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**The Trilemma of European Economic and Monetary Integration, and Its Consequences**

Jukka Snell[[1]](#footnote-1)\*

*The article analyses trade-offs between sovereignty, mass politics, and EMU, employing Rodrik’s paradox of globalisation. The logic of EMU is incompatible with sovereignty and mass politics – only two of the three can coexist. It is argued that three different answers to the trilemma can be observed in the EU practice. In the initial EMU integration was limited to safeguard mass politics and sovereignty. Member States were free to set economic policies in response to domestic mass politics. This proved unsustainable. During the crisis democracy was sacrificed to bolster integration while sovereignty was maintained. Rules on fiscal discipline and macroeconomic imbalances constrain mass politics, and non-democratic institutions have acquired more prominent roles. Finally, long term plans for a genuine EMU envisage the strengthening of integration and moving the locus of democracy to the EU level, while weakening sovereignty. The analysis carries implications. If national courts insist on sovereignty and democracy, the likely consequence is an unworkable EMU, damaging the output legitimacy of the EU. The model adopted in the crisis reinforces the elite-nature of the EU, undermines democracy at the national level, and may bolster political extremism. This leaves the task of building the preconditions for democracy at the European level.*

**Introduction**

The eurocrisis and the response to it can be and have been analysed from many different angles.[[2]](#footnote-2) One perspective is substantive. What are the legal changes that have taken place? How does the current legal framework differ from the original ‘constitution’ of the Economic and Monetary Union? Another perspective is institutional. How have the roles of, and the interplay between, the various European institutions changed as a result of and in response to the eurocrisis? Is a new form of intergovernmentalism being established? If so, how does this account for the strengthened role of the Commission and the European Central Bank? Yet another perspective is constitutional. How has the relationship between the EU and its Member States, in particular those that have adopted the euro, been altered? What kind of powers have and can be transferred from one level to another?

The present article seeks to combine several of these perspectives. It does so by examining and applying Dani Rodrik’s ’trilemma of globalization’ to the context of the European economic and monetary union.[[3]](#footnote-3)

My central claim is that Rodrik’s trilemma also applies to European economic and monetary integration: you cannot have at the same time a well-functioning economic and monetary union, mass politics and nation states. It is further argued that in the early years of monetary integration the EU opted for a model where mass politics and nation states were preserved, but at the expense of the coherence of the design of economic and monetary union. I call this the ‘early EMU’. During the eurocrisis the economic and monetary union model changed. In order to ensure the functioning and even the survival of EMU, the substance of mass politics was reduced, while the role of the nation states was maintained. I call this the ‘crisis EMU’. Finally, an alternative has been put forward, most notably in the Commission’s blueprint for a deep and genuine economic and monetary union.[[4]](#footnote-4) In its proposals, the Commission puts forward a plan for the strengthening of mass politics at the European level, at the expense of nation states. I call this the ‘blueprint EMU’.

If the analysis offered is correct, it has profound implications.[[5]](#footnote-5) If we remain committed to EMU, we must recognise the trade-off between maintaining mass politics and maintaining nation states. The defence of the latter, for example by national constitutional courts and national elites, will come at the cost of disempowering citizens. There is a danger that this will render various forms of extremism more appealing and even rational as a revolt against mass politics that has been robbed of its substance and as an attempt to create a radical change in or overthrow the system. However, if we choose instead to focus on defending national sovereignty and domestic democracy, [[6]](#footnote-6) we may be saddled with a poorly functioning currency union that will sap the output legitimacy of the whole European project that runs the risk of being associated with misery, rather than with prosperity.

**Dani Rodrik’s Trilemma**

Dani Rodrik has put forward the notion of the ‘trilemma of globalisation’ in a number of places.[[7]](#footnote-7) The basic idea is simple: you cannot have at the same time deep international economic integration, nation states, and mass politics. Only two of the three can co-exist.

Consider first a situation with mass politics, that is democracy,[[8]](#footnote-8) and nation states,[[9]](#footnote-9) that is national sovereignty. Citizens of different states will democratically approve different laws and policies. These laws and policies will create transaction costs and other obstacles to trade between different countries. Thus, deep economic integration is not possible, but has to be curtailed to render possible mass politics and national sovereignty. Rodrik calls this the ‘Bretton Woods’ compromise, a direct reference to the small town in the US where the key elements of the post-war economic order was negotiated. The agreements aimed at boosting international trade while preserving and building the capacity of states to regulate their own socio-economic structure in accordance with the wishes of their citizenry. Economic borders were to be porous, something that required that goods were not discriminated against - other than through the levying of customs duties - on the basis of where they had been manufactured. This was famously described, with the benefit of hindsight, as ‘embedded liberalism’ by John Ruggie.[[10]](#footnote-10)

Consider secondly the situation that emerges if we favour deep international economic integration and mass politics. Here the transaction costs and other barriers are eliminated by the sheer fact that rules are democratically adopted at the international level. This corresponds to a ‘world federation’. In such a world federation there is still mass politics, but no longer at the national, but at the international level. In the same way that most important decisions in a federal state are in the hands of the federation rather than in those of the states, the primary locus of law-making in a world federation is elevated from the national to the global level.

Consider thirdly what happens if we opt for deep international economic integration and the preservation of national sovereignty. As in the previous scenario, common rules prevail, eliminating transaction costs and other obstacles. However, the laws are adopted by the states themselves. They do so constrained by the imperatives resulting from international competition and the pressure exerted by ‘international markets’. National elites know or fear that idiosyncratic national laws and policies will result in reduced inward investment or even capital flight. To avoid this, they fashion their rules to suit the requirements of the ‘markets’, rather than to respond to the wishes of the citizens. This may be justified by the mantra that there is no alternative. Rodrik calls this the ‘golden straitjacket’.[[11]](#footnote-11)

To put it differently, Rodrik’s trilemma presents us with a stark choice. Democracy, international economic integration, and national sovereignty - choose two because you cannot have all three.

The trilemma seems to be directly applicable to economic and monetary union, and it is my claim that it is very helpful in understanding the European crises. The initial attempt to create a monetary union that combined a currency union with sovereign states and democracy did not stand the test of the first serious crisis that hit the Eurozone. The trilemma is a powerful reminder that we cannot have mass politics, national sovereignty and monetary integration at the same time. So, if we want monetary integration, we have to choose whether to scale down national sovereignty or to abandon our commitment to mass politics.



**The ‘Early EMU’: Mass Politics and Nation States**

The architects of monetary union were conscious of the incomplete character of the project. In the words of Helmut Kohl, the German Chancellor at the time of Maastricht negotiations that resulted in EMU, a monetary union without political union was bound to be a ‘castle in the air’.[[12]](#footnote-12) Still, the incomplete character of EMU allowed the EU to preserve national sovereignty and mass politics - in a way, the EU was seeking to eat its cake and have it too.[[13]](#footnote-13) However, the price to be paid for defying Rodrik’s trilemma was a monetary union that proved vulnerable and only seemedto work.[[14]](#footnote-14) A number of features of EMU substantiate such an assessment.[[15]](#footnote-15)

First, EMU was asymmetric.[[16]](#footnote-16) The monetary side was strong and involved exclusive EU competence for monetary policy administered by a new EU institution, the European Central Bank. National currencies were abandoned in favour of a common currency, the euro. By contrast, the economic side was less integrated. Member States remained in control of their economic and fiscal policies. In the main, the role of the EU was limited to soft coordination and weak monitoring. The EU spread best practices, while setting benchmarks and making exhortations, but it could not impose.

The limited power of the EU over national economic policy making was understandable from the perspective of national sovereignty and mass politics. Different Member States have different economic systems. While all of them fitted the description of ‘market economies’, they embrace different varieties of capitalism.[[17]](#footnote-17) For example, Ireland is a liberal market economy, Germany is usually classified as a coordinated market economy, while Spain has been seen as a Mediterranean market economy. As a result, their economic needs and expectations are different. A policy that suits one country does not necessarily suit another. Further, the views that their citizens and elites have of things such as the role of markets in the society, the position of trade unions, and the nature of welfare states is rather different.[[18]](#footnote-18) To protect sovereignty and to allow domestic mass politics to determine the fundamental economic structures of each country, it was not possible to create a unified economic policy for the EU. Instead, the rules on economic coordination were deliberately left open-ended so as to provide room for flexibility, different national solutions, learning and even experimentation. However, the weakness of the economic side of EMU rendered the entire project vulnerable.[[19]](#footnote-19) Coordination, benchmarking and so on did not suffice to make nation states, which remained responsive to their citizens, follow policies that rendered EMU as a whole stable. Different states adopted different policies. The result was divergences that ultimately proved to be unsustainable and that rendered a severe global financial crisis into an existential threat for the single currency.[[20]](#footnote-20)

Secondly, those European rules that were in place and did go beyond soft coordination were bent or ignored, again at least partly reflecting sensitivities and constraints that arose from sovereignty or mass politics. In practice, the limited number of rules in the original EMU that had some potential of curtailing national mass politics were left without much effect. The argument here is not that their application would have completely prevented the crisis, although some aspects of it would have been rendered less serious; rather, it is that their non-application is another example of an attempt to defy the logic of Rodrik’s trilemma. First, the rules concerning the entry of countries to the third stage of EMU were applied liberally. The Maastricht Treaty had put in place so-called convergence criteria that prospective euro-entrants had to meet. These criteria concerned issues such as the ratios of government deficit and debt to the gross domestic product. Yet countries that had only temporarily managed to reduce their deficit or that were very far from the prescribed debt ratio were allowed to enter the euro. Due to domestic political constraints, even many of the core countries had had to resort to one-off measures or rely on a liberal interpretation of the rules to qualify.[[21]](#footnote-21) It was therefore difficult for them to question what others had done.[[22]](#footnote-22) At the same time, the Commission had not been given the power to investigate the data supplied by Member States,[[23]](#footnote-23) in deference to national sovereignty. More broadly, there seems to have been no desire to embarrass sovereign nation states or to push them too hard irrespective of national politics, and unelected European ‘technocrats’ were not keen to question the views of democratically elected politicians of the Member States.[[24]](#footnote-24) Further, a somewhat similar pattern emerged when the Commission sought to enforce the Stability and Growth pact against Germany and France, which had allowed their deficits to grow beyond the levels set by the rules. This time the Commission initiated action but the Member States in the Council were not prepared to censure their own.[[25]](#footnote-25) Again the broader pattern was one of deference towards sovereign nation states and their domestic political circumstances. In this context, Adamski has spoken more generally of a political constitution of excessive permissiveness and privilege where national leaders took the opportunity to engage in mutual congratulations, imposing political constraints on the ability of the Commission, which lacks a democratic mandate, to engage in strict rules enforcement.[[26]](#footnote-26)

Thirdly, the result of the soft coordination mechanisms and the unwillingness to enforce the rules was divergences among the Member States,[[27]](#footnote-27) in particular as regards private and public debt, and current account surpluses. In the words of Paul De Grauwe: ‘The European monetary union lacked a mechanism that could stop divergent economic developments between countries… These divergent developments led to large imbalances, which were crystallised in the fact that some countries built up external deficits and other external surpluses.’[[28]](#footnote-28)

For example, when it comes to private debt, Ireland witnessed a classic property bubble. This was to a large extent brought about by the availability of cheap loans resulting from one-size-fits-all interest rates set by the European Central Bank that proved too low for local Irish economic conditions, as well as the influx of capital from other Eurozone countries such as Germany and the disappearance of the risk premia the markets had charged of the peripheral countries. Recommendations that were directed at Ireland to avoid an expansionary budget that added to the overheating of the Irish economy were ignored.[[29]](#footnote-29) The result was that the bubble grew and grew, only to burst and result in a colossal banking crisis. There was a fear of contagion, in other words that the distrust of the markets towards Irish banks would spread to the banks of other countries, especially if there was a bail-in of bondholders. The result was a bank bail-out that crippled Irish public finances.[[30]](#footnote-30)

As for public debt, Greece allowed its public finances to get out of hand - perhaps not surprisingly, given that inside EMU the Greek Republic was suddenly able to borrow at practically the same rate as Germany. The weak supervision mechanisms of the Eurozone failed to detect this.[[31]](#footnote-31) When the scale of the problem was revealed, it was too late. The markets refused to extend funding to Greece, and the EU and its Member States hastily scrambled together various improvised rescue mechanisms.

By contrast, in Germany policies suppressed domestic demand and inflation, with predictable consequences for current account imbalances. The result was that German competitiveness, especially towards some of the peripheral countries of the Eurozone, improved dramatically. This in turn led to a massive German current account surplus between Germany and those Member States, producing what has been described as a ‘beggar-thy-neighbor’ effect.[[32]](#footnote-32) A part of the surplus was then invested in the peripheral Eurozone countries,[[33]](#footnote-33) boosting their real estate or public consumption booms.[[34]](#footnote-34) Again a difference in national approaches, in response to domestic mass politics, resulted in an unsustainable divergence between the Member States.

When the fiscal crises of several Eurozone states erupted in 2010, all the problems and divergences were exposed. Yet there were no proper tools to deal with them.[[35]](#footnote-35) There was no system of fiscal transfers built into the Treaties; in fact there was a no bail-out clause in Article 125 TFEU. There was no unified system of bank supervision, resolution, and deposit guarantee. Respect for national sovereignty and mass politics had advised against a complete economic and monetary union. Yet at the same time the adoption of the common currency with the European Central Bank meant that countries in trouble could not devalue their currency to restore competitiveness and cut debt burden. They also had no obvious lender of last resort to turn to, as central bank financing of governments was prohibited in the Treaty.

In sum, the ‘early EMU’ attempted to achieve deep international economic integration, in particular by creating a single currency and unified monetary policy, while at the same time respecting nation states and mass politics. This proved impossible. The crisis proved that the single currency was incompatible with domestically determined policies driven by mass politics.

**The ‘Crisis EMU’: Integration and Nation States**

The response to the eurocrisis has been to strengthen EMU but to maintain State control. In other words, international economic integration and national sovereignty have been prioritised, at the cost of mass politics.[[36]](#footnote-36) The value of private capital and the position of national elites have been preserved. This is in line with the golden straitjacket model put forward by Rodrik.[[37]](#footnote-37) The development has a number of features that involve both the substance of rules as well as the institutional set up and the process through which the rules have been arrived at.[[38]](#footnote-38)

The first thing to note is that new rules have been adopted with the effect of reducing the ability of domestic mass politics to arrive at widely diverging policies. The rules maintain the key policies in national hands. There is no EU economic policy or fiscal policy of note. National elites still cut an important role. Matters have not been centralised to the EU. However, while the appearances of national democratic decision making are kept, the new normative framework imposes substantive and procedural constraints aimed at ensuring that national policies remain within certain parameters. As a result, domestic democracy is also restrained. Some of the ‘substance’ of self-government gets lost.[[39]](#footnote-39) To put it differently: whichever party or parties are in power, policies are going to be fairly similar.[[40]](#footnote-40)

The first major set of new rules was enshrined in the so-called legislative ‘six-pack’, which entered into force at the end of 2011. The six-pack takes the form of five regulations and one directive.[[41]](#footnote-41) They concern both national fiscal policies and macroeconomic imbalances. As regards fiscal policies, the Stability and Growth Pact becomes more detailed, while the powers of supranational institutions to monitor compliance and sanction the lack it are reinforced – it should be easier to impose penalties on countries that stray from deficit or debt limits. A new system of surveillance is established so as to prevent ‘excessive’ macro-economic imbalances. National economic policies are to be monitored by reference to a set of indicators. If imbalances occur, European institutions may take action, first through recommendations, but ultimately by means of imposing sanctions.

The second main set of new rules is contained in the Treaty on Stability, Coordination and Governance, also known as the Fiscal Compact, which entered into force at the beginning of 2013.[[42]](#footnote-42) Formally speaking the Fiscal Compact is an intergovernmental agreement. All euro-countries are signatories, as is the great majority of other EU Member States. The key purpose of the Fiscal Compact is to tighten the substantive and procedural limits disciplining national policy, especially on what concerns fiscal policy. Countries are to adhere to demanding requirements on structural deficits. Monitoring of compliance is to be enhanced by the establishment of independent national fiscal councils and the fiscal rules at the core of the new Stability and Growth Pact, above all the golden rule requiring public budgets to be balanced, have to be written into national constitutional or quasi-constitutional law. Failure to do so may result in sanctions. There are also rules aimed at improving the surveillance and coordination of national economic policies, as well as the institutionalisation of the Euro Summits, where national leaders of the euro-countries meet.

The third set of new rules is the so-called legislative ‘two-pack’. It entered into force 2013. It consists of two regulations. The first of these concerns the scrutiny and assessment of the budgets of the Eurozone countries.[[43]](#footnote-43) The States will need to present their draft budgets to the Commission, which reviews them. The Commission issues opinions on the budgets and has the power to ask for revisions. The second regulation of the ‘two-pack’ deals with countries that are experiencing fiscal problems, to which a system of enhanced surveillance is to be applied.[[44]](#footnote-44)

When put together, and combined with earlier measures, the new rules have a major structural impact on the constitution of economic and monetary union. There is a systematic process of coordination and guidance of fiscal and economic policies. The process takes place throughout the year under the banner of the European Semester. There are clear limits to national budgetary policies. In case of breach, a more effective enforcement mechanism is in place. The Eurozone countries are also subject to tight monitoring. This has been extended beyond the fiscal field and also concerns macroeconomic imbalances. Again, there is a system of enforcement in case of Member State non-compliance.

The new rules set limits to what domestic mass politics can decide. Significant deficit financing is not allowed. Neither are national economic policies that cause excessive macroeconomic imbalances. This may affect national tax systems, investment in infrastructure, education, pensions, labour market regulation, and so on.[[45]](#footnote-45) Individual Member States are given detailed guidance on their policies by the Commission[[46]](#footnote-46) and enter into negotiations with it to finalise their budget bills. The impact of the European rules has been strengthened by the fact that the majority of EU countries have found themselves either in excessive deficit procedure or under in-depth review for macroeconomic imbalances.[[47]](#footnote-47) The effect is that some of the substance is taken out of mass politics. Policies remain national, but the policy space is narrowed down considerably.[[48]](#footnote-48)

Similar remarks would apply to one of the proposals that are being considered, namely ‘binding contracts’, or to be more precise, quasi-contractual arrangements under the so-called ‘Convergence and Competitiveness Instrument’,[[49]](#footnote-49) although enthusiasm for these contracts seems to have plummeted in the last months.[[50]](#footnote-50) The idea of ‘binding contracts’ was put forward by the Commission in its blueprint for a deep and genuine monetary union in 2012. It has since attracted at times some support from Member States. The idea is simple. There may be reforms that a Member State should adopt. This may apply in particular in the context of so-called structural reforms, such as the regulation of the labour market. Often there is resistance in the Member State that makes elected politicians reluctant to impose the reforms. To lull public opinion, the EU could offer funds to the relevant Member State subject to the condition that the structural reform is actually implemented. National politicians could use this to ‘buy off’ the opponents of the reform by means of giving transitory subsidies to those affected by the reforms - for example, if a Member State adopted policies to render its labour market more flexible, EU money could be granted to support the training of the workers who are made redundant. The consideration of European money would thus be national structural reforms (and vice versa). Once again the proposal of binding contracts would impose rules that would constrain the options open to domestic mass politics. Once a contract has been agreed to by national leaders, there is no turning back from the path of reform. Again, the role of the nation state and national elites would be maintained, but the result would be tighter international economic integration, in particular ensuring that divergences harmful for the euro could not arise from national reluctance to reform.

The same pattern can be seen at play, although in an even starker form, in the context of the ‘financial assistance’ programmes signed by countries such as Greece; and also in the recommendations more or less formally extended to countries that have experienced severe fiscal difficulties, such as Italy. In all these case, policy-making has remained in national hands. Still, the contents of the policies have been ‘agreed’ with the troika (i.e. the trio European Commission, European Central Bank, and International Monetary Fund) or with the Commission and the Euro Summit. As a result, responsiveness of national policies to domestic mass political preferences has been radically curtailed. In some cases, national elected leaders were forced to step down in favour of technocrats without a democratic mandate.[[51]](#footnote-51) Similarly, proposals for referenda have been quashed as too dangerous,[[52]](#footnote-52) or have been greeted with a hostile reaction.[[53]](#footnote-53) In fact, this is the most extreme version of Rodrik’s golden straitjacket. The nation states are still formally preserved and they maintain the ultimate, if somewhat theoretical, sovereign options of defaulting on their debts or even leaving the EU. National parliaments and governments remain formally in charge, and national administrations and courts implement and apply their decisions. National elites still occupy the offices of state. Yet the ability of nation states to respond to domestic mass politics has been reduced to close to zero because of the demands of the deep economic integration.

It is also important to consider the institutional pattern that has emerged.[[54]](#footnote-54) This has two aspects. One the one hand, there is a new blend of intergovernmentalism where the Member States, in particular their prime ministers and finance ministers, have emerged as key decision makers. On the other hand, those EU institutions that lack a firm democratic pedigree, namely the Commission and the European Central Bank, have seen their powers strengthened. Perhaps the biggest loser is the European Parliament, which has neither had a strong role as a decision maker nor in the implementation and enforcement.[[55]](#footnote-55)

The new intergovernmentalism refers to a pattern where the key decisions are taken by national leaders or national finance ministers. This may take place in the European Council, where all national leaders are represented, or in Euro Summits, where only the heads of state or government of the Eurozone countries meet. In addition, the meetings of finance ministers either in the Council of Ministers or in the eurogroup have been influential. Consequently, the ‘motor’ of integration has not been the Commission but a collective of national leaders.[[56]](#footnote-56)

The new intergovernmentalism has been strengthened by the increased resort to international treaties as legal instruments. The Treaty on Stability, Coordination and Governance has already been mentioned. But we should also take into account the Treaty Establishing the European Stability Mechanism as well as the Agreement on the Transfer and the Mutualisation of Contributions to the Single Resolution Fund. The use of international agreements keeps control firmly in the hands of national executives and side-lines European institutions and legal doctrines.

At the same time that the new intergovernmentalism took shape, the most ‘federal’ and technocratic institutions of the EU, [[57]](#footnote-57) namely the European Commission and the European Central Bank, have also got new powers or have seen their old ones strengthened. The Commission has been given new tasks and powers as the guardian of fiscal rectitude and budget discipline and as the umpire of macroeconomic balance. The European Central Bank has been widely regarded as the most effective of EU institutions as a result of its decisive intervention in the sovereign debt crisis through the announcement in 2012 of its resolve to buy sovereign debt in secondary markets in the amounts needed to deter bets on the collapse of the euro (the so-called outright monetary transactions).[[58]](#footnote-58) The ECB has been formally assigned new tasks and powers, in particular in the field of banking supervision and bank resolution, as well as recognised considerable latitude in the exercise of its already existing powers in the constitutional practice of the European Union.

At first sight the combination of the new intergovernmentalism and the strengthening of the supranational institutions may appear puzzling. However, the pattern makes sense if viewed through the prism of the trilemma. The economic and monetary union has been strengthened and national sovereignty has been safeguarded at the same time. The loser has been mass politics. In particular, the European Parliament has been side-lined in the institutional pattern.[[59]](#footnote-59)

In sum, it seems that the ‘crisis EMU’ has donned a golden straitjacket.[[60]](#footnote-60) It has enhanced economic and monetary integration by reducing the danger of diverging policies. In the main, it has not done this by centralising power, but rather by imposing constraints, monitoring, and the possibility of sanctions being imposed on Member States that stray from the European orthodoxy in response to domestic mass politics. The institutional processes and patterns have favoured national executives and European technocrats. The European Parliament has been side-lined and domestic democracy has on occasion been viewed as a threat. International economic integration and nation states have emerged as the winners, mass politics as the loser.

**The ‘Blueprint EMU’: Integration and Mass Politics**

If the immediate response to the crisis has been the knitting of what Rodrik would characterise as a golden straitjacket, in the longer term proposals have been put towards an European equivalent of his ‘world federation’.[[61]](#footnote-61) This would involve maintaining the high level of international economic integration in the form of a well-functioning EMU, but adding to it mass politics at the European level. The loser would be the nation states, that is national sovereignty, to be compensated by the strengthening of supranational democracy.

In 2012 the European institutions put forward two key documents that explore how the EMU should look like in the long term. These are the Commission’s blueprint for a deep and genuine economic and monetary union[[62]](#footnote-62) and Four Presidents’ Proposal ‘Towards a Genuine Economic and Monetary Union’. [[63]](#footnote-63) In 2015, the two proposals were joined by a ‘Five Presidents’ Report’.[[64]](#footnote-64) For the present purposes, we should concentrate on the long term visions that underpin these proposals.

For the long term, which is defined as beyond five years, the Commission’s blueprint calls for an autonomous euro area budget, fiscal capacity for EMU, and common issuance of public debt. In its view, this ‘further integration of the euro area towards a full banking, fiscal and economic union will require parallel steps towards a political union.’ The recent Five Presidents’ Report follows along the same lines, but is more cautious. For ‘longer term’, that is by 2025, it envisages sharing more sovereignty within common institutions and going beyond rule-based cooperation. There would be increasingly joint decision making on national budgets and economic policies, as well as public risk sharing, economic convergence and regulatory harmonisation.[[65]](#footnote-65)

In other words, the vision that emerges in particular from the Commission’s blueprint is one of transfer of policy responsibilities from the national level to the European level in the long term.[[66]](#footnote-66) EMU would not only be based on supranational constraints and monitoring of national decisions, but would also involve among other things a Eurozone budget, aimed at realising solidarity at a supranational level and rendering the Eurozone capable of absorbing asymmetric economic shocks. In other words, the room for national sovereignty in the system would be much reduced.

At the same time, proposals have been made to reduce the depth of the socio-economic structural differences within the Eurozone - if you wish, the varieties of capitalism issue[[67]](#footnote-67) - so as to render Member States more similar to each other through harmonisation. This emerges particularly clearly from a recent call by Macron and Gabriel,[[68]](#footnote-68) the Ministers of Economy for France and Germany, but the point is also made in the Five Presidents’ Report, which envisages binding EU standards on ‘labour markets, competitiveness, business environment and public administrations, as well as certain aspects of tax policy (e.g. corporate tax base).’[[69]](#footnote-69)

The documents emerging from the EU institutions recognise that the proposed long term system would need to incorporate elements ensuring democratic legitimacy and accountability – a political union. In the words of the Commission’s blueprint:

…it is the European Parliament that primarily needs to ensure democratic accountability for any decisions taken at EU level… A further strengthened role of EU institutions will therefore have to be accompanied with a commensurate involvement of the European Parliament…

[Fundamental accountability] problem would no longer arise in a full fiscal and economic union which would itself dispose of a substantial central budget, the resources for which would be derived, in due part, from a targeted, autonomous power of taxation and from the possibility to issue the EU's own sovereign debt, concomitant with a large-scale pooling of sovereignty over the conduct of economic policy at EU level. The European Parliament would then have reinforced powers to co-legislate on such autonomous taxation and provide the necessary democratic scrutiny for all decisions taken by the EU's executive…[[70]](#footnote-70)

The idea is to strengthen mass politics at the EU level, by empowering the European Parliament. If powers are transferred to the EU level, as they envisage, the correlation is that democracy should follow. Logically, the struggle between the political right and the left would increasingly take place on the European stage, undoubtedly joined by various other struggles, as we have seen for example in the US.[[71]](#footnote-71) In this respect, the 2012 documents are clearer that the 2015 Five Presidents’ Proposal. However, even the latter proposes a ‘political union’ and ‘euro area treasury accountable at the European level’.

The long term ‘blueprint EMU’ would involve a very different resolution of the trilemma than the ‘crisis EMU’. International economic integration would be maintained. There would be a ‘genuine’ economic and monetary union. This would unavoidably entail transferring powers to the EU level, at the cost of national sovereignty. Yet at the same time mass politics could be enhanced. Instead of domestic mass politics restrained by tight supranational constraints, the reforms would unleash genuine European level mass politics. As policy adopted at the European level would by definition not result in divergences threatening EMU, similar substantive constraints on the results of European mass politics would not have to be adopted. In other words mass politics would migrate at the European level and be revitalised.

In sum, there are serious long term proposals that aim to prioritise international economic integration and mass politics at the cost of the role of the nation states. They would result in what the Commission calls a political union, or in Rodrik’s terminology a European federation.

**Implications**

The argument so far has been that Rodrik’s trilemma applies to European economic and monetary integration. We can at the same time have only two of the following: deep international economic integration, nation states, and mass politics. In the course of the last twenty or so years, we have witnessed different answers to the trilemma. Under the ‘early EMU’, national sovereignty and mass politics were prioritised. This led to divergences that threatened the very existence of the euro. The response was the ‘crisis EMU’ that enhanced integration while maintaining national sovereignty by imposing substantive limits on the decisions that domestic democracies could arrive at. However, a different long term vision is in the process of being articulated, a vision that promises to enhance integration but also remove some of the constraints on mass politics by elevating it to the European level, albeit at a cost to national sovereignty.

If the argument put forward is correct, it has several implications. The first has to do with national constitutions and constitutional courts.[[72]](#footnote-72) If the fundamental starting point of national constitutions is the state and its sovereignty, then there is a trade-off between maintaining national democracy and having a well-functioning currency union. If the starting point is democracy, then the trade-off is between sovereignty and the single currency. Without substantive limits on the former, the latter will not work. It is important that this trade-off be recognised and articulated. If national sovereignty and democracy are to be defended to the very end, there is a price to be paid.[[73]](#footnote-73)

The point above may be illustrated by a necessarily stylised sketch of some of the key judgments of the German Constitutional Court.[[74]](#footnote-74) In *Brunner*,[[75]](#footnote-75) the Constitutional Court emphasised the role of the sovereign nation state, setting limits on economic integration.[[76]](#footnote-76) In the *Lisbon Judgment* it grounded this on a more fully articulated theory of democracy.[[77]](#footnote-77) It emphasised it was not enough to maintain the formal trappings of democracy, but nation states should also have sufficient space to take collective decisions on the shape of their societies. In its *OMT Reference* it operationalised the protection of sovereignty and democracy by arguing that the outright monetary transactions decision of the European Central Bank is *ultra vires* and infringes these principles.[[78]](#footnote-78)

The *OMT Reference* concerned the very constitutionality of the outright monetary transactions announced by the European Central Bank in September 2012:[[79]](#footnote-79) the programme signalled the willingness of the ECB to buy bonds of Eurozone countries in secondary markets for unlimited amounts (in the sense the final amount not being limited *ex ante*, but decided discretionally by the ECB), provided the ‘beneficiary’ Member State was the signatory of a programme of financial assistance from the Eurozone. The ECB argued that its OMT commitment was needed to repair and prevent disruptions to the monetary policy transmission mechanism. In particular, fears of an eventual break-up of the Eurozone were making ECB decisions on interest rates toothless, as actual rates were not influenced by the ECB, but by the assessment that financial market actors made of the likelihood of this or that country remaining or leaving the Eurozone. The OMT was meant to calm those fears. It can be fairly said that it succeeded in doing so. By contrast the plaintiffs who brought the case before the German Constitutional Court argued that the powers of the ECB did not extend far enough as to cover a programme such as the OMT and that the programme violated the prohibition of monetary financing, enshrined in Article 123 TFEU. The plaintiffs were partly supported by the German Bundesbank, which argued that the OMT was not in reality about the effectiveness of monetary policy, as claimed by the ECB, and expressed concerns about its effect on market discipline and on the German federal budget.

By a 6 to 2 majority, the German Constitutional Court decided to refer the matter to the European Court of Justice. However, it spelt out in great detail its own views on how the matter should be decided, making it clear that it was the considered view of the majority of the Court that the OMT programme had to be declared invalid, or at the very least interpreted narrowly. Altogether, the views of the German Constitutional Court seem to have been heavily influenced by the arguments of the Bundesbank. The Court first held that it would find a violation by the ECB of its monetary policy mandate or of the prohibition of monetary financing structurally significant, due to its impact on the core areas of Member State responsibilities and on their democratic processes.[[80]](#footnote-80) It then proceeded to interpret EU law, and considered that both the ECB’s mandate and Article 123 TFEU had indeed been violated. Its interpretation of the mandate was narrow, on account of what the democratic principle requires.[[81]](#footnote-81) It expressed the view that the OMT is an act of economic rather than monetary policy, and concluded that the OMT aimed at circumventing the prohibition of monetary financing, thus rejecting the argument of the ECB about the OMT as an instrument repairing the monetary policy transmission mechanism. However, it held out the possibility of a narrow interpretation of OMT that could render it legal. Particularly important in this respect are that the amounts of bond purchases be limited and that the ECB is treated as a preferred creditor that does not need to participate in possible debt cuts.[[82]](#footnote-82)

The trade-off described above emerges clearly in the ruling. Sovereignty and democracy, as interpreted by the German Court, demand that a policy that has been critical for the functioning and even the survival of the euro be discontinued or at least modified. In effect, with its OMT decision the European Central Bank assumed a role akin to that of lender of last resort towards all Eurozone states.[[83]](#footnote-83) National central banks have always performed this role.[[84]](#footnote-84) For example, the UK Government can never run out of pounds, since the Bank of England can always print more. Markets know this and therefore do not doubt the ability of the government to service its loans. By contrast, individual Eurozone countries cannot order the European Central Bank to provide them with more euros. As a result, it is rational for markets to worry about the ability of a Eurozone country that is in distress to service its loans. This was reflected in the very high and potentially unaffordable interest rates that several governments had to offer to investors.[[85]](#footnote-85) The promise of the European Central Bank to purchase government bonds reduced this risk. Investors now knew that if they purchased bonds, there would be a buyer they could sell to. As a result, the risk they took was smaller and they could live with the correspondingly lower interest rates. Functionally, the existence of a lender of last resort seems to be a vital condition for a well-functioning economic and monetary union; and still, the assumption of that role by the ECB would contravene sovereignty and democracy in the view of the German Constitutional Court.[[86]](#footnote-86)

It is true that the Constitutional Court did suggest that the OMT decision could be interpreted narrowly. In this narrow form, it would survive the objections of the Court. Unfortunately this would seriously compromise the effectiveness of the OMT. Particularly important in this respect is the *ex ante* unlimited character of the programme, in other words that the ECB can buy as many national bonds as the circumstances require.[[87]](#footnote-87) According to the German Constitutional Court, quantitative limits need to be imposed for reasons of legality. Yet it is precisely the unlimited nature of the OMT promise that has made it so powerful. The European Central Bank is the only Eurozone institution that can never run out of money. It can always simply print more. It has infinite financial firepower. For this reason, it is not rational for market actors to seek to take it on; the Central Bank will always win due to its theoretically infinite resources.[[88]](#footnote-88) As a result, the OMT decision has never had to be implemented to be effective. The markets found it credible and accepted that it provided them with the assurance they needed to keep on buying government bonds. The Constitutional Court’s demand that the European Central Bank have priority towards other creditors rather than rank *pari passu* would similarly undermine the OMT. If bonds held by the ECB had senior status, then any creditors whose bonds are not purchased would experience heavier losses, and the OMT commitment would fail to reassure. Overall, the trade-off between the effectiveness of the OMT, and more broadly the functioning of the single currency, and the demands emanating from the principles of sovereignty and national democracy emerges in a stark form.[[89]](#footnote-89)

The response of the European Court of Justice has been handed down very recently.[[90]](#footnote-90) The Court’s view largely follows that of Advocate General Cruz Villalón,[[91]](#footnote-91) and those of the 11 Member States and the EU institutions that submitted observations. The Court rules that the ECB has neither overstepped its mandate nor engaged in monetary financing in violation of Article 123(1) TFEU. In particular, the Court draws from its previous *Pringle* ruling,[[92]](#footnote-92) and uses the aims and the instruments of monetary policy to define its remit.[[93]](#footnote-93) It does not engage with wider issues of sovereignty and democracy that had informed the narrow reading of the Constitutional Court - instead its ruling is technical and emphasises the limits of judicial competence when assessing the proportionality of the activities of an expert institution like a central bank.[[94]](#footnote-94) It also expressly notes the importance of the *ex ante* unlimited nature of OMT for its effectiveness and does not see a legal reason to require a preferential creditor status for the ECB.[[95]](#footnote-95)

At the time of this writing, it is impossible to predict the response of the German Constitutional Court. There is a real risk of a constitutional crisis, with the Constitutional Court rejecting the ruling of the European Court either on *ultra vires* grounds or due to an infringement of German constitutional identity.[[96]](#footnote-96) The former avenue would result in a direct clash between the two courts, but could be cured through Treaty change authorising the OMT, incidentally offering an opportunity for a wider reform of the Eurozone. The constitutional identity option would avoid a direct clash between the two courts, as each court could claim to be relying on different legal systems, the German and the European, to decide the case. But this will come at the price of a clash between the German and the EU legal orders that could not be fixed by the ‘simple’ expedient of a Treaty change, as powers affecting identity cannot be transferred under the German law. Regardless of the ground chosen, a rejection would inflict considerable damage to the EU legal system and the credibility of the euro if it emerges that individual Member States are able to opt out of key policies, such as the OMT, even when a common dispute settlement mechanism, as the European Court is *par excellence*, has established their legality.

The second set of implications concerns the legitimacy of the EU. It is useful to consider this in terms of output legitimacy and input legitimacy.[[97]](#footnote-97) The problems revealed with the ‘early EMU’ came to undermine the output legitimacy of the EU when the crisis hit, while the move to the ‘crisis EMU’ has exacerbated problems with input legitimacy in the composite European political system comprising the EU but also its Member States.

For a long time it has been argued that the EU suffers from limited input legitimacy. This means that the citizens have limited opportunities to make their voices heard at the EU level and to influence EU policy. However, it has been argued that this is at least partially compensated for by output legitimacy. In other words, the activities of the EU provide benefits for the citizens. They may not be able to influence European policies, but they approve of the actual results of the activities of the EU, such as freedom to trade and travel or the protection of the environment.[[98]](#footnote-98)

The output legitimacy of the EU can be and has already been seriously compromised by a poorly functioning currency union.[[99]](#footnote-99) The loudly proclaimed and supposedly carefully planned single currency that was put in place after years of work has proven desperately vulnerable. The danger is that the EU comes to be associated in the minds of citizens not with prosperity but rather with economic problems and ineffectual and chaotic policy responses.[[100]](#footnote-100) Even if the rules-based ‘crisis EMU’ that is now in place might have the potential to alleviate some of the problems intrinsic to the ‘early EMU’ and, consequently, to bring along long term benefits in the form of low interest rates, sound public finances and a stable financial system, the new rules will require further work and need to be operated with skill.[[101]](#footnote-101) At the moment, any such potential long term output-legitimacy-enhancing benefits are however crowded out by the problems bequeathed by the failure of the ‘early EMU’ model. Further, if the eurocrisis were to re-emerge in an acute form, or if a new crisis erupts despite the reforms that have been implemented or agreed to, the legitimacy of the whole EU project would suffer a tremendous blow. There are causes for concern. For example, is the agreed bank resolution mechanism that will only collect €55 billion in funds[[102]](#footnote-102) and has a cumbersome decision decision-making process involving a multitude of actors truly going to be a sufficient tool to break the doom loop between banks and sovereigns?[[103]](#footnote-103) In other words, if the weaknesses in international economic integration result in a currency union that is simply not working, as in the case of the ‘early EMU’, a price will be paid in terms of output legitimacy.

As for input legitimacy, it has always been acknowledged that the EU is imperfectly democratic, but now the danger is that with the ‘crisis EMU’ democracy is being undermined at the national level, too. The ‘crisis EMU’ moved to strengthen the workings of EMU by imposing a series of rules that constrain the policy space available for national democracies. As was stressed above, substantive limits have been imposed on mass politics.[[104]](#footnote-104) Sovereignty and the position of national elites are maintained; in fact the elite nature of the EU project has probably been further strengthened.[[105]](#footnote-105) The cost has been a further reduction in input legitimacy.

The danger lurking in this development is that it may encourage political extremism.[[106]](#footnote-106) We tend to assume that citizens disgruntled with current policies can indeed vote for the opposition in the next general election. However, the various constraints imposed by European rules on national economic and fiscal policy may render the opposition incapable of pursuing policies that are substantially different. Change within the system is impossible. In such circumstances it may be attractive and even rational to turn to extreme options that promise to change radically or overthrow the entire system. The European Parliament elections of 2014 where parties such as France’s *Front national* posted strong results offer a taste of what might be in stock.[[107]](#footnote-107)

Alternatively, it may be the case that the tools laboriously developed during the crisis to survey and constrain national decision-making get watered down in practice in the face of resistance from national mass politics. Member State governments and parliaments may choose to ignore or finesse the limits that European rules seek to impose on them, in order to avoid defeat in national elections. It is not clear that EU institutions faced with a determined government of an important country could ultimately enforce the rules in full.[[108]](#footnote-108) This might be otherwise if EU institutions received strong backing from all or most other governments, but whether this would be forthcoming would probably depend on political factors and cannot be taken for granted. Further, the final sanctions of fines and so on lack full credibility.[[109]](#footnote-109) It is an open question whether a country in serious economic difficulties that lead it to breach EU rules would really be hit by fines that would only make matters worse.[[110]](#footnote-110) Further, the imposition of sanctions on important economies during a downturn could have systemic effects and plunge the entire Eurozone into a recession.[[111]](#footnote-111) In other words, there is a possibility that ‘crisis EMU’ systems could prove insufficiently robust to constrain states responsive to national mass politics,[[112]](#footnote-112) with the result that the divergences of the ‘early EMU’ period could all too easily remerge.

Unfortunately the implementation of the ‘blueprint EMU’, and in particular the recreation of mass politics at the supranational level, is something that poses major practical and normative challenges. The most obvious is feasibility. How to get nation states to agree to a project that seeks to reduce the role of nation states?[[113]](#footnote-113) In essence, turkeys are asked to organise Christmas. However, there is also a more profound problem that has to do with legitimacy.[[114]](#footnote-114) It is commonly argued that the EU lacks a demos.[[115]](#footnote-115) There is no ‘we’ feeling that would encourage political minorities to accept the decisions of the political majority. There is no European debate that would allow for the formation of common views on issues; in fact, the opposite is closer to facts: we can observe separate national debates unfolding. The European Parliament has not been able to emerge as a credible depository and source of democracy. Voter turnout has remained low and public interest limited, except in the case of scandals. So far, the attempt to increase interest in European Parliament elections by the *Spitzenkandidaten* formula can only be described as less than an overwhelming success.

The potential danger is thus that an attempt to transfer mass politics from the national level to the supranational level would only worsen EU’s legitimacy problems.[[116]](#footnote-116) Citizens attached to their national demoi might not accept decisions made at the European arena as legitimate even if all the formal rules of democracy were observed.[[117]](#footnote-117) Yet it is difficult to see how else the trilemma of economic and monetary integration could be resolved. One solution suggested by the logic of Rodrik’s trilemma would be a retreat from EMU back to national currencies. However, once the decision to create the euro was made, it became both economically and politically very costly to step back, and it would be by no means certain that the whole European project could recover from it. In the words of Offe: ‘[t]he dissolution of the Euro zone and, as an inescapable medium term consequence, the EU would be equivalent to a tsunami of economic as well as political regression.’[[118]](#footnote-118) Ultimately, an attempt to return to national currencies would represent a gamble of epic proportions. The list of unknowns and unknowables in terms of impact on the financial system, on the internal market, on the political glue that holds the EU together, and on the domestic institutions of the weaker countries is simply frightening.[[119]](#footnote-119) Further, it is difficult to see how the EU could plan for such an eventuality in a transparent and systematic manner, like it was done for the introduction of the single currency. The start of such a planning process would unleash a wave of speculation destabilising the existing system and making an orderly and managed transition back to national currencies extremely challenging. And is the goal, a return to national solutions of the past that were never really satisfactory, truly worth the risks? As a result, this should remain the option of last resort. But supporting the single currency at the cost of democracy does not appear acceptable or viable either. The conclusion then is that in the context of economic and monetary integration the most urgent issue is the need to build the preconditions for true democracy at the European level[[120]](#footnote-120) and transform the project of elites to one of citizens. This will not be easy, and again there are many unknowns and unknowables. In the words of Mény, ‘the daunting task that policy-makers, philosophers, and academics now face is rethinking the way democracy can be transferred at the supranational level. It is a challenge comparable to the one that the American founding fathers and French revolutionaries had to deal with when confronted with the intellectual deadlock of democratic theory at the end of the eighteenth century… Mass democracy as we know it did not emerge *toute armée* from the minds of brilliant men but, rather, was the by-product of new republican governments and the unfinished result of 200 years of trial and error.’[[121]](#footnote-121) Yet, despite the difficulties, this seems to me in the long term a far more promising course than the chaotic retreat to national solutions of the past that the unwinding of the single currency would entail. It is in line with the basic ethos of ‘ever closer union’ that has animated the integration project ever since the Schuman declaration.[[122]](#footnote-122) It represents a constructive and positive endeavour that could yield great benefits upon success, rather than a reactionary move back to the problems the EU was seeking to address. Further, if the attempt to integrate were to fail, the option of dismantling the single currency is still going to be available, while the obverse is not true.

**Conclusion**

In sum, it has been argued that Rodrik’s trilemma between deep economic integration, nation states, and mass politics applies for European economic and monetary integration. Well-functioning EMU, full state sovereignty, and unfettered democracy cannot co-exist. During the early years of EMU, the emphasis was on respecting national autonomy and mass politics, with the result of divergences and a currency union that was rendered vulnerable to a crisis. During the crisis, the role of nation states has been preserved and the functioning of EMU has been improved, but at the cost of democracy both at the European and the national levels. However, a third possibility has been put forward by the European institutions that would safeguard EMU and promote mass politics by transferring it from the national level to the EU one. Important implications follow from the trilemma. The defence of national constitutions by Member State constitutional courts may imperil the functioning of the single currency, as demonstrated by the potential consequences of *OMT Reference* of the German Constitutional Court for the economically vital OMT commitment of the European Central Bank, if the Constitutional Court decides to reject the ruling of the European Court of Justice. More profoundly, the different answers to the trilemma present different challenges for the legitimacy of the European project. In particular, while a poorly functioning EMU will sap the output legitimacy of the EU, a ‘crisis EMU’ that sets substantive limitations to what can democratically be decided imperils input legitimacy and invites political extremism. The logic of Rodrik, when applied to the case of EMU, suggests that we should respond either by moving ahead towards a political union or by retreating back to national currencies.

Ultimately the deep challenge facing the euro is a political one.[[123]](#footnote-123) Is there sufficient political will to create the arrangements needed for a successful currency union, or do the high political costs associated with the necessary moves mean that Europe will have to endure a deeply unsatisfactory system that will eat at its legitimacy? [[124]](#footnote-124) This should not come as a surprise. The monetary union was always a political project. Economists writing about optimum currency areas warned about limited labour mobility and the lack of a serious system of fiscal transfers within Europe.[[125]](#footnote-125) They were surprised by the decision to admit countries such as Italy or Greece that were not part of the European economic core formed around Germany.[[126]](#footnote-126) Political leaders behind the euro project were aware of this, but decided to push ahead regardless. Their political problem is now in trouble, a political solution is needed. The various high-level reports from the Commission’s blueprint to the Five Presidents’ Proposal analysed in this article have consistently pointed the way towards the greater sharing of sovereignty, coupled with a greater role for democracy at the European level. After years of studying these reports, it may be the time for the Member States of the Eurozone to act on them, or alternatively to start considering whether and how the single currency could be unravelled in an orderly fashion.

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2. The most comprehensive legal analysis to-date are A. Hinarejos, *The Euro Area Crisis in Constitutional Perspective* (Oxford University Press, 2015), and K. Tuori and K. Tuori, *The Eurozone Crisis: A Constitutional Analysis* (Cambridge University Press, 2014). [↑](#footnote-ref-2)
3. D. Rodrik, 'How Far Will International Economic Integration Go?' (2000) 14 *Journal of Economic Perspectives* 177-186. For an earlier attempt from a political science perspective, see B. Crum, 'Saving the Euro at the Cost of Democracy' (2013) 51 *Journal of Common Market Studies* 614-630. See on Rodrik’s recent views ‘Future of European Democracy’ at <https://www.sss.ias.edu/files/pdfs/Rodrik/Commentary/Future-of-Democracy-in-Europe.pdf>. [↑](#footnote-ref-3)
4. Commission Communication, 'A Blueprint for a Deep and Genuine Economic and Monetary Union: Launching European Debate' (2012) COM 777 final/2, available at <http://ec.europa.eu/archives/commission_2010-2014/president/news/archives/2012/11/pdf/blueprint_en.pdf>. [↑](#footnote-ref-4)
5. The fundamental significance of the crisis for European integration more broadly has also been emphasised eg in the reports for the XXVI FIDE Congress; see F. Amtenbrink, ‘General Report’ at 75 and J.-P. Keppenne, ‘Institutional Report’ at 179, both in U. Neergaard, C. Jacqueson, and J.-H. Danielsen (eds), *The Economic and Monetary Union: Constitutional and Institutional Aspects of the Economic Governance within the EU* (DJØF Publishing, 2014). [↑](#footnote-ref-5)
6. See P. Leino and J. Salminen, 'Should the Economic and Monetary Union Be Democratic After All? Some Reflections on the Current Crisis' (2013) 14 *German Law Journal* 844-868 for an analysis of the crisis from the democratic perspective. [↑](#footnote-ref-6)
7. Above, n. 2, and D. Rodrik, *The Globalization Paradox: Why Global Markets, States, and Democracy Can't Coexist* (Oxford University Press, 2011). [↑](#footnote-ref-7)
8. Following Rodrik, above, n. 2, at 180 the term ‘mass politics’ is used to refer to ‘political systems where: a) the franchise is unrestricted; b) there is a high degree of political mobilization; and c) political institutions are responsive to mobilized groups.’ In his later writings, Rodrik tends to use the term ‘democracy’ instead. [↑](#footnote-ref-8)
9. Rodrik defines nation states *ibid* as ‘territorial-jurisdictional entities with independent powers of making and administering the law’. [↑](#footnote-ref-9)
10. J.G. Ruggie, 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order' (1982) 36 *International Organization* 379-415. [↑](#footnote-ref-10)
11. This model is akin to the gold standard of the late 19th and early 20th century, as discussed by Rodrik, above, n. 6, at 34-39. [↑](#footnote-ref-11)
12. D. Marsh, ‘Don’t Count on Germany’s Economic Surrender’ *Financial Times*, 20 June 2012. [↑](#footnote-ref-12)
13. M. Poiares Maduro, 'A New Governance for the European Union and the Euro: Democracy and Justice' *RSCAS Policy Paper* 2012/11, available at <http://cadmus.eui.eu/bitstream/handle/1814/24295/RSCAS_PP_2012_11rev.pdf?sequence=1>, writes at 2 of ‘leaving outside Euro governance fundamental dimensions of economic and fiscal policy impacting on a monetary Union. This was necessary so as to preserve space for national politics.’ [↑](#footnote-ref-13)
14. The narrative here reflects the ‘standard’ view of the crisis, such as the one provided in the introduction to R. Baldwin and F. Giavazzi (eds), *The Eurozone Crisis: A Consensus View of the Causes and a Few Possible Solutions* (CEPR Press, 2015) This has shifted several times and may shift again. I am grateful to an anonymous referee for making this point. [↑](#footnote-ref-14)
15. See Tuori and Tuori, above, n. 1, for a sustained analysis of the original macroeconomic constitution of the EU and its defects. [↑](#footnote-ref-15)
16. See generally also A.J. Menéndez, 'The Existential Crisis of the European Union' (2013) 14 *German Law Journal* 453-526, at 484-497. [↑](#footnote-ref-16)
17. See P. Hall and D. Soskice, ‘An Introduction to Varieties of Capitalism’ in P. Hall and D. Soskice (eds), *Varieties of Capitalism: The Institutional Foundations of Comparative Advantage* (Oxford University Press, 2001) for a seminal analysis. For an exploration from the perspective of EU law, see J. Snell, ‘Varieties of Capitalism and the Limits of European Economic Integration’ (2010-11) 13 *Cambridge Yearbook of European Legal Studies* 415-434. [↑](#footnote-ref-17)
18. See P.A. Hall, 'Varieties of Capitalism and the Euro Crisis' (2014) 37 *West European Politics* 1223-1243. [↑](#footnote-ref-18)
19. For concise overviews of the causes of the crisis in the Eurozone, see eg ‘A Very Short History of the Crisis’ *The Economist*, 12 November 2011, or D. Harari, ‘Causes of the Eurozone Crisis: A Summary’ *House of Commons Library Standard Note* SN06831, available at <http://researchbriefings.files.parliament.uk/documents/SN06831/SN06831.pdf>. [↑](#footnote-ref-19)
20. See P. De Grauwe, ‘Design Failures in the Eurozone: Can They Be Fixed?’ *LEQS Paper* 57/2013, available at <http://www.lse.ac.uk/europeanInstitute/LEQS/LEQSPaper57.pdf>, at 6-8. [↑](#footnote-ref-20)
21. According to *The Economist*, ‘Maastricht follies’, 9 April 1998: ‘For a start, the figures had to be fudged even for the hard-core countries. The debt criterion had to be qualified—to let in countries approaching the 60% ceiling “at a satisfactory pace”—to give Belgium any chance at all. France and Italy both resorted to huge one-off manoeuvres (a payment by France Télécom and a repayable euro tax respectively). Even Germany redefined its hospital debt, although it had to give up trying to revalue its gold reserves in the face of fierce hostility from the Bundesbank. And, as the Germans found, once one country is allowed to fudge, others are hard to stop.’ [↑](#footnote-ref-21)
22. S. Böll, C. Reiermann, M. Sauga and K. Wiegrefe, ‘Operation Self-Deceit: New Documents Shine Light on Euro Birth Defects’ *Spiegel Online International*, 8 May 2012 <http://www.spiegel.de/international/europe/euro-struggles-can-be-traced-to-origins-of-common-currency-a-831842-2.html>. [↑](#footnote-ref-22)
23. G. Majone, *Rethinking the Union of Europe Post-Crisis: Has Integration Gone Too Far?* (Cambridge University Press, 2014) at 203. [↑](#footnote-ref-23)
24. According to J. Rankin, ‘Greece in Europe: a short history’ *The Guardian*, 3 July 2015: ‘Although it was not until 2004 that Athens admitted entry figures had been fudged, the dodgy numbers were an open secret in Brussels.’ Yet both the Commission and the Council supported its euro entry in 2001. [↑](#footnote-ref-24)
25. The issue was litigated in Case C-27/04 *Commission v Council* EU:C:2004:436. See on this eg F. Snyder, 'EMU - Integration and Differentiation: Metaphor for European Union' in P. Craig and G. de Búrca (eds), *The Evolution of EU Law* (Oxford University Press, 2nd edn, 2011) at 705-709. [↑](#footnote-ref-25)
26. D. Adamski, 'Europe's (Misguided) Constitution of Economic Prosperity' (2013) 50 *Common Market Law Review* 47-86. [↑](#footnote-ref-26)
27. See also the narrative of the crisis in D. Wilsher, ‘Law and the Financial Crisis: Searching for Europe’s New Gold Standard’ (2014) 20 *European Law Journal* 241-283. [↑](#footnote-ref-27)
28. P. De Grauwe, ‘Design Failures of the Eurozone’ in Baldwin and Giavazzi (eds), above, n. 13, 99-108, at 101. [↑](#footnote-ref-28)
29. Press Release, 2329th Council Meeting, 5696/01 (Presse 35), available at <http://europa.eu/rapid/press-release_PRES-01-35_en.htm>. The Council took issue with Ireland’s budget plans that were feared to ‘aggravate overheating and inflationary pressures’. [↑](#footnote-ref-29)
30. See eg J. Murray Brown, ‘Ireland Faces up to Fiscal Dilemma’ *Financial Times*, 6 April 2011. It is not clear to what extent the ECB pressured Ireland to desist from bailing in bondholders on the grounds that doing so would damage French and German banks. See B. Eichengreen, ‘The Irish Crisis and the EU from a Distance’ (January 2015), 6, available at <https://www.imf.org/external/np/seminars/eng/2014/ireland/pdf/Eichengreen_IrishCrisisEU.pdf>. [↑](#footnote-ref-30)
31. See eg T. Barber and K. Hope, ‘Fake Greek Data Criticised’ *Financial Times*, 13 January 2010. [↑](#footnote-ref-31)
32. P. Krugman, Those Depressing Germans’ *New York Times*, 3 November 2013. See more generally for a scathing analysis of the role of Germany P. Legrain, *European Spring: Why Our Economies and Politics Are in a Mess - and How to Put Them Right* (CB Books, 2014) [↑](#footnote-ref-32)
33. See for figures and analysis European Commission, ‘Current Account Surpluses in the EU’ *European Economy* 9/2012. [↑](#footnote-ref-33)
34. It is important to note that at least in theory the current account imbalances were not inherently harmful in themselves. Had the money borrowed from Germany been invested in ways that boosted exports and thus made it easier to repay the loans, the imbalances would have been benign. In fact, before the crisis, the current account imbalances were viewed as a sign of the success of the euro in fostering convergence, with capital owners taking advantage of plentiful investment opportunities in the poorer countries: see O. Blanchard and F Giavazzi, ‘Current Account Deficits in the Euro Area: The End of the Feldstein-Horioka Puzzle?’ [2002] Brookings Papers on Economic Activity 147-186. [↑](#footnote-ref-34)
35. See for a legal assessment of the crisis response M. Ruffert, ’The European Debt Crisis and European Union Law’ (2011) 48 *Common Market Law Review* 1777-1805. [↑](#footnote-ref-35)
36. See also the discussion in Maduro, above, n. 12, in particular at 8-10. [↑](#footnote-ref-36)
37. Compare also the discussion of ‘surveillance model’ in A. Hinarejos, ‘Fiscal Federalism in the European Union: Evolution and Future Choices for EMU’ (2013) 50 *Common Market Law Review* 1621-1642, at 1634-1635. [↑](#footnote-ref-37)
38. For an accessible overview of the main legal developments, see A. Hinarejos, ‘Economic and Monetary Union’ in C. Barnard and S. Peers (eds), *European Union Law* (Oxford University Press, 2014) 567-590. See K.A. Armstrong, 'The New Governance of EU Fiscal Discipline' (2013) 38 *European Law Review* 601-617 for a nuanced analysis of the reforms. [↑](#footnote-ref-38)
39. See also M. Dawson and F. de Witte, 'Constitutional Balance in the EU after the Euro-Crisis' (2013) 76 *Modern Law Review* 817-844, in particular at 824-828. [↑](#footnote-ref-39)
40. The well-known sequence of Greek elections in January 2015 followed by a referendum in July and elections in September provides a particularly telling example - popular votes against austerity policies did not result in a fundamental change of direction. See eg H. Foy, ‘What’s at stake when Greeks go to the polls... again’ *Financial Times*, 16 September 2015. [↑](#footnote-ref-40)
41. Regulation (EU) No 1173/2011 of the European Parliament and of the Council on the effective enforcement of budgetary surveillance in the euro area OJ L306, 23.11.2011, 1-7; Regulation (EU) No 1174/2011 of the European Parliament and of the Council on enforcement measures to correct excessive macroeconomic imbalances in the euro area OJ L 306, 23.11.2011, 8-11; Regulation (EU) No 1175/2011 of the European Parliament and of the Council amending Council Regulation (EC) No 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies OJ L 306, 23.11.2011, 12-24; Regulation (EU) No 1176/2011 of the European Parliament and of the Council on the prevention and correction of macroeconomic imbalances OJ L 306, 23.11.2011, 25-32; Council Regulation (EU) No 1177/2011 amending Regulation (EC) No 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure OJ L 306, 23.11.2011, 33-40; and Council Directive 2011/85/EU on requirements for budgetary frameworks of the Member States OJ L 306, 23.11.2011, 41-47. [↑](#footnote-ref-41)
42. For analysis, see eg C. Calliess, ‘From Fiscal Compact to Fiscal Union? New Rules for the Eurozone’ (2011-12) 14 *Cambridge Yearbook of European Legal Studies* 101-117 and, highly critically, P. Craig, 'The Stability, Coordination and Governance Treaty: Principle, Politics and Pragmatism' (2012) 37 *European Law Review* 231-248. [↑](#footnote-ref-42)
43. Regulation (EU) No 473/2013 of the European Parliament and of the Council on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area OJ L 140, 27.5.2013, 11-23. [↑](#footnote-ref-43)
44. Regulation (EU) No 472/2013 of the European Parliament and of the Council on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability OJ L 140, 27.5.2013, 1-10. [↑](#footnote-ref-44)
45. See also D. Chalmers, ‘The European Redistributive State and a European Law of Struggle’ (2012) 18 *European Law Journal* 667-693, at 682. [↑](#footnote-ref-45)
46. See eg the reviews found at <http://ec.europa.eu/economy_finance/economic_governance/macroeconomic_imbalance_procedure/index_en.htm>. [↑](#footnote-ref-46)
47. At the time of writing 11 countries are in excessive deficit procedure, 6 countries have just exited this procedure, and only Estonia and Sweden have never been subject to it. As regards macroeconomic imbalances 17 countries are currently covered by in-depth reviews. <http://ec.europa.eu/economy_finance/economic_governance/index_en.htm>. [↑](#footnote-ref-47)
48. See also Amtenbrink, above, n. 4, at 177-178. [↑](#footnote-ref-48)
49. Commission Communication, ‘Towards a Deep and Genuine Economic and Monetary Union: The Introduction of a Convergence and Competitiveness Instrument’ COM(2013) 165 final, available at <http://ec.europa.eu/economy_finance/articles/governance/pdf/2039_165_final_en.pdf>. [↑](#footnote-ref-49)
50. V Pop, ‘Italian presidency tries to appease Britain on EU bill’ *euobserver.com*, 4 November 2014. [↑](#footnote-ref-50)
51. T. Barber, ‘Eurozone Turmoil: Enter the Technocrats’ *Financial Times*, 11 November 2011. [↑](#footnote-ref-51)
52. T. Barber, K. Hope, D. Oakley, and P. Spiegel, ‘Greek PM Scraps Referendum Plan’ *Financial Times*, 3 November 2011. [↑](#footnote-ref-52)
53. As in the decision of the Eurogroup not to extend the financial assistance programme in response to the referendum called in Greece in June 2015: see Eurogroup statement on Greece 27 June 2015, available at <http://www.consilium.europa.eu/en/press/press-releases/2015/06/27-eurogroup-statement-greece/>. [↑](#footnote-ref-53)
54. See also the analysis in E. Chiti and P. Gustavo Texeira, 'The Constitutional Implications of the European Responses to the Financial and Public Debt Crisis' (2013) 50 *Common Market Law Review* 683-708, and Keppenne, above, n. 4, at 201-210. [↑](#footnote-ref-54)
55. See also generally Dawson and de Witte, above, n. 38, at 828-836. In practice, some of the smaller or weaker Member States have also lost out, as the protections that the EU system has afforded have given way to the more naked power politics that is an inevitable part of intergovernmental bargaining. I am grateful to Agustín José Menéndez for raising this point. [↑](#footnote-ref-55)
56. See generally on the ‘intermediate sphere’ between a wider Europe of international relations and the inner club of the Community governed by the Treaties L. van Middelaar, *The Passage to Europe: How a Continent Became a Union* (Yale University Press, 2013). [↑](#footnote-ref-56)
57. How capable they are to discharge these obligations is a moot point. Particular criticism has been directed at the treatment of Greece. See International Monetary Fund, ‘Greece: Ex Post Evaluation of Exceptional Access under the 2010 Stand-By Arrangement’ (2013) *IMF Country Report* No. 13/156, available at <https://www.imf.org/external/pubs/ft/scr/2013/cr13156.pdf>. [↑](#footnote-ref-57)
58. European Central Bank, ‘Technical Features of Outright Monetary Transactions’ Press Release 6 September 2012, available at <http://www.ecb.europa.eu/press/pr/date/2012/html/pr120906_1.en.html>. [↑](#footnote-ref-58)
59. See also K. Lenaerts, ‘EMU and the European Union’s Constitutional Framework’ (2014) 39 *European Law Review* 753-769, in particular at 764. Chalmers, above, n. 44, argues at 686-687 that national parliaments have also been undermined, but see for Finland P. Leino and J. Salminen, 'The Euro Crisis and Its Constitutional Consequences for Finland: Is There Room for National Politics in EU Decision-Making?' (2013) 9 *European Constitutional Law Review* 451-479. [↑](#footnote-ref-59)
60. See also *ibid* at 478 on the lack of debate and deference to anticipated market reactions. [↑](#footnote-ref-60)
61. Compare also the discussion of ‘the classic fiscal federalism model’ in Hinarejos, above, n. 36, at 1635-1636. [↑](#footnote-ref-61)
62. See above, n. 3. For an in-depth assessment of the proposals, see House of Lords European Union Committee, ‘”Genuine Economic and Monetary Union”; and the Implications for the UK’ 8th Report of Session 2013-14, *HL Paper* 134, available at <http://www.parliament.uk/documents/lords-committees/eu-sub-com-a/GEMU/GEMUReportWITamends.pdf>. [↑](#footnote-ref-62)
63. Available at <http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/134069.pdf>. The document was prepared by the President of the European Council, Van Rompuy, in close collaboration with the presidents of the Commission, the Eurogroup, and the European Central Bank. The proposals are not dissimilar, although the blueprint is more thorough in its analysis and more far-reaching in its recommendations. For far-going proposals from the previous President of the ECB, see J.-C. Trichet, ‘Constuire l’Europe, bâtir ses institutions’ available at <http://www.ecb.europa.eu/press/key/date/2011/html/sp110602.fr.html>. [↑](#footnote-ref-63)
64. Available at <http://ec.europa.eu/priorities/economic-monetary-union/docs/5-presidents-report_en.pdf>. The report, titled ‘Completing Europe’s Economic and Monetary Union’, was authored by Commission President Juncker in close cooperation with the presidents of the European Council, Eurogroup, European Central Bank and European Parliament, and aims to build on the two earlier documents. It again pushes in the same direction as the original blueprint, but more guardedly. [↑](#footnote-ref-64)
65. *ibid* at 5. [↑](#footnote-ref-65)
66. Similarly Keppenne, above, n. 4, at213. [↑](#footnote-ref-66)
67. See the text above at n. 16. [↑](#footnote-ref-67)
68. E. Macron and S. Gabriel, ‘Europe cannot wait any longer: France and Germany must drive ahead’ *The Guardian*, 3 June 2015: ‘[W]e have to launch an economic and social union by agreeing on a new, staged process of convergence that would involve not only structural reforms (labour, business environment) and institutional reforms (functioning of economic governance) but also social and tax convergence where necessary (consistent, though not necessarily equal, minimum wages, and a harmonised corporate tax). This would strengthen our individual economies, establish a truly level playing field across the eurozone, and ensure that tax competition and social dumping don’t create races to the bottom and uncooperative fiscal devaluations. It would bring our economies closer, improve the economic potential of EMU and allow us to establish clearly which policies should be centralised, harmonised or simply coordinated.’ [↑](#footnote-ref-68)
69. Above, n. 63, at 9. [↑](#footnote-ref-69)
70. Above, n. 3, at 35 and 40. [↑](#footnote-ref-70)
71. See also Chalmers, above, n. 44. [↑](#footnote-ref-71)
72. For a critical assessment of the role that national high courts have come to play, see Y. Mény, 'Managing the EU Crises: Another Way of Integration by Stealth?' (2014) 37 *West European Politics* 1336-1353, at 1341. [↑](#footnote-ref-72)
73. This is recognised in P.M. Huber, ’The Rescue of the Euro and Its Constitutionality’ in W.-G. Ringe and P.M. Huber (eds), *Legal Challenges in the Global Financial Crisis: Bail-outs, the Euro and Regulation* (Hart Publishing, 2014) at 26. [↑](#footnote-ref-73)
74. See *ibid* for an overview of the main strands in the approach of the German Constitutional Court. For a sophisticated critique of the concept of democracy employed, see P. Eleftheriadis, ’Democracy in the Eurozone’ in W.-G. Ringe and P.M. Huber (eds), *Legal Challenges in the Global Financial Crisis: Bail-outs, the Euro and Regulation* (Hart Publishing, 2014). [↑](#footnote-ref-74)
75. *Brunner* [1994] CMLR 57. [↑](#footnote-ref-75)
76. See J.H.H. Weiler, ‘Does Europe Need a Constitution? Demos, Telos and the German Maastricht Decision’ (1995) 1 *European Law Journal* 219-258 for a classic critique of the ruling. [↑](#footnote-ref-76)
77. BVerfG, 2 BvE 2/08 of 30/06/2009, paras No (1-421). See D. Halberstam and C. Möllers, ‘The German Constitutional Court Says “Ja zu Deutschland!”’ (2009) 10 *German Law Journal* 1241-1257 and D. Thym, 'In the Name of Sovereign Statehood: A Critical Introduction to the Lisbon Judgment of the German Constitutional Court' (2009) 46 *Common Market Law Review* 1795-1822 for critical readings. [↑](#footnote-ref-77)
78. BVerfG, 2 BvR 2728/13 of 14/01/2014, paras No (1-105). [↑](#footnote-ref-78)
79. Above, n. 57*.* [↑](#footnote-ref-79)
80. Paras 36-43. [↑](#footnote-ref-80)
81. Paras 58-59. [↑](#footnote-ref-81)
82. Para 100. [↑](#footnote-ref-82)
83. See generally on the role of the ECB D. Wilsher, ‘Ready to Do Whatever It Takes? The Legal Mandate of the European Central Bank and the Economic Crisis’ (2012-13) 15 *Cambridge Yearbook of European Legal Studies* 503. [↑](#footnote-ref-83)
84. See generally P. De Grauwe, 'The European Central Bank as Lender of Last Resort in Government Bond Markets' (2013) 59 *CESifo Economic Studies* 520-535. [↑](#footnote-ref-84)
85. De Grauwe, above, n. 19, at 9-10. [↑](#footnote-ref-85)
86. From the legal perspective, the Constitutional Court’s reading of the Treaty reflects a kind of ‘originalist’ interpretation of what was meant at Maastricht. As such, it immediately invites two kinds of retorts. First, even if Germany understood the Maastricht settlement in a particular way, others may have taken different views - the legal text is open to various interpretations, as the ruling of the ECJ, which will be discussed below, shows. Second, it may be countered with an objection that the Treaty is a ‘living instrument’ that must be interpreted in accordance with the needs of the society. The eurocrisis has shown that some of the basic assumptions underpinning Maastricht were flawed. It can be argued that the interpretation of the Treaty text must therefore evolve to meet the needs of today’s Europe. [↑](#footnote-ref-86)
87. De Grauwe, above, n. 19, at 16-18. [↑](#footnote-ref-87)
88. Subject to possible political limits flowing from the structure of the ESCB. In the case of the OMT, the tacit approval of the German Government may have been important in this respect, see eg M. Steen, ‘Draghi says he needs to explain plan’ *Financial Times*, 14 September 2012. [↑](#footnote-ref-88)
89. See M. Wendel, ‘Exceeding Judicial Competence in the Name of Democracy: The German Federal Constitutional Court’s OMT Reference’ (2014) 10 *European Constitutional Law Review* 263-307 for a critical assessment of the ruling of the Constitutional Court. [↑](#footnote-ref-89)
90. Case C-62/14 *Gauweiler* EU:C:2015:400. [↑](#footnote-ref-90)
91. Case C-62/14 *Gauweiler* EU:C:2015:7. [↑](#footnote-ref-91)
92. Case C-370/12 *Pringle* EU:C:2012:756. [↑](#footnote-ref-92)
93. Para 46. [↑](#footnote-ref-93)
94. See in particular paras 68 and 75. [↑](#footnote-ref-94)
95. Paras 88 and 126. [↑](#footnote-ref-95)
96. While the ruling above, n. 77,is articulated in terms of *ultra vires*, identity review is hinted at para 102. [↑](#footnote-ref-96)
97. See generally F.W. Scharpf, *Governing in Europe: Effective and Democratic?* (Oxford University Press, 1999). [↑](#footnote-ref-97)
98. See P. Craig, ‘Integration, Democracy, and Legitimacy’ in P. Craig and G. de Búrca (eds), *The Evolution of EU Law* (Oxford University Press, 2nd edn, 2011) for an overview of the issues and arguments. [↑](#footnote-ref-98)
99. See G. Majone, ‘From Regulatory State to a Democratic Default’ (2014) 52 *Journal of Common Market Studies* 1216-1223, at 1218-1219 and F.W. Scharpf, ‘Legitimacy Intermediation in the Multilevel European Polity and Its Collapse in the Euro Crisis’ *MPlfG Discussion Paper* 12/6, available at <http://www.mpifg.de/pu/mpifg_dp/dp12-6.pdf>. [↑](#footnote-ref-99)
100. For an argument that prosperity is one of the EU’s foundational ideals, see J.H.H. Weiler, *The Constitution of Europe* (Cambridge University Press, 1999), in particular at 244-246. [↑](#footnote-ref-100)
101. The President of the Bundesbank, Jens Weidmann, has made this point in a number of speeches available at <http://www.bundesbank.de/Navigation/EN/Press/Speeches/speeches.html>. He tends to emphasise that the rules have to be strict and applied with little or no flexibility. [↑](#footnote-ref-101)
102. As a last resort, the ESM can in certain circumstances provide additional total of €60 bn under ESM direct bank recapitalisation instrument; see <http://www.esm.europa.eu/press/releases/esm-direct-bank-recapitalisation-instrument-adopted.htm>. By way of comparison, the UK government injected directly approximately €60 bn just to Royal Bank of Scotland and its total cash outlay, which excludes the massive guarantee commitments, amounted to approximately €170 bn. See <http://www.nao.org.uk/highlights/taxpayer-support-for-uk-banks-faqs/> for the figures. [↑](#footnote-ref-102)
103. For a negative answer, see House of Lords European Union Committee, above, n. 62. See also B Fox, ‘EU Earns “Fail” Grade over Bank Capital Regime’ *euobserver.com*, 8 December 2014. [↑](#footnote-ref-103)
104. See also Menéndez, above, n. 15, at 520. For a similar argument in the context of the internal market, see G. Davies, ‘Democracy and Legitimacy in the Shadow of Purposive Competence’ (2013) *European Law Journal* doi: 10.1111/eulj.12079. [↑](#footnote-ref-104)
105. See also Wilsher, above, n. 26, eg at 275. [↑](#footnote-ref-105)
106. For an analysis of the connection between the eurocrisis and the rise of the right wing parties in Europe, see M. Berezin, ‘The Normalization of the Right in Post-Security Europe’ in A. Schaefer and W. Streeck (eds), *Politics in the Age of Austerity* (Polity Press, 2013). [↑](#footnote-ref-106)
107. See eg P. Spiegel and H. Carnegy, ‘Anti-EU Parties Celebrate Election Success’ *Financial Times*, 26 May 2014. [↑](#footnote-ref-107)
108. Further, some of the detail of the rules may already be designed to fit the interests of important countries. See eg Macroeconomic Scoreboard <http://ec.europa.eu/economy_finance/economic_governance/macroeconomic_imbalance_procedure/mip_scoreboard/index_en.htmv> establishing that a current account surplus needs to be above 6 per cent before causing concern, while a deficit of 4 per cent is already an indicator of a macroeconomic imbalance. [↑](#footnote-ref-108)
109. Similarly Ruffert, above, n. 34, at 1803. [↑](#footnote-ref-109)
110. See V. Pop, ‘Spain Gets Controversial Let-Off on Budget Deficit’ *euobserver.com*, 13 March 2012. By contrast, Hungary was subjected to sanctions, see V. Pop, ‘Heckles on “Double Standards” as EU Freezes Hungary's Money’ *euobserver.com*, 13 March 2012. [↑](#footnote-ref-110)
111. I am grateful to an anonymous referee for this point. [↑](#footnote-ref-111)
112. Compare also the discussion of the collapse of the gold standard in Wilsher, above, n. 26, at 244-246. [↑](#footnote-ref-112)
113. Maduro, above, n. 12, puts it as follows at 8: ‘The Union is, in certain respects, in a Catch 22 situation: European politics are required to address some of its current problems but the steps necessary for the emergence of European politics are for now dependent on national politics.’ [↑](#footnote-ref-113)
114. See also the discussion in A. Hinarejos, 'The Euro Area Crisis and Constitutional Limits to Fiscal Integration' (2011-12) 14 *Cambridge Yearbook of European Legal Studies* 243-268, at 263-265. For suggestions on how to improve the democratic quality of the eurozone, see M. Poiares Maduro, B. De Witte, and M. Kumm, ‘The Euro Crisis and the Democratic Governance of the Euro: Legal and Political Issues of a Fiscal Crisis’ *RSCAS Policy Paper 2012/08*, available at <http://cadmus.eui.eu/bitstream/handle/1814/23981/RSCAS_PP_2012_08.pdf?sequence=1>, as well as Maduro, above, n. 12. [↑](#footnote-ref-114)
115. See eg D. Grimm, ‘Does Europe Need a Constitution’ (1995) 1 *European Law Journal* 282-302. See however T. Risse, ‘No Demos? Identities and Public Spheres in the Euro Crisis’ (2014) 52 *Journal of Common Market Studies* 1207-1215 for an argument that there is a gradual Europeanisation of identities and public spheres with the EU. [↑](#footnote-ref-115)
116. For this reason Crum, above, n. 2, argues at 626 that ‘some form of executive federalism… commands considerable normative justification’, but needs to be accompanied by what he terms ‘flanking measures’. [↑](#footnote-ref-116)
117. See generally J. Snell, ‘”European Constitutional Settlement”, an Ever-Closer Union, and the Treaty of Lisbon: Democracy or Relevance?’ (2008) 33 *European Law Review* 619-642. [↑](#footnote-ref-117)
118. C. Offe, ‘Europe Entrapped: Does the EU Have the Political Capacity to Overcome Its Current Crisis?’ (2013) 19 *European Law Journal* 595-611, at 596. See also on the formidable logistical problems F. Papadia, ‘Operational Aspects of a Hypothetical Demise of the Euro’ (2014) 52 *Journal of Common Market Studies* 1090-1102. [↑](#footnote-ref-118)
119. See L Tsoukalis, ‘Has European Integration Reached the End of the Road’ Cyril Foster Lecture 2014, available at <http://www.eliamep.gr/wp-content/uploads/2014/11/Cyril-Foster-Lecture-2014.pdf>. [↑](#footnote-ref-119)
120. See for discussion in particular J. Habermas, *The Crisis of the European Union: A Response* (Polity Press, 2012). [↑](#footnote-ref-120)
121. Above, n. 71, at 1342. [↑](#footnote-ref-121)
122. The Schuman Declaration was delivered by French foreign minister Robert Schuman on 9 May 1950. It called for economic integration in the field of coal and steel ‘as a first step in the federation of Europe’. The text is available at <http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm>. [↑](#footnote-ref-122)
123. In the words of Maduro, above n. 12, at 5: ‘[T]he failure of the EU political process to successfully address the current crisis has, at its core, a political gap: the scope and level of politics has not followed the scope and level of political problems in Europe.’ See also Mény, above, n. 71, at 1337. [↑](#footnote-ref-123)
124. As a warning example, the Latin Monetary Union of the late 19th and early 20th century between France, Belgium, Greece, Italy, and Switzerland managed to hold together for decades, without functioning very well. See B.J. Cohen, ‘Beyond EMU: The Problem of Sustainability’ in B. Eichengreen and J.A. Frieden (eds), *The Political Economy of European Monetary Unification* (Westview Press, 2nd edn, 2000). [↑](#footnote-ref-124)
125. See P. Krugman, 'Revenge of the Optimum Currency Area' (2012) 27 *NBER Macroeconomics Annual* 439-448. [↑](#footnote-ref-125)
126. See B. Eichengreen, ’European Monetary Integration with Benefit of Hindsight’ (2012) 50 *Journal of Common Market Studies* 123-136. [↑](#footnote-ref-126)