only in 2016, with Brexit and the election of Donald Trump.

Returning to Esposito, we can see two opposing tendencies when it comes to the 'instituting praxis' in relation to the (representations of the) economy. The *naturalising* representations include, first, the deepening of the imaginary boundary between economy and politics/society, via various objectifying tools, such as GDP, or various indexes and measures. Second, the commitment to empowering private actors (via deregulation, tax breaks, and free hand to shape technological futures) also naturalises

[57] Vivien A. Schmidt and Mark Thatcher, 'Why Are Neoliberal Ideas So Resilient in Europe's Political Economy?', *Critical Policy Studies* 8, no. 3 (2014): 340–47.
[58] Berman, *Thinking Like an Economist*.
[59] Hans-W. Micklitz and Dennis Patterson, 'From the Nation State to the Market: The Evolution of EU Private Law', *SSRN Scholarly Paper* (Social Science Research Network, Rochester, NY, 1 June 2012).
[60] Schmidt and Thatcher, 'Why Are Neoliberal Ideas So Resilient in Europe's Political Economy?'

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the economy as it leaves to chance – that is the whims of the individual self-interests – the responsibility of delivering prosperity, innovation, or better futures. Third, naturalisation also operates via *narrowing* of our understanding of humans and society: simple models, such as famous homo economicus, price systems, or self-regulating markets, are necessary to be able to imagine and represent social institutions as *nature-like*. Finally, the naturalisation of the economy also presupposes the unsuitability of collective and public institutions to govern, while in turn also bringing such incapacity about via privatisations, outsourcing, consultancies, austerity, etc.[61]

On the other hand, the instituting praxis of collectivising/socialising/democratising the economy (I use these terms interchangeably) implies, first, the assumption of the attitude of *collective self-determination* also vis-à-vis the economic institutions. Economy and markets are no longer seen as separate self-regulating systems, given to people by their own 'human nature', but instead as social 'institutions' made also through politics, law, and collective decision-making. Second, it is the empowered public, collective, or democratically governed actors – rather than private actors – who are seen as both responsible and able to bring about prosperity and better futures. Third, the socialisation of the economy will compel the *thickening* of our understanding of humans and society: humans, and their organisation, have (and can act on) a complex set of interests and values. Price systems alone cannot express or mediate those interests and values. Finally, the democratisation of the economy will require the spread of democratic processes beyond simple politics. As the economy is itself seen as being instituted, and thus political, some degree of democratic accountability and participation will be necessary throughout. Thus, for instance, the democratisation of power in the workplace (today, for instance, via worker participation, worker ownership, steward ownership, stakeholder governance, etc.), as well as the democratisation of decisions about technological futures, may be required.

2.2.3.2 On the Translation Role of Democratic Institutions

The struggles about the boundary between economy and politics have particular dynamics in democratic societies. Democracies try to

[61] Mariana Mazzucato and Rosie Collington, *The Big Con: How the Consulting Industry Weakens Our Businesses, Infantilizes Our Governments, and Warps Our Economies* (Penguin, 2023).

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translate – without revolutions – the discontents into institutional change. In a healthy democracy, resistance and contestation at times when the imaginary of prosperity ceases to create trust in its route to prosperity should find sufficient expression in democratic politics and eventually penetrate policy and law-making. And this is exactly what happened when welfare state imaginaries became increasingly contested in relation to the economic crisis in the late 1970s and early 1980s, and we have seen what without much exaggeration may be called a democratic transition to neoliberal imaginaries of prosperity.

In Chapter 3, I unpack the mechanics of the institution of neoliberalism on the background of the transformation of the EU's consumer policy from 1975 until the present day. This systematic analysis shows how neoliberal ideas about state and market, public and private, continually 'trickled down' as 'bits and pieces' into EU policy-making, gradually introducing variation in how we understand the basic elements of our social ordering, be it consumer, economy, the role of government, the role of law, etc. For instance, we have seen how consumers were gradually turning from weaker actors in need of governmental protection to competent actors in the market, who first needed to become more mature (i.e. less conflictual), then had to accept trade-offs, to be finally called to act responsibly and shop around cross-border in order to 'reap' the benefits of the internal market. Even as these bits and pieces of the new thinking continued to accumulate, quantitatively, there was still much of the thinking that resisted. For instance, next to accepting trade-offs and improving their capacities to reap better prices, one could still find a passage, here and there, that suggested that consumers needed protection, the issue of fairness popped up, or the argument that consumer organisations need to be strengthened to represent consumers' collective interests.

At some point, however, these *old* ideas gave in. There is a moment of *radical transformation* in the EU policy thinking from around 1997, when we can observe a *qualitative* leap (rather than just a *quantitative* increase of neoliberal discourse as was the case before that) in the language that the Commission relied on in EU consumer policy. From this moment onwards, there was little hesitation, little lip service paid to the old normative concerns such as protection, justice, fairness, power asymmetries, and harshness of contractual terms. Henceforth, policy prescriptions are presented with a remarkable degree of coherence and confidence, elegantly and persuasively, as if

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assuming the unwavering social consensus underpinning the new vision of the world.[62]

Of course, consumer law and policy were not – and could not be – the exceptions in the grounding of the new imaginary in the EU at the end of the 1990s. In fact, those studying different areas of law would notice this transformation independently in their own fields – be it in the area of tax law,[63] in the area of labour law,[64] in the area of company law,[65] as well as in EU institutional law.[66] At the level of the EU MSs, it is remarkably also a moment when the third-way social democrats of Tony Blair and Gerhard Schroder win elections in the UK and Germany – with the promise of unleashing the power of capitalism and individualism, seasoned by a dash of social democratic concerns. It is around this moment of *revolution* that the neoliberal imaginary of prosperity is, I believe, at the peak of its socially integrative function, being able to rely on strong social consensus about its route to prosperity, engendering broad trust in a prosperous future.

Now, one would expect the same gradual transformation to take place in the aftermath of the 2008 great financial crisis: democratic and expert institutions picking up on more fundamental criticism and slowly changing their (foreground and background) assumptions as to how the world (i.e. political economy) fits together, translating some of this hesitation in its law and policymaking. However, despite the

[62] See Chapter 3. Clearly, the social consensus was never entirely perfect. The EU courts, for instance, have been less enthusiastic in adopting the same market language in consumer law. Its integrationist agenda, which was set to be filled by political institutions with market efficiency, still came paired with some degree of concern for interpersonal justice and the protection of weaker parties, especially in the wake of the 2008 economic crisis. See, for instance, Candida Leone, 'The Missing Stone in the Cathedral: Of Unfair Terms in Employment Contracts and Coexisting Rationalities in European Contract Law' (University of Amsterdam, 2022), available at https://pure.uva.nl/ws/files/48074023/Thesis_complete_.pdf.

[63] Jussi Jaakkola, 'Taming the Leviathan or Dismantling Democratic Government? Evolving Political Ideas on Spontaneous Income Tax Integration in the European Union', *European Law Open* 2, no. 3 (2023): 575–615.

[64] Ruth Dukes, *The Labour Constitution: The Enduring Idea of Labour Law* (Oxford University Press, 2014).

[65] Thomas J. Andre Jr., 'Cultural Hegemony: The Exportation of Anglo-Saxon Corporate Governance Ideologies to Germany', *Tulane Law Review* 73, no. 1 (1998): 69; Martin Gelter, 'EU Company Law Harmonization between Convergence and Varieties of Capitalism', in *Research Handbook on the History of Corporate and Company Law* (Edward Elgar Publishing, 2018), 323–52.

[66] C. Joerges et al., *Mountain or Molehill?: A Critical Appraisal of the Commission White Paper on Governance* (New York University School of Law, 2001).

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considerable criticism and resistance to neoliberalism by this point, we do not see democratic and expert institutions changing perceptively their understanding of the role of law (is self-regulation really a panacea?), economy (is trickle down working well enough?), politics (do all groups in society really have only a common interest in "well-functioning" markets?) or government (should governments just facilitate markets?) until the end of the 2010s. The EU as well as its MSs instead doubled down on the privatised route to prosperity by adding austerity to the mix – making sure that the less privileged segments of society pay double the price for the excesses of financial capital. What is more, institutions also continued boosting the economic recovery that did not take seriously the lived experience of many,[67] and repeating neoliberal receipts that could hardly engender confidence in a "better future" among large segments of society.

The sequel to the 2008 great economic crisis is instructive because it allows us to see what happens if democratic and expert institutions do *not* turn to instituting a different, more credible imaginary of prosperity, despite a broadly felt crisis. As the neoliberal ideology at this point of time increasingly ceases to provide a symbolic framework within which many people could understand their socio-economic lives, we can observe a growing mistrust in most institutions that we connect with modernity – democratic institutions, but also science or mainstream media. Similarly to the 1930s, it is the incapacity of democratic institutions to articulate and represent the lived experience of many post-2008 that made those very institutions appear irrelevant or "rigged" to a growing part of the population.[68] If democratic institutions cannot *renew* imaginaries of prosperity to ensure that people feel connected to society via the shared hope in a prosperous future, many will turn elsewhere for meaning and connection. Yet the main alternative to prosperity – tribal imaginaries – as I discuss later in Section 2.3, do not need democracy, pluralism, science, or critical media.[69]

2.2.3.3 Between Ideas and Interests

Why did we not see the shift in the imaginaries of the political economy post-2008 – even if it was quite clear that neoliberal privatised prosperity

[67] Haldane, 'Whose Recovery?'

[68] Jeff D. Colgan and Robert O. Keohane, 'The Liberal Order Is Rigged: Fix It Now or Watch It Wither', *Foreign Affairs* 96, no. 3 (2017): 36–44.

[69] C. Joerges and N. S. Ghaleigh, *Darker Legacies of Law in Europe: The Shadow of National Socialism and Fascism over Europe and Its Legal Traditions* (Hart Publishing, 2003).

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did not work (any longer)? It was certainly not the problem of the scarcity of ideas or alternatives. But ideas were not enough. I single out here three weighty reasons as to why the governing institutions did not face up to reality and attempt to change course – leaving, likely, a number of other powerful explanations unaddressed.

First and foremost, in capitalism, with mostly privatised money supply, a democratic transition to shared prosperity will be made more difficult due to the structural dependence of the state on taxation and thus also on the capital. States, and their governing elites, aspire to have a strong, well-resourced, internationally competitive, and technologically powerful "productive sector", as otherwise the state may face two problems: (a) weakening its geopolitical and geoeconomic relevance and (b) not having the means to fill its public purse, making it difficult for the state to "pay" for things people care for, today and in the future.[70] If this is what one believes – and that seems to be the case as this is what the parties on the political right argue strongly about each and every election –many policy choices will remain foreclosed by this (imagined or not) dependence.[71]

Second, this problem is made more acute by the fact that politicians and technocrats in democracies are generally *risk-averse*; thus proposals that seem radical or unpredictable may not fare very well – with the onus historically weighing more on the proposals that favoured sharing rather than the privatisation of resources and power.[72] Thus whenever politicians muster the courage to go for proposals aimed at a greater democratic control of the economy, for instance, inspired by their constituencies, social movements, or academic knowledge, the well-resourced finance and industry lobbies will mobilise to portray the changes as too dangerous or too risky.[73] Even the proposals that were a reality just a couple of years earlier, or are entirely "normal" abroad, may appear as outlandish ideas.[74]

[70] Sum and Jessop, *Towards a Cultural Political Economy*.

[71] The driver of the dependency is the set up of the monetary system, with the centrality of private money. See, for instance, Stephanie Kelton, *The Deficit Myth: Modern Monetary Theory and How to Build a Better Economy* (Hachette UK, 2020).

[72] Hirschman, *The Rhetoric of Reaction*.

[73] One of the best sources for insights into corporate lobbying in Europe is provided by Corporate Europe Observatory, with their flagship reports available at https://corporateeurope.org/en/reports.

[74] For instance, in the US the demand for universal health coverage may lead to the accusation that you are a socialist even if the entire Europe has such a system – without there being a threat of sliding to socialism (Bernie Sanders, *It's OK to Be Angry about*

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Third, neoliberalism itself has benefited several groups, which in turn could exercise a growing influence on politics. Consumers *as* consumers benefited from the cheapness and abundance of consumer goods. (Over) consumption has at least partially compensated for the falling labour share of income in most 'developed' economies.[75] Today, many far and extreme right parties promote a conception of prosperity that relies on throw-away cheap goods, which "green elites" are allegedly trying to take away.

But neoliberalism has also benefited, and far more for that matter, some concentrated groups in society – for example the managers and shareholders of ever bigger corporations, inherited wealth holders, the managers of financial institutions, transnational lawyers, accountants, the finance industry, the consultancy industry, the real estate sector, etc. For most of these groups, their taxes decreased and their share of wealth increased, at times dramatically. Today, the level of inequality is past the nineteenth-century levels, thus being the highest in history.[76] With these levels of inequality, one should not be surprised that capital has exercised such a grip on power post-2008.

2.2.3.4 On the Role of Law

Law is vital to *instituting praxis* in a very specific sense of being the core vehicle for translating the imaginary into norms. But by looking at law, we can also understand how a given society relates (or not) to its power to *institute* itself. In political and social theory, law has always played an important role. The 'rule of law' has been seen as a core imaginary of modernity,[77] a facilitator of democratic governance,[78] and the main public tool to govern modern economy and society.[79] If anything, law's (practical) eminence has continued to expand over the past decades and

Capitalism (Crown, 2023). Or in Europe, suggesting that the rich need to pay more taxes – way below the post-war consensus – is still seen as 'tax threatening' even by those who put social security as the top issue on their political programme. For instance, a popular Dutch politician, Pieter Omtzigt, who has recently set up a successful political party 'New Social Contract' has made a statement to this effect in the RTL TV debate, in the context of the Dutch 2023 election campaign, www.bnr.nl/nieuws/politiek/10530449/bezuinigen-of-belastingverhoging-lijsttrekkersdebat-rtl-draait-om-deze-vraag, last accessed 5 January 2024).

[75] Branko Milanovic, *Global Inequality: A New Approach for the Age of Globalization* (Harvard University Press, 2016).

[76] Thomas Piketty, *Capital in the Twenty-First Century* (Harvard University Press, 2014).

[77] Thompson, *Whigs and Hunters*.

[78] Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Polity Press, 1997).

[79] Max Weber, *Economy and Society*, new ed. (University of California Press, 1992).

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centuries, with law regulating an ever-growing number of social relations, in a process that has been sometimes critically called 'juridification'.[80] Today, the EU produces thousands of pages of law per year, to be added to all those pages produced at the national level. This is clearly not without consequence for law's self-understanding and for its function in society.[81] Law's normative sweep is not only related to its seeming omnipresence but more recently also to its political bite. As the world nears the climate catastrophe in an ever quicker tempo, there has been a growing body of environmental and climate court cases that give legal value and relevance to what previously was seen only as political and/or scientific claims. This politically contested development has nevertheless much to teach us about the law as both part of imaginaries of prosperity and an independent social institution.[82]

We can distinguish three ways in which law can be appreciated as an expression of modern social imaginaries. First, law has been an important discourse and a part and parcel of the story of political economy – that is what prosperity means and how to achieve it.[83] Second, law is a central tool for instituting ideas, translating them into norms, institutions, and ultimately practices – backed by coercive state apparatus. Third, and perhaps most easily recognised by lawyers, law is also a separate institution, with its own time, rationality, and values.[84] While not separate from society in any thicker sense, it is still an institution with its own actors, norms, and rationalities – which can work to resist,

[80] Jürgen Habermas, 'Legitimation Problems in the Modern State', in *Communication and the Evolution of Society*, ed. Habermas (Beacon Press 1979).

[81] Hans-W. Micklitz, 'The Measuring of the Law through EU Politics', in *The Politics of European Legal Research* (Edward Elgar Publishing, 2022), 223–38.

[82] Chantal Mak, 'Giving Voice: A Public Sphere Theory of European Private Law Adjudication', *European Law Open* 2, no. 4 (2023): 697–723; Chantal Mak and Betül Kas, *Civil Courts and the European Polity: The Constitutional Role of Private Law Adjudication in Europe* (Bloomsbury Publishing, 2023); Laura Burgers, 'Private Rights of Nature', *Transnational Environmental Law* 11, no. 3 (November 2022): 463–74.

[83] Chantal Mak, 'Giving Voice: A Public Sphere Theory of European Private Law Adjudication', *European Law Open* 2, no. 4 (2023): 697–723; Chantal Mak and Betül Kas, *Civil Courts and the European Polity: The Constitutional Role of Private Law Adjudication in Europe* (Bloomsbury Publishing, 2023); Laura Burgers, 'Private Rights of Nature', *Transnational Environmental Law* 11, no. 3 (November 2022): 463–74. Three Globalizations of Law and Legal Thought: 1850-2000" by Duncan Kennedy and Legal Thought: 1850–2000', in *The New Law and Economic Development: A Critical Appraisal*, ed. Alvaro Santos and David M. Trubek (Cambridge University Press, 2006), p. 19.

[84] Emilios Christodoulidis, *The Differentiation and Autonomy of Law* (*Elements in Philosophy of Law*) (Cambridge University Press, 2023).

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soften, or push for change. Law is thus simultaneously a discourse, an instrument, and an institution.

Law as discourse is co-constitutive of the imaginaries of political economy. As I show in the empirical chapters, how we think about law, about its normative power, has been shaped by the prevailing imaginaries of prosperity. When the imaginaries of prosperity that favoured the privatisation of power and resources prevailed, law has tended to hollow out its own normativity, via deregulation, self-regulation, or deference, in order to leave world-making power to private actors. In contrast, when more collective imaginaries prevailed, law has assumed a more normative posture, instituting public decisions on how both power and resources should be shared via mandatory rules that aim to tackle the structural features of the economy and society.

Law is discourse in yet another, second sense: it has important legitimatory and normalising functions. Legal imaginaries – such as rule of law, positivism, formalism, materialisation, freedom of contract, and similar – add legitimacy to (different kinds of) political economy. For instance, freedom of contract has been important to imaginaries of privatised prosperity, adding veneer of legitimacy to the freedom to choose to work long hours, to enforce the acceleration clauses in mortgage contracts, or to shield a strong protection of intellectual property rights in the pharmaceutical industry. But freedom of contract has also been fundamental to justify large interventions on behalf of substantive rather than formal freedom and equality, as it concerns the protection of labour rights, tenancy, and similar.[85] This ambiguity or indeterminacy of law, which has ultimately enabled law to shift with social imaginaries, has also been one of the major reasons for both its praise and its criticism.[86]

The empirical chapters also speak to this legitimatory power of law in a twofold sense. We will see that the legal discourses that place values and concerns such as (in)justice, (un)fairness, power (asymmetries), bargaining power, and interdependence as central usually appear when imaginaries of 'shared prosperity' are more dominant. In contrast, legal discourses that stress choice, freedom of contract, self-regulation, formal

[85] Martijn Willem Hesselink, *Justifying Contract in Europe: Political Philosophies of European Contract Law* (Oxford University Press, 2021); P. S. Atiyah, *The Rise and Fall of Freedom of Contract* (Oxford University Press, 1985).

[86] M. Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press, 2006).

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equality, or information (asymmetries) have been central to the legal discourses associated with privatised prosperity. Legal discourses of privatised prosperity were often amplified by discourses that profess deference to market or technology (law "lags behind"), while legal discourses in collective imaginaries have in fact stressed the public and democratic control over these other social spheres.

Second, law is one of the most important tools for instituting imaginaries into institutions and practices in modernity.[87] All social reformers, those on the "Left" and those on the 'Right", have used law to shape social reality to their liking. Consider, on the one hand, the welfare reforms including labour and tenancy law, European 'common agricultural policy', or the international proposals for the 'NIEO'.[88] Or consider, on the other hand, the large-scale *legal* projects of liberalisation and privatisation of public utilities over the past decades, which required large numbers of rules and regulations and thus were nothing short of major intervention.[89] Importantly, these processes of legal institution have *future effects*, by normalising the present and by shaping what may be accepted as a "*non-radical*" proposal in the future. Thus, by instituting certain norms, institutional arrangements, or modes of justification, law not only legitimises such present arrangements but also presents constraints on the *compossible futures*, as the divergence from outcomes, distributions, and values will always require more collective energy than maintaining the status quo.

Two examples. The ecodesign framework has over the last couple of years quite gradually expanded what 'product' stands for. It has expanded the understanding of the product as a set of relations – of production, distribution, consumption, and disposal – entrenching that the product cannot be seen in isolation from these relations. The recent expansion of the ecodesign framework to include certain circular economy principles – such as durability, recyclability, second-hand products, and repair – was made sufficiently imaginable by the previous iterations of law-making. These recent rules requiring a visible departure

[87] Much conversation in law is about whether one is 'instrumentalist' about law or not. But that discussion is mute, I want to suggest, as law is both a discourse, an instrument, and an institution.

[88] Ingo Venzke, 'Possibilities of the Past: Histories of the NIEO and the Travails of Critique', *Journal of the History of International Law/Revue d'histoire du droit international* 20, no. 3 (2018): 263–302.

[89] Hans-W. Micklitz, 'The Visible Hand of European Regulatory Private Law – The Transformation of European Private Law from Autonomy to Functionalism in Competition and Regulation', *Yearbook of European Law* 28, no. 1 (2009): 3–59.

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from unqualified consumerism and economic growth were not only imaginable but even realised.[90] The contrasting example comes from the field of industrial policy.[91] Long seen as an unwanted child, over the past decade we have seen a growing policy focus on industrial policy, with more transformative ambitions post-European Green Deal. However, without a significant degree of legal institutionalisation, we have witnessed a relatively quick lapse into a publicly financed ("derisked") market approach[92] once the EU became concerned with lagging behind its competitors (US and China). The Net Zero Industrial Act not only commits public support in terms of subsidies and tax breaks to the clean technology industry but does so without many conditionalities in terms of social or environmental standards or continued public say. The law makes very few choices as to the kind of clean industries that should be publicly financed in this way: ultimately, everything goes according to this Act, from carbon storage to dirty hydrogen. The public discussion as to what kind of 'clean economy' we want (and can realistically get) has never really taken place.

Third (and final), as most lawyers know all too well, law is also a separate institution with its own time, norms, and rationalities. As such, law does not necessarily only *follow* the shifts in the imaginaries of prosperity, but at times can also act as an accelerator of shifts or a buffer of (sometimes negative) side effects. One of the reasons is that law is closer to the *ground*, making it an institution where contestation can take place before or next to political contestation.[93] This could be well observed during the great financial crisis, when the Court revived the unfair terms directive – the "Sleeping Beauty" to cite Micklitz and Reich – to strike down unfair provisions in mortgage contracts.[94] All the while, the European Commission and the other EU institutions, then still in the neoliberal mode, put in place a new mortgage directive mainly concerned with screening customers rather than protecting them against widespread misuse of power and harsh credit conditions. But as the recent work of Leone Niglia argues, the European Court of Justice running at its own tempo may have "caught up" with the neoliberal turn

[90] See Chapter 5. [91] See Chapter 6.
[92] Daniela Gabor, 'The (European) Derisking State', *UWE Bristol WP* (2023).
[93] Irina Domurath and Chantal Mak, 'Private Law and Housing Justice in Europe', *The Modern Law Review* 83, no. 6 (2020): 1188–1220.
[94] Hans-W. Micklitz and Norbert Reich, 'The Court and Sleeping Beauty: The Revival of the Unfair Contract Terms Directive (UCTD)', *Common Market Law Review* 51, no. 3 (1 June 2014): 771–808.

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in recent years[95] – exactly when the other institutions may be moving on.

Law has an intimate relation to modernity. Its various doctrines and principles have served to justify different types of political economy. At the same time, law goes beyond discourse only. It is one of the central tools, or instruments, for instituting ideas in social reality, and thus law shapes not only the present but also the imaginable futures. This law's role is further reinforced by its own institutional apparatus that operates in accordance with its specific principles, values, and persons, having thus also a *rationality* of its own that does not map one to one on political and economic discourses. And while law is certainly not without ambiguity,[96] the respect for the 'rule of law' – including its aspiration to justice and the limitation of arbitrariness – is something that sets imaginaries of prosperity, and democratic and pluralist societies, apart.

2.3 Prosperity

In 'The Crisis of Democratic Capitalism', a renowned Financial Times journalist Martin Wolf argues that democracy cannot survive without capitalism – and vice versa. Wolf suggests that democratic societies need a capitalist private sphere that rests on profit motive and a healthy degree of capital accumulation, as the necessary counterpart to democracy and collective self-determination.[97] Only if capitalism becomes too capitalist, so to say, will it undermine – rather than sustain – democracy.

While much can be challenged on his claim, Wolff does have an important intuition. That is, political economy has something to do with democracy, at least in large pluralist societies. Where Wolff, however, seeks the anchoring of democracy in a particular historical version of political economy, the capitalism[98] (of the mid twentieth century), my

[95] Leone Niglia, *The Structural Transformation of European Private Law: A Critique of Juridical Hermeneutics* (Bloomsbury Publishing, 2023).

[96] David Kennedy, *A World of Struggle: How Power, Law, and Expertise Shape Global Political Economy* (Princeton University Press, 2016).

[97] Martin Wolf, *The Crisis of Democratic Capitalism* (Penguin Press, 2023).

[98] I do not operate with the concept of 'capitalism' in this book, because I find the concept overdetermined. We have seen so many different variations of 'capitalist political economies', with fundamentally different understandings of profit or property, or fundamentally different distributive outcomes, so that putting them in one basket is analytically unhelpful. What is more, I do not think that overcoming capitalism should be the goal in itself, for many different reasons. Rather developing a realistic and inclusive conception of prosperity is what ought to keep people busy, both intellectually and politically.

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contention is that various varieties of capitalisms have been central to democracy for another reason: namely because they present a subset of *imaginaries of prosperity*. Imaginaries of prosperity create a *right kind* of social glue, a sufficiently thin conception of good life that can be shared in large pluralist societies. This also means that there is no overcoming of (different varieties of) "capitalisms" without a different set of shared background beliefs and understandings as to what prosperity means and how a society can get there.

Importantly in my view, the *imaginaries of prosperity* are not an expression of simple politics – of being on the right or the left on the political spectrum. Rather they present background preconceptions as to the relations between economy and politics, between the market and the state. They in turn define how we understand left and right, public and private, as well as the individual and collective. Or, put differently, the whole political spectrum moves with the shifts in the imaginaries of prosperity. It is in this sense that they present a shared social imaginary: they can integrate societies exactly because they can bridge the divisions of "normal politics". That is, until they cannot – as we witness today with the shift to tribalism, which moves away from prosperity altogether and relies on some sort of dominant identity as a vehicle of social integration.

In what follows, I will first try to clarify what people in the Global North understand as prosperity. While many equal prosperity to consumerism or economic growth, we have good reasons to believe that what we hope for (*pro/sperare*) seems to be far more related to happiness and safety, today and in the future, than to SUVs and large mansions (Section 2.3.1). After, I turn to discuss the four central questions related to prosperity in Europe today: of prosperity and democracy (Section 2.3.2), of prosperity and technocracy (Section 2.3.3), what is the historical role of the EU at present (Section 2.3.4), and how to understand prosperity's other – tribalism (Section 2.3.5).

2.3.1 *On the Meaning of Prosperity (Today): More about Happiness than Consumerism*

What do people hope for? Is it an ever-larger amount of consumer goods that makes people (feel) prosperous? Or do they hope for something else? Most economists would link prosperity today to economic growth. Investment, innovation, and increases in productivity lead to a more capacious economy, producing more and cheaper goods, which in turn can be bought and enjoyed by an ever-bigger segment of the population,

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in ever-bigger quantities. More goods for less money, thus making everyone more prosperous: without ever having to rise the question of distribution. This "contestation free" prosperity, some suggest, is what grounds the current "addiction" of democracies to economic growth – people can have a more prosperous future without political struggles over the difficult questions of (re)distribution.[99]

The only problem with this economic understanding of prosperity is that it seems ever less credible in the context of the numerous crises we are facing. The logical solution has been to respond to environmental crisis by *greening* economic growth. If we make goods and services green, decouple growth from the use of material resources, and make the world net neutral, we can land in the green version of the present. This future seems like a non-brainer, as it relieves us from painful choices, while staying within the carrying power of Earth. The question remains whether it is a possible future: so far, this approach seems to be failing on both the environmental front (over the past couple of years, the use of material resources and energy has continued to rise[100]) and the social front, at least judging on the basis of the growing opposition to the green transition as envisaged by this programme.

The question I want to ask in this section is, however, whether our starting position is correct: is it consumption and, if so, what kind of consumption, that makes people thrive? Is there something essential in our present-day conception of prosperity that makes the permanent expansion of productive capacities a necessity? This is not only a theoretical question. If prosperity is central to democracy, and we cannot muster a credible conception of prosperity for a finite planet, we may be doomed to a violent autocracy or theocracy in the midst of climate collapse.

I want to explore this question of what we understand by prosperity today, not via any macroeconomic indicators but in a micro sense, that is how people themselves think about prosperity. To this end, I have settled for one political cleavage that has emerged in the wake of the 2008 crisis,[101] namely the complaints of the generation of the so-called millennials (born between 1981 and 1995) vis-à-vis the generation of

[99] John Barry, 'Green Republicanism and a "Just Transition" from the Tyranny of Economic Growth', in *Green Politics and Civic Republicanism* (Routledge, 2022), 59–76.

[100] See, for instance, Centre for Sustainable Research Factsheets, on Energy https://css.umich.edu/publications/factsheets/energy and on Material Resources https://css.umich.edu/publications/factsheets/material-resources.

[101] Kate Alexander Shaw, 'Baby Boomers versus Millennials: Rhetorical Conflicts and Interest' (Sheffield Political Economy Research Institute (SPERI), 2018).

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their parents, 'baby boomers' (post-war babies). This short excursus is not aimed, however, at exploring in any detail the broader issues of intergenerational politics or intergenerational justice, but rather to attempt to distil more generally what prosperity may mean today, and any future expectations that may be connected to it.

The main concern raised by millennials has been that they have far worse chances of being prosperous than their parents. In general press, this conflict comes under titles such as 'Dashed Dreams: European Millennials Expect a Worse Life than Their Parents',[102] or 'Many Millennials Are Worse Off Than Their Parents'.[103] There are several interesting elements to this political cleavage. First, it has emerged post-2008 crisis, making it clear that the sense of the *loss of prosperity* spreads beyond the practically educated older population, and includes also a well-educated, younger generation. Second, this cleavage has been sustained by both the Left and the Right of the political spectrum, suggesting that there is some "common sense" about it.[104] Third, and finally, while broadly shared, the material comparison between millennials and their parent generation is not unambiguously in favour of baby boomers.[105] This also reveals that the concerns raised are located more in the sphere of future expectations, in the sphere of imaginary, so to say, than in the simple present.

In general media, the concerns of millennials are described as follows. Unlike baby boomers, millennials are said not to be able (as early or as easily) to afford housing,[106] to marry, or to have kids.[107] Millennials tend to be more indebted from the start, due to the costs of education, and they have to live with their parents, because housing is unavailable, which in turn makes it impossible to "grow up" and have a family and

[102] Matthew Elliot, 'European Millennials Expect a Worse Life than Their Parents, Survey Shows', *Youth Time Magazine* (2018), https://youthtimemag.com/dashed-dreams-european-millennials-expect-a-worse-life-than-their-parents-survey-shows/, last accessed 30 December 2023.

[103] Tami Luhby, 'Many Millennials Are Worse Off than Their Parents – a First in American History', *CNN Magazine* (2020), https://edition.cnn.com/2020/01/11/politics/millennials-income-stalled-upward-mobility-us/index.html, last accessed 30 December 2023.

[104] Shaw, 'Baby Boomers versus Millennials'.

[105] Jean Twenge, 'The Myth of the Broke Millennial: After a Rough Start, the Generation Is Thriving. Why Doesn't It Feel That Way?', *Atlantic* 2023, www.theatlantic.com/magazine/archive/2023/05/millennial-generation-financial-issues-income-homeowners/673485/; Roula Khalaf, 'Millennials Are Not as Badly Off as They Think – But Success Is Bittersweet', *FT* 2023, www.ft.com/content/6f7d7522-42e9-43cb-bd73-36eee6681f3e, last accessed 30 December 2023.

[106] Khalaf, 'Millennials Are Not as Badly Off as They Think'. [107] Ibid.

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their own children.[108] They also enter the economic system that has made insecurity and competition the cornerstone of economic and social life.[109] At the same time, the chances that millennials will enjoy excellent health care and pensions similar to those of their parents are dubious at best[110] – a constellation made even more complicated with raising concerns about the long-term liveability of the planet.[111]

What is interesting about this list is that the complaints, or concerns about prosperity ("having it as good as parents") have relatively little to do with conspicuous consumption, such as big cars, luxurious furniture, fancy holidays, or powerful home appliances. Prosperity for millennials is about securing basic material, social, and institutional goods. This includes the capacity to afford a house, that is to put down roots in the way that previous generations did.[112] Furthermore, the stability of a housing situation is also one of the preconditions for forming many meaningful social relations – including those that signpost 'adulthood' such as marriage or having children. The other amenity to be able to have children is the accessibility and affordability of childcare and education – something that is ever more difficult in the context of privatised care. To thrive, many millennials further imagine an economy that would provide less insecurity and competition, and more security and cooperation (as it did for their parents). This connects to the overarching concern with the inequality of wealth and opportunity, often expressed in who gets a chance to buy a (first) house or not. Finally, having a liveable planet, and a prospect of good health (care) and a decent living at old age, presents long-term concerns that are fundamental for a sense of prosperity today as in the future.

So, what can we learn about the *content* of prosperity based on this list? Today, like in the past, prosperity will indeed require some material basics, such as a house or a means of sustenance. But to thrive, flourish,

[108] Patrick Collinson, 'UK Millennials Second Worst-Hit Financially in Developed World, Says Study', Guardian 2018, www.theguardian.com/money/2018/feb/19/uk-millennials-second-worst-hit-financially-in-developed-world-says-study, last accessed 30 December 2023.

[109] Alan France, *Understanding Youth in the Global Economic Crisis* (Policy Press, 2016).

[110] Andy Green, *The Crisis for Young People: Generational Inequalities in Education, Work, Housing and Welfare* (Springer, 2017).

[111] Brian Barry, 'Sustainability and Intergenerational Justice', in *Intergenerational Justice* (Routledge, 2017), 183–208, www.taylorfrancis.com/chapters/edit/10.4324/9781315252100-10/sustainability-intergenerational-justice-brian-barr, last accessed 5 January 2024.

[112] Green, *The Crisis for Young People*.

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and prosper, a range of social and institutional goods remain necessary.[113] The sense of malaise today is related, on the one hand, to the systemic failure of the still instituted imaginary of prosperity – neoliberalism – to ensure that people have secure access to the basic basket of material, social, and institutional goods that are necessary for thriving. The commodification of many of these fundamental goods over the past forty years has made the financial insecurity created by neoliberalism much more dramatic for this generation, as their access to such goods is conditioned by their (strained) financial resources. On the other hand, the current prosperity also does not offer a convincing *route* to future prosperity, which would make clear how these goods will become (readily) available in the coming time: ever cheaper toasters cannot guarantee a safe and prosperous future.

The good news is that (over)consumption, or the availability of SUVs, is not what will cut it for the imaginary of prosperity. In fact, people want rather simple foreseeable things. A new definition of prosperity will have to provide a convincing story of how basic material, social, and institutional goods will be provided, not only today but also in the future, and in the face of all the challenges we face. Such a story will have to contain a new understanding of how macroeconomic and microeconomic institutions can effectively provide the mix of basic goods that prosperity requires. Anything less of that will *not* do: just consider that today (end of 2023) the economic situation in many European countries is not altogether grim, with the highest rates of employment in years.[114] And yet, loss of prosperity is what seems to drive many people to vote for extreme right parties, as only 'prosperity chauvinism' seems to provide a vaguely credible promise of securing prosperity also in the future.[115]

[113] Including healthy relations, social standing and recognition, personal security, a degree of autonomy in personal and collective life, having meaning and purpose, caring for others and being cared for, health and education, rewarding work and sufficient leisure, and so forth.

[114] See Eurostat statistics on (un)employment across Europe, from 2009 to the present. Eurostat, 'EU Labour Market Quarterly Statistics' (2023), https://ec.europa.eu/eurostat/statistics-explained/index.php?title=EU_labour_market_-_quarterly_statistics, last accessed 5 January 2024.

[115] According to Greve, economic insecurity correlates with the degree of support for multiculturalism in all European countries (with the exception of Hungary, at one, last measuring point in 2016). Bent Greve, *Welfare, Populism and Welfare Chauvinism* (Policy Press, 2020), p. 147.

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2.3.2 *Of Prosperity and Democracy*

The core argument of this book is that prosperity is fundamental for democracy. That is, democratic institutions depend on the broadly shared *imaginaries of prosperity* as a *democracy friendly* ground for social integration. Imaginaries of prosperity – resting on the shared belief in a prosperous future – provide a necessary measure of societal glue even in widely pluralist societies, while giving objectives, direction, and vigour to their democratic politics and collective action. Democratic institutions are at the same time fundamental for prosperity, that is beyond just their moral appeal, for only the well-functioning democratic institutions can translate the resistance and contestation into the renewal of the imaginaries of prosperity, ensuring thus transformation and stability at the same time.

The imaginaries of prosperity, such as neoliberalism today or welfare state imaginaries of prosperity before, do several things for democracy. First, they are able to create an inclusive understanding of the 'we' (the political community, the institutions, and the people) that can encompass widely plural sets of values and worldviews. These imaginaries can provide a sufficient degree of sharedness and purpose necessary for social integration, for keeping societies together – without imposing what liberals call a "thick" conception of good life. Importantly, such imaginaries are also future oriented, rather than oriented towards the past or tradition; thus they aim to transform the conditions of life in order to land the polity in a better future.

Second, if the imaginaries of prosperity are to be able to fulfil their integrative role, they need to give rise to a social order that enjoys a specific kind of 'outcome legitimacy'.[116] That is, not only that the imaginaries of prosperity need to deliver a certain degree of prosperity today but they also need to have a credible claim that they can deliver prosperity tomorrow as well. To do so, within the imaginaries of prosperity, two main channels for 'updating' their empirical basis are crucial: democratic process and scientific knowledge.[117] Both channels are necessary in order to make sure that governing is based on a sound informational basis. This goes very much against the insistence on "common sense" governing, beloved by populists, which tends not only

[116] Fritz W. Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford University Press, 1999).

[117] Michel Foucault, *Security, Territory, Population* (Springer, 2007).

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to be bigoted but also based on "gut feeling" rather than on a sound empirical basis – hardly thus able to address various complex problems that societies face.[118]

Third, many political struggles in democracy are about the specific content and the meaning of prosperity, as well as – more importantly perhaps – the route to prosperity. For their credibility, if pressured by crises, imaginaries of prosperity will need to include their constitutive outsides. As this has to happen at least to some degree on the basis of sound knowledge and reasoned debate, the circles of prosperity can expand. Thus today, the environmental crises can force a community to rethink its relation to nature, the migration crisis can force people to rethink their geoeconomics (more prosperity abroad may limit one's exposure to the new waves of migration), or the care crisis can force a society to re-evaluate the place care gets in their socio-economic system. This process carries the potential for both inclusion and justice.

Democracy, in turn, can do several things for prosperity. If functioning at least reasonably well, democratic institutions are sensitive to the needs of the (constitutive) outsides in a polity, enabling the claims and grievances to shape and eventually reshape the meaning and route to prosperity. Three important qualities of democracy make it conducive to prosperity.

First, democracy is crucial for dealing with social conflict in a constructive or affirmative way.[119] Even in its "actually existing" forms, democracy gives itself the task of creating conditions for fostering resistance and opposition against any provisional hegemony, using thus the energies of conflict towards the transformation of social consensus – rather than exclusion and violence.[120] In democracy, the old should *always* be dying and the new should *always* be institutionalising.[121]

Second, democracy operates both on the level of politics and the level of the Political. Namely, democracy enables not only the change of policies but ultimately also the transformation of hegemonic, or constitutive, social imaginaries. The institution of neoliberal imaginaries of privatised prosperity is an excellent example of such societal

[118] For an influential sympathetic treatment, see Clifford Geertz, 'Common Sense as a Cultural System', *The Antioch Review* 33, no. 1 (1975): 5–26. For a more critical treatment, see Umberto Eco, 'Ur-Fascism', *The New York Review of Books* 22 (1995): 12–15.

[119] Roberto Esposito, *Politics and Negation: For an Affirmative Philosophy* (John Wiley & Sons, 2020).

[120] Neera Chandhoke, *Democracy and Revolutionary Politics* (Bloomsbury Publishing, 2015).

[121] Esposito, *Politics and Negation*.

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transformation facilitated by the "actually existing" democracy. The gradual incorporation of what may seem politically attractive, *good* ideas, via policymaking, has ultimately prepared grounds for a peaceful *revolution*, making an entirely different relation between the state and the market, public and the private, as well as social and natural reality.[122] This should have also been the case in relation to the transition to shared prosperity, but for the reasons I discuss at least partially in Section 2.2.3, democracy has not delivered (so far).

Third, and importantly, the temporary hegemonies in democratic societies have an important function.[123] Namely, at the height of their integrative function, hegemonic social imaginaries create grounds for a more resolute action of public institutions as well as collective action in society more broadly – by showing the direction of travel, creating social support for political action, and fostering a certain shared optimism about the future. Hegemonic neoliberalism has transformed the entire society: the private and the public, the collective and the individual, the right and the left. In fact, today we may be in dire need of a new hegemonic social imaginary (of prosperity) that would provide social consensus for collective institutions to act resolutely to address the multiple crises that we are facing. Yet, such imaginaries always must be produced by and embedded in democratic institutions. Without the pluralising centripetal workings of democracy, the direction of travel may be instead towards fascist-like or soviet-like futures rather than towards actually solving social and environmental problems.

2.3.3 *Of Prosperity and Technocracy*

I noted above that prosperity requires reliance on scientific knowledge,[124] to ensure that policy choices are based on sound informational

[122] See Chapter 3.

[123] Oliver Marchart, *Post-Foundational Political Thought: Political Difference in Nancy, Lefort, Badiou and Laclau* (Edinburgh University Press, 2007).

[124] In this book, I do not discuss science as an institutional practice that itself requires certain condition to be able to fulfil its role of uncovering and analysing various 'constitutive outsides'. I (somewhat conveniently) assume that in the EU, certain minimum conditions of autonomy, resources, inclusion, independence, etc., are available for science to be able to fulfil this task. In Chapter 6, I spend some time discussing the difficulties, which emerge when science is used in policymaking. For a more general treatment of the question, see Sheila Jasanoff, *The Fifth Branch: Science Advisers as Policymakers* (Harvard University Press, 1998); I have myself discussed some of these problems in relation to the treatment of the science behind the precautionary principle, in the context of EU trade relations. See Marija Bartl, 'Regulatory

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basis. To this purpose, modern states have increasingly relied on educated bureaucracies in order to help politics govern.[125] At other times, institutions were created that were meant to be entirely independent of political pressures and democratic process, as only "pure expertise" was deemed to be fit for the task.[126] Also in the context of international and transnational governance, the technocratic institutions have gained a greater role, as they were expected to solve problems (ranging from ensuring peace, facilitating trade, regulating labour, or solving climate crisis) and ensure output legitimacy – entirely without or with very thin democratic controls.[127]

Over time, it has become clear that technocratic institutions have their own deficits – not only obvious democratic deficits but also knowledge deficits.[128] Built often around narrow disciplinary expertise,[129] itself a part of a particular mainstream scientific paradigm,[130] and set within tight institutional and normative frameworks,[131] the technocratic institutions may also become incapable of seeing the full picture and incorporating *constitutive outsides* effectively. An illustrative example of this point comes from the UK. Andrew Haldane, the then Chief Economist of the Bank of England, has tried to reconcile Bank's post-crisis data, suggesting an exemplary economic recovery in the UK, with the much more negative picture shared with him by people and organisations during his visits to peripheral regions of the UK. After disaggregating the statistics regarding the changes in income, wealth, region, age, and housing situation after the crisis, what he discovered is that the recovery story had missed important distributive dimensions.[132]

Haldane was in this regard more an exception than a rule post-2008 crisis. The reason why populists can so easily maintain that the

Convergence through the Back Door: TTIP's Regulatory Cooperation and the Future of Precaution in Europe', *German Law Journal* 18, no. 4 (2017): 969–92.

[125] Weber, *Economy and Society*.

[126] Jeremy Leaman, *The Bundesbank Myth: Towards a Critique of Central Bank Independence* (Springer, 2000).

[127] Philippe C. Schmitter, 'Neo-Neofunctionalism', in *European Integration Theory* (1st ed.), ed. Antje Wiener and Thomas Diez (Oxford University Press, 2003), 45–74.

[128] Marija Bartl, 'Contesting Austerity: On the Limits of EU Knowledge Governance', *Journal of Law and Society* 44, no. 1 (2017): 150–68.

[129] Marija Bartl, 'Making Transnational Markets: The Institutional Politics behind the TTIP', *Europe and the World* 1, no. 1 (1 June 2017): 1–37.

[130] Thomas S. Kuhn, *The Structure of Scientific Revolutions*, 2nd ed. (University of Chicago Press, 1970).

[131] Bartl, 'Contesting Austerity'.

[132] Haldane, 'Whose Recovery?'

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institutions are "rigged"[133] ("we are tired of experts!"[134]) is that technocratic institutions have often remained stuck for too long with the neoliberal common sense, failing to incorporate real grievances on the one hand and keep up with the development of the scientific knowledge on the other. There are other problems as well. Technocracies can be captured, epistemically[135] and/or materially[136] by those who stand to lose from change. Supranational technocracy faces an additional set of challenges. As Hayek brilliantly observed long ago, it remains easier for supranational institutions to work to institute imaginaries that divulge power and resources to private actors, rather than imaginaries that aim to collectivise such power, as supranational institutions usually face their own institutional constraints.[137]

Technocratic institutions thus, just like democratic institutions, need to be able to incorporate the *constitutive outside* into the framings of social problems, while channelling real grievances into policy. Where it does not happen – for reasons of capture, incompetence, or distance – the trust in the entire governing system, the trust in *institutions*, will suffer. A possible consequence is that, like today, when knowledge is crucial for addressing various *constitutive outsides*, and supranational bodies may be better placed to address some of the global problems, a broad swath of people would rather trust YouTube influencers than institutions to provide answers to various social and environmental problems.

2.3.4 *Of Prosperity and Europe*

In his book 'European Constitutional Imaginaries',[138] Jiří Přibáň argues that prosperity is the core imaginary behind the EU and its internal

[133] Colgan and Keohane, 'The Liberal Order Is Rigged'.

[134] Henry Mance, 'Britain Has Had Enough of Experts, Says Gove', *Financial Times* 2016, www.ft.com/content/3be49734-29cb-11e6-83e4-abc22d5d108c, last accessed 1 January 2024.

[135] Wendy E. Wagner, 'Administrative Law, Filter Failure, and Information Capture', *Duke Law Journal* 59, no. 7 (2010): 1321–1432.

[136] Margarida Silva, 'The European Union's Revolving Door Problem', in *Lobbying in the European Union*, ed. Doris Dialer and Margarethe Richter (Springer, 2019), 273–89.

[137] Friedrich A. Hayek, 'The Economic Conditions of Interstate Federalism', *New Commonwealth Quarterly* 5 (1939): 131–49; Marija Bartl, 'Hayek Upside-Down: On the Democratic Effects of Transnational Lists', *German Law Journal* 21, no. 1 (January 2020): 57–62.

[138] Přibáň, Jiří. *Constitutional Imaginaries: A Theory of European Societal Constitutionalism* (Routledge, 2021).

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market. Working within the framework of systems theory, while building his specific understanding of prosperity on the work of Friedrich Hayek and ordoliberals, Přibáň suggests that prosperity in Europe means foremost, and perhaps even only, privatised prosperity. To what extent is he right? Is the EU indeed doomed to privatised prosperity?

To start, one needs to acknowledge that the EU's institutions are not *symmetrical*, be it with regard to their competences[139] or macroeconomic structure.[140] It was thus also no accident that the EU was so successful in institutionalising a set of neoliberal policy prescriptions.[141] Neoliberalism gave the EU supranational institutions an opportunity to expand their own institutional power, by spreading markets, which in turn needed to be liberalised and Europeanised.[142] In this sense, neoliberalism has advanced the EU project via the push for liberalisation and privatisation, which came paired with a degree of re-regulation to remove the excesses that would stand entirely at odds with a commitment to 'social market economy'.[143] Yet, this still left the internal market asymmetrical (between social and economic), and often regressively distributive,[144] while further entrenching privatised prosperity.

But is the EU doomed to continue entrenching neoliberal imaginaries of prosperity – even if many of its technocrats and politicians, may realise that such a course does not make sense either in epistemic or democratic terms? The EU has not always been neoliberal. If anything, as I show in Chapter 3, neoliberalism became hegemonic in the EU only by the end of the 1990s, when we see the EU finally relinquish concerns with protection, structural inequalities, or asymmetries of powers that typified the previous welfare state imaginary of prosperity, and fully

[139] Fritz W. Scharpf, 'The Asymmetry of European Integration, or Why the EU Cannot Be a "Social Market Economy"', *Socio-Economic Review* 8, no. 2 (24 December 2010): 211–50.

[140] Fritz W. Scharpf, 'Monetary Union, Fiscal Crisis and the Preemption of Democracy', *MPIfG Discussion Paper, No. 11, 2011, Max Planck Institute for the Study of Societies, Cologne*.

[141] Nicolas Jabko, *Playing the Market: A Political Strategy for Uniting Europe, 1985–2005* (Cornell University Press, 2006); Bartl, 'Internal Market Rationality, Private Law and the Direction of the Union'.

[142] Ibid.

[143] Petersmann, Ernst-Ulrich. 'Neoliberalism, Ordoliberalism and the Future of Economic Governance'. *Journal of International Economic Law* 26, no. 4 (December 2023): 836–42.

[144] Damjan Kukovec, 'Law and the Periphery', *European Law Journal* 21, no. 3 (2015): 406–28. Also critiqued in terms of legal culture, see Rafał Mańko, Martin Škop, and Markéta Štěpáníková, 'Carving Out Central Europe as a Space of Legal Culture: A Way Out of Peripherality?', *Wroclaw Review of Law, Administration & Economics* 6, no. 2 (1 December 2016): 4–28.

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orient towards facilitating markets and competition. It is only beyond this point that the narratives of international competitiveness, trade liberalisation, privatisation, deregulation, financial markets liberalisation, capital markets union, etc., became the tropes leading the day, not only before the 2008 crisis but also afterwards.[145] Similarly, Clemens Kaupa in his excellent book shows that much of the EU's neoliberal drift was contingent rather than necessary.[146] He argues that there is nothing inherently neoliberal in the EU treaties. Treaties could have been interpreted differently, and it was more a political decision – rather than any legal necessity – that turned the EU in the direction it went.

However, this is not to say that once neoliberalism has been institutionalised in the EU, a shift away would be easy. From a number of crucial institutional lock-ins of neoliberalism, perhaps the most relevant one is the Union's set-up that includes a monetary union without a fiscal union.[147] Stability is then enforced via control of public spending, thus permanently threatening austerity.[148] Furthermore, the lack of tax competences at the EU level, be it in relation to its 'own budget', limiting the EU's capacity to invest, or in relation to tax harmonisation, entrenching the EU's incapacity to limit tax competition among the EU MSs,[149] further restricts the space for developing a more collective imaginary of prosperity.

Beyond these institutional constraints, there are also particular political economic constraints that are not an explicit part of the treaties but create their 'real world' context. The first is the misalignment of interests between the European Core and the European Peripheries (Southern and Eastern). Namely, the countries of the European Core (Germany, the Netherlands, Nordic countries, and Austria), which are the 'exporters of capital' to the Periphery, have their interests clearly aligned with those

[145] See most specifically Chapter 5.

[146] Clemens Kaupa, *The Pluralist Character of the European Economic Constitution* (Bloomsbury Publishing, 2016).

[147] On the role of the CJEU in locking this constitutional settlement, see Harm Schepel, 'The Bank, the Bond, and the Bail-out: On the Legal Construction of Market Discipline in the Eurozone', *Journal of Law and Society* 44, no. 1 (1 March 2017): 79–98; Marco Dani et al., 'At the End of the Law: A Moment of Truth for the Eurozone and the EU', University of Luxembourg Working Paper, 2020, available at https://orbilu.uni.lu/bitstream/10993/45861/1/Weiss-VB.pdf.

[148] Clemens Kaupa, 'Has (Downturn-)Austerity Really Been "Constitutionalized" in Europe? On the Ideological Dimension of Such a Claim', *Journal of Law and Society* 44, no. 1 (2017): 32–55.

[149] Eloi Flamant, Sarah Godar, and Gaspard Richard, 'New Forms of Tax Competition in the European Union: An Empirical Investigation', Report, Eu-Tax, 2021.

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of (their) capital.[150] This has impacted the way in which the EU has dealt with the 2008 crisis: saving mostly Western European banks was paid for by austerity, internal devaluation and large-scale unemployment in the Periphery.[151] What is more, that same foreign capital (European, but also Chinese) has been able to acquire cheaply fundamental public infrastructure in the peripheral states (such as ports, islands, and public services).[152]

The coalition building between the Southern and Eastern Periphery is difficult to achieve, however, because their 'models of development', and thus also their problems, differ. While Southern Europe is in a creditor–debtor relation with the countries of the Core, which in the EU monetary set-up makes them excessively dependent on the whims of the financial markets, the Eastern periphery has based its development on foreign direct investment, which keeps salaries low but leaves these countries somewhat more policy space,[153] at times misused by the likes of Orban.

Another "real world" complication for the project of de-neoliberalisation of the EU is the strong influence of industry and finance on European policymaking. Industry started lobbying Europe at least from the 1980s, when the European Roundtable of Industrialists was established.[154] Today, much power has been outsourced to industry and finance; via self-regulation, co-regulation, and generally massive degree

[150] Kukovec goes further and argues that the centre-periphery dynamics in the EU is built into the legal discourse. Kukovec, 'Law and the Periphery'.

[151] Emilios Christodoulidis, 'Europe's Donors and Its Supplicants: Reflections on the Greek Crisis', in *Constitutional Sovereignty and Social Solidarity in Europe*, ed. Johan Van Der Walt and Jeffrey Ellsworth (Nomos, 2015), 241–66.

[152] One of the demands of creditor countries, and in particular Germany, was for Greece to sell their islands as one of the means to pay back their creditors. See Spiegel report, 2010, www.spiegel.de/wirtschaft/soziales/schuldenkrise-cdu-und-fdp-fordern-verkauf-griechischer-inseln-a-681637.html, last accessed 5 January 2024. In a rather funny turn of events, the Greek minister of economy advises the same to Germany at the moment when the Constitutional Court uproots the spending plans of the Scholtz government, www.focus.de/politik/deutschland/um-schnell-grosse-summen-aufzubringen-griechischer-ex-minister-raet-deutschland-zum-verkauf-seiner-inseln_id_254033082.html, last accessed 5 January 2024.

[153] Visnja Vukov, 'Growth Models in Europe's Eastern and Southern Peripheries: Between National and EU Politics', *New Political Economy* 28, no. 5 (3 September 2023): 832–48; Laszlo Bruszt and Visnja Vukov, 'Making States for the Single Market: European Integration and the Reshaping of Economic States in the Southern and Eastern Peripheries of Europe', *West European Politics* 40, no. 4 (2017): 663–87.

[154] Bastiaan Van Apeldoorn, 'Transnational Class Agency and European Governance: The Case of the European Round Table of Industrialists', *New Political Economy* 5, no. 2 (2000): 157–81.

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of consultations, giving industry the influence via well-established institutional channels.[155] Such coupling is difficult to wean out.

But this does not mean, I want to argue, that the EU and its institutions are not trying to bring about changes, despite significant constraints. And with some success. In the following empirical chapters, I explore the attempted transformations in four policy fields at the micro and meso level of the economy, where the EU enjoys the greatest competences and legitimacy. There we see the EU gradually trying to develop imaginaries of consumption, corporation, technological governance, and (to a lesser degree) also industrial policy that are both more sustainable and more shared. Even in the "macro sphere" some work has been ongoing. Consider the growing stress on the importance of public investment (European public goods), a stronger solidarity gesture behind the NGEU, and (if relatively weak) calls to at least align tax policy with the green agenda.[156] If nothing more, all these can be seen as preparing grounds for making the silent revolution eventually both imaginable and possible.

2.3.5 The Prosperity's Other: Looming Tribalism

2.3.5.1 Dialectics of Prosperity: Between Privatised and Shared Prosperity

Historically, the imaginaries of prosperity have oscillated between two main routes of prosperity. On the one side of that spectrum, we find a vision that prosperity originates from some social reality that is external to the public or collective domain, such as the market, technology, or individual strive. What pursuing prosperity requires in such an imaginary is to "untie the hands" of those who are rooted in these domains – that is to privatise power and resources – so they may be able to bring about better futures. On the other side of the prosperity spectrum, we find a story of prosperity that sees collective action, public and democratic institutions as central for delivering prosperity. What prosperity requires in such imaginary is to collectivise/publicise both power and

[155] In an excellent recent piece, Morvillo and Weimer argue that this problem of capture in food and safety has profoundly shaped the CJEU's decision-making, by the backdoor so to say. Marta Morvillo and Maria Weimer, 'Who Shapes the CJEU Regulatory Jurisprudence? On the Epistemic Power of Economic Actors and Ways to Counter It', *European Law Open* 1, no. 3 (2022): 510–48.

[156] See Chapter 5.

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resources, not least by means of law, in order to ensure that all can partake in prosperity.

More specifically, the *imaginaries of privatised prosperity* place individual effort, self-interest, and self-reliance as central public values. Epistemologically, they tend to be naturalistic about many (hierarchical) social relations as well as the "economic system", seeing them as given by human nature and thus also good and mostly desirable.[157] These imaginaries of privatised prosperity stood behind both classical liberal and neoliberal conceptions of prosperity and society – both aiming to privatise power in order to bring about better futures. Needless to say, the privatisation of power and the 'untying' of the hands of private actors comes usually with a lot of legal and social engineering.[158]

The *imaginaries of shared prosperity*, in ethical terms, place solidarity, cooperation, and sharing as central public values. Epistemologically, they are more constructivist, seeing collective self-determination, law, and policy, as both ends and means to change economic structures, address power imbalances, and ensure fair distributions of wealth or voice.[159] The imaginaries of shared prosperity stand behind social-democratic, welfare state, and some socialist regimes, all of which placed more power and resources in public and collective hands in order to ensure that prosperity is more genuinely shared.

Overall, many of the political regimes that we have seen over the course of the past 200 years (laissez-faire, social democracy, welfare states, neoliberalism, some socialist regimes, etc.) can be placed somewhere on this spectrum between privatised and collective (route to) prosperity. What unites all regimes on this spectrum is that prosperity functions as the main anchor of the social imaginary, being a central device for social integration and a compass for the direction to collective

[157] See Section 2.2.3.1.

[158] Karl Polanyi, '*The Great Transformation: The Political and Economic Origins of Our Time*' (Beacon Press, 2001). For the implications of the embeddedness thesis in law, see Christian Joerges and Karl Polanyi, *Globalisation and the Potential of Law in Transnational Markets* (Hart Publishing, 2011); Aukje A. H. Van Hoek, 'Re-Embedding the Transnational Employment Relationship: A Tale about the Limitations of (EU) Law?', *Common Market Law Review* 55, no. 2 (2018): 449–87; Vladimir Bogoeski, 'The Aftermath of the Laval Quartet: Emancipating Labour (Law) from the Rationality of the Internal Market in the Field of Posting', PhD thesis, Hertie School (2021), https://opus4.kobv.de/opus4-hsog/frontdoor/index/index/docId/3717.

[159] For the outline of the ordo/neoliberal criticisms of this type of social or welfare 'constructivism', see Quinn Slobodian, *Globalists: The End of Empire and the Birth of Neoliberalism* (Harvard University Press, 2020), 212.

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energies, while at the same time enabling a degree of pluralism and inclusion.

Clearly, this is not to say that imaginaries of prosperity are free of misogyny, racism, and a myriad of other social hierarchies. Far from that. Rather, this only means that they remain at the same time open to challenges on these same grounds. If the claim to power is based on the best route to prosperity, then the challenge that, for instance, empowering *only* white propertied men hampers prosperity will have to be, first, met by the considerations of prosperity – rather than some inherent supremacy of propertied white men. To do so, second, both the challengers and those to whom the claim is addressed will aim to substantiate as far as possible their claims by relying on (scientific) knowledge, empirical or theoretical. Arguments based on some sort of identity or theology, such as tradition, religion, ethnical belonging, race, gender, language, culture, or similar, cannot be decisive. Finally, such challenges will ultimately need an institutional framework that does not aim to suppress but instead aims to enable a sufficient degree of dissent – if for nothing else than because dissent is crucial for enhancing its informational basis.[160] It is in this sense that imaginaries of prosperity are at the *foreground* of Enlightenment ideology,[161] which values and aspires to – if certainly not immediately delivers – self-reflection, critique, scientific knowledge, inclusion, and ultimately democratic institutions. This aspiration is what distinguishes the imaginaries of prosperity – be it privatised or shared – from tribal imaginaries that place a group identity and/or a thick conception of good life as the anchor of Political. While tribal imaginaries can also provide a means of social integration, they relinquish, even as a pretext, the respect for many of the institutions and values that modernity, and Enlightenment, stand for.[162]

[160] Habermas, *Between Facts and Norms*.

[161] The 'background' of the imaginaries of prosperity at home was tribal imaginaries abroad that have justified colonial and neocolonial domination and extraction in various forms. For instance, "French civilisation" stood for a very specific group identity that was mobilised to justify all kinds of exploitation and extraction on the basis of postulated superiority. An interesting question to discuss is how the tribal imaginaries abroad related to the imaginaries of prosperity at home: this is, however, a huge historical question that in this book I cannot answer. It comes back only as a prospective question, namely what a credible imaginary of shared prosperity today, in the face of multiple crises – some of which are direct consequences of colonial and neocolonial relations – must mean for the EU's relation to the so-called third countries.

[162] Eco, 'Ur-Fascism'.

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2.3.5.2 The 'Other' Collective Imaginary: The Rise of Tribalism

And the pretext does matter. As a person coming from a country, which has been the stage of much tribal violence (former Yugoslavia), understanding when and how societies descend into such ways of seeing and acting has been one of the major motivations to write this book. And however complicated the delivery of the aspirations of modernity is (such as publicness, institutions, truth, and science), I do not see how one is better off without such pretenses, at least in Europe.

It seems to me that both historically and at the present moment, we can see usually two different types of *collectivist imaginaries* developing after a previous period of dominant privatising imaginaries, which privatised both power and resources – and by their end date will have delivered vastly unequal and chaotic societies.[163] Also today, these two types of collective imaginaries aim to provide responses to neoliberalism's parasitic feeding on social norms and social support structures that it inherited from the previous period, but is unable to renew.

These two types of imaginaries, however, respond to the thinning out of social resources and support structures in very different ways, relying on different understandings of community and belonging. One type of collective imaginaries sees belonging as a *product* of institutions, shared purposes, and doing things together. Such collectives are, for instance, various voluntary associations (trade unions, social movements, eco-villagers, sports clubs, or religious associations) and less voluntary associations, such as neighbourhoods, cities, regions, nation states ('political citizenship'[164]), or the EU.[165] When *mobilised* as political imaginaries,

[163] In Europe, many argue that the turn to Fascism and Nazism can be understood as a response to extended periods of economic austerity and social contraction between the wars. Ricardo Duque Gabriel, Mathias Klein, and Ana Sofia Pessoa, 'The Political Costs of Austerity', *Review of Economics and Statistics*, 2023, 1–45, https://direct.mit.edu/rest/article-abstract/doi/10.1162/rest_a_01373/117705/The-Political-Costs-of-Austerity?redirectedFrom=fulltext; Jacopo Ponticelli and Hans-Joachim Voth, 'Austerity and Anarchy: Budget Cuts and Social Unrest in Europe, 1919–2008', *Journal of Comparative Economics* 48, no. 1 (2020): 1–19; Thiemo Fetzer, 'Did Austerity Cause Brexit?', *American Economic Review* 109, no. 11 (2019): 3849–86; Gregori Galofré-Vilà et al., 'Austerity and the Rise of the Nazi Party', Working Paper, Working Paper Series (National Bureau of Economic Research, December 2017); Mark Blyth, *Austerity: The History of a Dangerous Idea* (Oxford University Press, 2013).

[164] Thomas Janoski and Brian Gran, 'Political Citizenship: Foundations of Rights', in *Handbook of Citizenship Studies*, ed. Engin F. Isin and Bryan S. Turner (SAGE Publications Ltd, 2002), 13–52.

[165] Hanno Sauer, *Moral Teleology: A Theory of Progress* (Taylor & Francis, 2023).

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this understanding of the collective is concerned with institutional belonging and any collective action is eventually aimed at transforming malfunctioning institutions.[166]

The other type of collective imaginaries relies on *tribal identity markers*, usually inherited or of "blood and soil" type, such as true Finn, people with white (or other colour) skin, 'native speakers', or Hindus. These *tribal imaginaries* foster a sense of belonging foremost by creating an outgroup, the other, the foreign.[167] Fintan O'Toole argues that *'perhaps the greatest advantage of tribalization is that it solves the problems of identity. (. . .) Tribal politics do not in fact deal in collective identities, which are always complex, contradictory, multiple, and slippery. They reduce the difficult "us" to the easy "not them." They set up some rough (and often arbitrary) markers of difference and then corral real collective experiences and histories within the narrow limits they define'*.[168]

Importantly, both collective imaginaries (tribal and shared prosperity) have analogous affective appeals, providing belonging, a sense of purpose, of being part of something bigger than one-self. A turn to such collective identities is a reasonable (emotional) response to the excesses of privatisation of both power and resources, of excessive individualism and marketisation. The central difference lies where the outlet of the collective energies is being sought: is the central problem of politics to deal with identity and group protection – against foreign(ness) –[169] or is the purpose the transformation of economic, legal, and political structures and institutions that have not served people well?[170]

The consequences of choosing one of these two collective imaginaries are dramatic. What is at stake are the most important signposts of Enlightenment including the fate of democratic institutions, pluralism, scientific knowledge and rationalism, and ultimately output (legitimacy). First, by making an inborn identity the anchor of social integration, exclusion becomes the defining feature of the polity, the state. '*All the group needs to hold it together is the conviction that it is being wronged by some*

[166] David Bollier and Silke Helfrich, *Free, Fair, and Alive: The Insurgent Power of the Commons* (New Society Publishers, 2019).
[167] Jan Willem Duyvendak and Josip Kesic, The Return of the Native: Can Liberalism Safeguard Us Against Nativism?, in *Oxford Studies in Culture and Politics* (Oxford University Press, 2023).
[168] Fintan O'Toole, Review of *Defying Tribalism*, by Susan Neiman, *The New York Review of Books*, 2 November 2023.
[169] Duyvendak and Kesic, 'The Return of the Native'.
[170] Kjaer, *The Law of Political Economy*.

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real or imaginary enemy"[171] Government's main task is to make sure, to use Geert Wilders' winning speech, to '*deliver on the hope that the Dutchmen will come first again*'.[172] The main vehicle to achieve this is to devise an expanding set of means to exclude whoever does not fit the bill, making sure that the whole '*idea of the state* [as an institution] *becomes profoundly uncertain*'.[173]

In such a polity, the institutions that aim to foster critique, pluralism (of views or ways of life), or the dispersion of power – for example independent judiciary, freedoms of speech and association, protests, social movements, and trade unions – will increasingly seem to be useless annoyances, the tools for stoking unrest, giving space to 'particular interests' or serving as the propaganda machine of the outgroup.[174] Science and non-partisan media also don't fare well in tribal societies. Science will often come with information or positions that unsettle traditions, settled gender roles, or "heroes of our history".[175] Non-partisan media will take it as their *task* to be critical of various powers, practices, institutions, discourses, or technologies. Given that critique cannot be tolerated, science and serious journalism will become one of the first and most important "Others". All these anti-pluralist tendencies make it very difficult to maintain democratic institutions,[176] since authoritarian modes of government appear better placed to protect the tribe against all those who aim to disturb its own prosperity, values, history, tradition or gender roles, etc.[177]

Finally, in tribal societies, output legitimacy will suffer, for two reasons. First, those operating within tribal imaginaries focus usually only on certain aspects of problems, in one way or another linked to combatting foreignness or outsiders – leaving thus often far more significant causal mechanisms for solving problems outside the picture. At the same time, they also tend to weaken knowledge and democratic

[171] O'Toole, 'Review of *Defying Tribalism*'.
[172] From the victory speech of Geert Wilders, 22 November 2023: '*De hoop, dat de Nederlander weer op een komt te staan, waar te maken*', www.youtube.com/watch?v=LuVZ_rEgj8k, last accessed 15 December 2023.
[173] O'Toole, 'Review of *Defying Tribalism*'.
[174] Antonis A. Ellinas, 'Media and the Radical Right', in *The Oxford Handbook of the Radical Right*, ed. Jens Rydgren (Oxford University Press, 2018), 269–84.
[175] PVV programme, 'Nederlanders weer op 1' (Dutch again first), at page 29, available at www.pvv.nl/?verkiezingsprogramma?.html, last accessed 2 January 2024.
[176] Jürgen Habermas, *A New Structural Transformation of the Public Sphere and Deliberative Politics* (John Wiley & Sons, 2023).
[177] Duyvendak and Kesic, 'The Return of the Native'.

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institutions that could channel that *outside* back in and instead rely mostly on "common sense" to address the material reality their populations face. What should concern us most, however, is that in order to make up for the lack of output legitimacy in such societies, the new "Others" will have to be identified and possibly ever more extreme forms of othering and exclusion implemented. Ultimately, war as a *diversion mechanism* or even a *growth strategy* is never unconceivable in such an imaginary.

This is not to say that arguments based on identity, ethnicity, or religion have no place in democratic politics. There is always a degree of identification with the beliefs and arguments that we make, as well as traditions, nations, cultures, languages, or others. Such expressions belong to democratic politics as they express certain issues that people hold valuable. But the identification becomes a problem when it turns into overidentification: a simple tribal "us–them" imaginary that becomes the frame for understanding everything.

2.4 Sustainable and Shared

Many of the grievances of the disappointed citizens, who vote for extreme parties, are real. In a society that on the one hand seems to value only highly educated people,[178] and where a growing number of people find themselves sliding down the social ladder, while the future also does not hold any positive promise, the trust in the official institutions is bound to plumet[179] and various dubious solutions are sought in order to preserve 'our' resources.[180] Clearly, also other factors come into play. For instance, media, social and traditional, seem to thrive on spreading doom and often hate,[181] while numerous politicians and parties are the political entrepreneurs of exclusion.[182] Equally, some groups may see it as a grievance that their rights to dominate have been taken away.[183] Yet, I want to argue

[178] Michael J. Sandel, 'The Tyranny of Merit: What's Become of the Common Good?' (Allen Lane, 2020); Daniel Markovits, *The Meritocracy Trap: How America's Foundational Myth Feeds Inequality, Dismantles the Middle Class, and Devours the Elite* (Penguin, 2020).

[179] Wolf, *The Crisis of Democratic Capitalism*.

[180] Greve, *Welfare, Populism and Welfare Chauvinism*.

[181] Stuart Soroka and Stephen McAdams, 'News, Politics, and Negativity', *Political Communication* 32, no. 1 (2 January 2015): 1–22.

[182] Sergei Guriev and Elias Papaioannou, 'The Political Economy of Populism', *Journal of Economic Literature* 60, no. 3 (1 September 2022): 753–832.

[183] Debbie Ging, 'Alphas, Betas, and Incels: Theorizing the Masculinities of the Manosphere', *Men and Masculinities* 22, no. 4 (10 May, 2017): 638–57.

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that both the economic and cultural reasons that drive tribalism can be addressed only if prosperity becomes once again the anchor of the political. What kind of prosperity it has to be this time around I discuss in the following section.

2.4.1 *On the Constitutive Outsides: Renewing Imaginaries of Prosperity*

Any successful imaginary of prosperity will have generated a degree of social consensus around what prosperity means and how to get there. But any such consensus will necessarily leave many issues unattended. As these issues become more urgent, and turn into serious problems, they will lead to crises that demand solutions. Such solutions, however, can be progressive: they can expand the circles of prosperity, making prosperity a tiny bit more shared, just, and stable.

Today, we are not short of crises, due to various *constitutive outsides* that our extractive economies have created. Perhaps the most immediate neglect in the neoliberal imaginary of prosperity was the distributive consequences of the privatisation of both power and resources. The attempt to "raise all boats", by empowering the capital, has ultimately led to a significant regressive shift in income between labour and capital and skyrocketing inequality within and among countries – in the Global North and some regions of the Global South.[184] For some time, the growing inequality was countered in the West via cheap consumer goods and borrowing, but the growing environmental degradation, real estate bubbles, privatisation of basic services, and financialisation have over time made basic material, social, and institutional goods – that is the basis for prosperity – unavailable to many.

But the problem has not been only that of raising inequality, but also that of losing grip on the technological futures. Having privatised the power over technological development, technological futures have been driven mainly by efficiency considerations of the capital, mostly, with a view of developing various labour replacing and labour disciplining technologies.[185] This has contributed in the West to the major shift of income from labour to capital.[186] The sense of existential insecurity created by technological development has in the meanwhile grown even further, with technologies such as AI not only promising to leave people

[184] Piketty, *Capital in the Twenty-First Century*.
[185] Simon Johnson and Daron Acemoglu, *Power and Progress: Our Thousand-Year Struggle Over Technology and Prosperity* (Hachette UK, 2023).
[186] Piketty, *Capital in the Twenty-First Century*.

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jobless but eventually even threatening their very existence. Leaving the future of the world in the hands of this or that Silicon Valley entrepreneur is perhaps not where societies want to or ought to be. Rather, distributive and world-making capacities of technologies need to become a fundamental issue of democratic politics and intervention in any new imaginary of shared prosperity.[187]

These two dynamics take place on the background of three constitutive outsides that have at present turned into full-blown crises.[188] These constitutive outsides have been neglected in modern political economy from its inception in the eighteenth century – with neoliberal imaginary of prosperity mainly greatly accelerating the exploitation of the underlying resources, setting the ground for the present crises.[189] First and foremost, the casualty of our political economy has been 'nature', with the growing environmental degradation creating an existential threat today,[190] which we can see unfold with a "plain eye" in the multiplication of 'weather events'.

Simultaneously, we see another structural crisis of the modern economy unfold, namely the crisis of care.[191] In still rather patriarchal imaginaries of prosperity, the structural undervaluation of care work used to be borne by those whose time and effort counted for less – women – but has over time grown into a serious unavailability of care. For instance, privatising childcare, both via profit-based provisions and via the centrality of nuclear families, has aggravated many of the demographic problems that developed countries face.[192] At the same time, the care services are also struggling to find willing staff – as an increasing number of people make a rational choice to choose jobs that receive both more financial and social recognition than care work. These problems will only grow more urgent as societies age.

Finally, to complete the picture, the last big constitutive outside of the European political economy is its relationship with the 'developing countries', often former colonies. This extractive relationship has many aspects. I find most illustrative the problem of debt: some of the poorest countries in the world pay up to 20 per cent yearly interest rate on their

[187] Johnson and Acemoglu, *Power and Progress*.
[188] Nancy Fraser and Rahel Jaeggi, *Capitalism: A Conversation in Critical Theory* (Polity, 2018).
[189] The historical CO_2 emissions have doubled over the past 50 years, during the reign of neoliberal prosperity.
[190] Lee et al., 'IPCC, 2023'. [191] Fraser and Jaeggi, *Capitalism*.
[192] Amia Srinivasan, 'The Right to Sex. Feminism in the Twenty-First Century', *The Right to Sex: Feminism in the Twenty-First Century* (Farrar, Straus and Giroux 2021).

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public debt, many of them spending as much as 50 per cent to 90 per cent of their budgets on servicing debts (instead of building infrastructures or paying for public or social services). The most lucrative of all trades, it seems.[193] But clearly, such exploitation of the developing world is coming back as a boomerang to Europe: as poverty, wars, and increasingly climate crisis are gradually displacing ever greater numbers of people, while the available places for a decent life are shrinking, Europe will face more uncontrollable migration pressures.[194] Thus perhaps rather than allowing European financial capital to continue extracting usury rate of interest from the poorest, keeping all of the plunder for itself and fuelling further inequality abroad and at home,[195] European citizens have every reason to demand that prosperity is more genuinely shared across its borders as this will lower the strain on our societies as well, while benefiting communities across the globe.

2.4.2 *In the Search of Future: Credible Prosperity in the Twenty-First Century*

I argued above that the rise of tribal imaginaries is not an accident. It is a response to decades-long privatisation of power and resources, which has created considerable inequality in the EU, exhausting at the same time societal, political, material, and institutional resources that were created in the previous periods. But instead of going down the path of tribalism that cannot solve the problems we face, we have another collective imaginary available: an imaginary of *shared prosperity*.

Such a genuinely shared imaginary of prosperity has to provide a credible prospect of a liveable future not only for a select few. First, the new imaginary has to move away from futures for the wealthy and university educated only and be able to present a convincing story also for practically educated, non-urban, "normal" people. This will require more democratic control over how power and resources (including technology!) are made and shared. Today, in a society where so much is left to

[193] Wester van Gaal, 'The Battle to Fix the "Rigged" Financial System Needs a Strong African Voice', *EU Observer* 2023, https://euobserver.com/africa/156991, last accessed 2 January 2024.

[194] There is some disagreement as to how big these pressures will be – much will depend on the liveability of the 'region'. Ingrid Boas et al., 'Climate Migration Myths', *Nature Climate Change* 9, no. 12 (2019): 901–3.

[195] Ugo Mattei and Laura Nader, *Plunder: When the Rule of Law Is Illegal* (John Wiley & Sons, 2008).

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the whims of capital, it is the search for new ways of making a profit that shapes the future. Technologies that are labour disciplining or replacing not only lead to many people receiving an ever-smaller piece of the pie, but they also foreclose the prospect of prosperous futures.[196] Equally, subjecting basic material needs – like housing – to speculative investment produces an atmosphere of insecurity. In the scramble for last resources then, even a dispossessed war refugee may seem like a threat.

Second, the new imaginary of prosperity has to go beyond welfare state imaginary of prosperity in two important respects. Unlike in the 1940s or in the 1970s, it will be increasingly difficult to build a future as if environmental issues did not exist. With growing occurrences of weather events, and growing threats to human rights and property, most people (even those who advocate no action) realise that the world is facing a very serious, even existential problem. Moreover, given the irreversibility of environmental changes, eco-systemic balance, and tipping points, a credible future will only be possible if shared prosperity presents an actual route to a liveable planet.

Third, given the various crises that we are facing, the new imaginary of prosperity will have to take seriously (often capital-induced) global interdependence and match it with the actual commitment to sharing prosperity across borders. Unless European imaginaries of prosperity commit to more equitable relations with at least our most proximate neighbours in Africa and thus contribute to a more liveable life beyond its borders, the rising (real or perceived) migration pressures will feed the sense of threat, fuelling nationalism, nativism, racism, religious, and other forms of discrimination and hate. These responses may in turn diverge Europe from prosperity to tribalism, threatening its democratic institutions and problem-solving capacity, the proud signposts of European modernity.[197]

2.4.3 *Can the EU Make a Difference?*

The one thing that distinguishes Europe in the 1930s, from Europe today, is the EU. It is seventy years after its establishment, when its origin story is nothing but forgotten, that the EU is called to play the very role that its founders have intended for it. The *Communities* that were to gradually unite a deeply diverse polity, around the quest for prosperity rather than

[196] Johnson and Acemoglu, *Power and Progress*. [197] Taylor, *Modern Social Imaginaries*.

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identity,[198] with strong technocratic bureaucracy and eventually also stronger democratic institutions. Given the low probability of a shared tribal identity, European democracy, integrated only via imaginaries of prosperity, may prove central in shifting Europe to the imaginary of shared prosperity – without world wars this time around.

But this will require political courage on several fronts. First, the EU will need to maintain its commitment to knowledge governance – even in the face of the far and extreme right becoming a more dominant force in Europe. Second, the EU's supranational institutions will have to stand up for those pulling the short straws in the integration process – something they failed to do in 2008. Thus they will have to stand up to big capital, driven by short-term logic rather than long term (including their own) interest, as well as the influential EU MSs, which today insist on the new push for austerity, even if this is anything but prudent at this point in time.[199] Third, the EU will have to continue (co)developing and gradually institutionalising a new imaginary of shared prosperity that aims to strengthen the democratic control of the economy and ensure fairer sharing of the benefits of social cooperation, internally and externally. Only if such an imaginary delivers on the hope in a better, or liveable future, will the tribal imaginaries oriented towards "lost past glory" lose their grip on the future.

But instead of pondering once again the nature of EU, its constitutional structures, symmetries, and asymmetries, this book asks what shape the EU imaginary of prosperity is taking today, if any. This particular imaginary is emerging on the background of the EU constitutional structures, as well as particular material and social conditions in which we find ourselves in the first half of the twenty-first century. Any new imaginary will be then unavoidably partially restrained, but not fully determined by these constraints.

One important caveat before we turn to the empirical chapters. Not all important issues can be resolved fully at the EU level. Think of the housing crisis, for instance. Housing crisis is one of the central issues across Europe today, having most recently catapulted the extreme right to the biggest force in the Dutch parliament.[200] Yet the role of the EU in

[198] Jiří Přibáň, *Constitutional Imaginaries: A Theory of European Societal Constitutionalism* (Routledge, 2021).

[199] Wester van Gaal, 'EU Secures Last-minute Deal on New Fiscal Rules', *EU Observer*, https://euobserver.com/green-economy/157867, last accessed 2 January 2024.

[200] I&O Research, 'Negen Op Tien Nederlanders: Sprake van "wooncrisis"', www.ioresearch.nl/actueel/negen-op-tien-nederlanders-sprake-van-wooncrisis/, last accessed 2 January 2024.

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relation to housing crisis remains limited and ranges from not getting in the way of solving such problems – which unreasonable fiscal rules would do – or by creating additional space and possibilities for solving such crises across Europe, for instance, by regulating financial markets.

But many other crises, however, cannot be solved but within the framework of the EU. The one that the EU itself has chosen to focus on and that in fact to a large degree can challenge all the constitutive outsides that I discuss above is environmental and climate crisis. In its landmark piece of policymaking, the European Green Deal, the EU argues that what ought to be done is nothing less than 'changing the ways in which we produce and consume' if we want to respond to the challenges we are facing.[201] The EU chose to act where it has most to say, where its competences are least doubtful, namely in the field of internal market regulation.

It is important to keep in mind that the continuing discontents with the EU policies may be related to the sidelining of *social issues* in EU's transformative agenda, even though they present the fundament of prosperity. Green growth on its own will not be sufficient to ensure good (sustainable, accessible, and affordable) transport or housing, without rethinking finance or public provision aimed at better distribution of access and control. Green growth may even aggravate the crisis of care, by continuing to prioritise traditional "productive" sectors and market-driven growth, all the while it is "unproductive" care sectors – such as health or education – remain underfunded despite being so crucial for people's sense of prosperity today and in the future.

I will draw attention to some of those social issues when discussing changing imaginaries of prosperity behind four important policy fields in the EU – consumption, the regulation of technology, industrial policy, and the transformation of corporation. The purpose of the empirical chapters is to identify what kind of *micro foundations* the EU has been trying to put in place over the past years, via various laws, policies, and institutional discourses, and what *compossible futures* these changes may make imaginable.

[201] European Commission, COM(2019) 640 final, The European Green Deal.

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