

BOOK REVIEW

The Eurozone Crisis: A Constitutional Analysis

The Eurozone Crisis: A Constitutional Analysis, Tuori, K. and Tuori, K.,
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“Every power comes through crisis” has long been a motif of European integration. The financial and sovereign debt crises, which have shaken the European Union (EU) in recent years, are at first glance no different. Treaty reforms, intergovernmental treaties such as the Fiscal Compact and the Treaty Establishing a European Stability Mechanism (ESM Treaty) have significantly altered the constitutional landscape of the EU and its Member States. The crisis has also inspired many European legal scholars to critically analyse the EU’s system of economic governance, as have other events throughout the history of the European Union, from the Empty Chair Crisis to the referenda in the aftermath of the Treaty of Maastricht and the failure of the Constitution for the European Union. What does seem to be different is the way in which scholars approach the issue of the Eurozone crisis. Instead of a purely legal perspective on economic governance, European legal scholars have realised that in order to understand and analyse the euro crisis, interdisciplinarity is the word of the moment.

The authors of “The Eurozone Crisis: A Constitutional Analysis” are no exception. Their monograph is based on the authors’ assumption that constitutional law and economics are closely interrelated and therefore need to be treated as such. Therefore, their concept of constitutionalism in the EU also varies from the common notion of a purely legal document creating rights for citizens and obligations for the state. It rather focusses on an understanding of a constitution as a representation of a legal culture and a hidden social theory that develops through constitutional speech acts by courts and a constitutional legislator. This rather loose concept of a constitution also allows the authors to identify the European Treaties as a constitution. However, their introduction also puts forward the idea that in fact, the EU does not have a unified constitution, but is rather built upon a set of different constitutions:

- 1) An economic constitution (microeconomic and macroeconomic constitution)
- 2) A juridical constitution
- 3) A political constitution
- 4) A security constitution
- 5) A social constitution

In application, the introduction to the book reads a bit like European integration theory. The authors argue that the five constitutions they discern can also be assigned to certain periods in European integration, what they call “pacemaker” constitutions, which have driven integration across the continent. On that accord, the Treaties of Rome and the European Economic Community were characterised by a microeconomic constitution, creating free movement rights for individuals on the one hand, and competition law aiming at creating a level playing field for business on the other, while the Treaty of Maastricht was a result of a ubiquity of the political constitution (creation of the EU), the Treaty of Amsterdam a sign of a preponderance of a security constitution (Common Foreign and Security Policy), while the euro crisis has brought the economic constitution in its macroeconomic form back to the foreground. Based on this notion of constitutionalism the authors enter

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their “constitutional analysis” in the following chapters, which are divided by three parts. First, chapters 2–4 mainly aim at describing the pre-crisis process of economic integration (chapter 2), the Eurozone crisis (chapter 3) and the EU responses to the crisis (chapter 4) respectively, while the second part consisting of chapters 4–7 analyse the constitutionality of the intergovernmental treaties as a response option (chapter 5), the failure of the Maastricht principles (chapter 6) and the repercussions of the changing economic constitution for the other constitutions (chapter 7). The third and final part offers concluding remarks.

The first part is mainly descriptive and a useful summary of European economic integration and the crisis that the Eurozone is currently facing. It identifies a move from a purely microeconomic constitution to a macroeconomic constitution as a logical step, first focussing on individual freedoms and trade, to an Economic and Monetary Union (EMU) as envisaged by Maastricht, while the authors also argue that the decision to complete the EMU was a mainly politically motivated decision based on the prevalence of the political constitution at the time. It also illustrates that the Treaty of Maastricht was in fact a compromise between two camps of economic thinking, the monetarists who claimed that EMU would facilitate further integration, and the economists who stated that EMU could only be a result of further integration and fulfilment of certain economic criteria by Member States. This is now embodied, on the one hand, by economic criteria of the Stability and Growth Pact, and on the other the early inception of EMU by 1999. The Maastricht principles basically left fiscal autonomy in the hands of Member States and did not envisage crisis, which the authors are not the first to refer to as an asymmetry. The story of the EMU continues to its crisis and the authors give an overview of its economic causes culminating in the sub-prime mortgage bubble in the United States (US) that had been the last straw that broke the camel’s back, not only in the US, but also in the EU. It is an accurate account of events and the authors rightly assert that the Maastricht principles did not include economic policy constraints on Member States other than the issue of government debt, while other macroeconomic imbalances such as private debt and trade balances with non-EU countries should also have been addressed. Member States did not realise at the time that EMU would increase their fiscal responsibilities and were not incentivised to keep their fiscal policies under control under Maastricht. While this is a story that has often been told, the authors also manage to give a background of the individual crisis countries’ domestic issues in Portugal, Ireland, Italy, Greece and Spain, the so-called “PIIGS.”

Dealing with the responses to the crisis, the authors categorise them in, firstly, emergency measures aiming to avoid contagion and helping the crisis countries out of their worst financial difficulties. Second, they also point out a strengthening of the preventive arm of the Stability and Growth Pact and third, European Central Bank (ECB) interventions. Again, the authors give a very detailed account of the crisis responses by the EU and its Member States and also carefully link economic developments inside and outside Europe to them. Additionally, they discern certain recurring patterns among the anti-crisis measures as either being institutions of private law (such as the European Financial Stability Facility) or being intergovernmental treaties (such as the Fiscal Compact and the ESM), which they label as highly conspicuous, as both arrangements mainly leave out Union law, but rather have an impact on national constitutional law. They also outline the array of ECB action including its Security Markets Programme (SMP) and later its Outright Monetary Transactions (OMT). Rightly, Tuori and Tuori assert that all these necessary measures were the result of the failure of the Maastricht principles, or at least the Stability and Growth Pact which lacked “bite” and, was in the aftermath of the crisis strengthened. It is mirrored in the Fiscal Compact, in an attempt to give the reforms, mainly undertaken by means of secondary law, more legitimacy.

While this first part of the book hardly provides any new insights, it is a valuable summary of the causes of the crisis, the European responses and the need for reform of the Maastricht principles from both a legal and economic background. The second part of the Tuoris’ contribution, on the other hand, promises a deeper understanding of the implications of the Eurocrisis for the constitutional setup of the Union, especially because of the more innovative understanding of a constitution that the authors put forward in their introduction. The second part then begins by analysing the constitutionality of the crisis responses, including the ESM, the Fiscal Compact and the ECB action, which the authors do see critically, especially when it comes to the compatibility of the ESM with the no-bail-out clause in Article 125 TFEU. They do not completely agree with the point of view of the Court of Justice of the European Union (CJEU), which argued that Member States are free to enter intergovernmental treaties with regards to economic policy. They rather purport the view that if Union law prohibits a certain action, the prohibition would then also extend to Member States acting under international law. However controversial, none of this is anything that has not been discussed or analysed by others before. The really interesting argument is, unfortunately, driven to the background by a legal doctrinal analysis of constitutionality of the anti-crisis measures in chapter 5, something that the authors in their introduction promised they would not do.

In fact, the authors infer from the European anti-crisis measures, including Treaty change to Article 136 TFEU and the CJEU judgement in *Pringle* that there is a change in the EU's economic constitution and an undermining of the Maastricht principles. This change, they argue, has been manifested by constitutional speech acts by the Court in *Pringle* as well as by the other institutions involved in crisis management. The authors demonstrate that these acts have led to a constitutionalisation of the primary objective of the economic constitution as financial stability, as opposed to price stability, and crisis management measures under strict conditionality (in order not to breach the no-bail-out clause). This they see as a manifestation of their theory that the Maastricht principles were based on certain economic assumptions that have proven to be untrue, which in turn also means that the economic constitution needed to change. This is quite a statement to make, and would have benefited from a bit more support from existing literature, and elaboration of the argument, although Tuori and Tuori illustrate their point by using examples. Chapter 6 however suffers from a lack of sources, and does not seem to be very well-founded, especially regarding the boldness of their statements. At the end of the chapter, the reader has to draw the rather disconcerting conclusion that the economic constitution as it is still laid down in the Treaties, including price stability as the sole mandate of the ECB does not cover reality anymore and that economic governance in law and economic governance in practice are two very different matters.

Towards the end of second part of the book, the authors discuss the repercussions that this constitutional mutation has on the other constitutions, since they argue that the macroeconomic constitution is currently the pacemaker constitution. This in their view could endanger the political constitution and democratic values such as accountability, transparency and legitimacy. However, and somewhat disappointingly, they do not follow through with their initial theoretical framework since, what follows in chapter 7 is a rather general contribution to the debate on the EU's democratic deficit in the field of economic governance. Only when it comes to the term "social constitution" do the authors explicitly analyse the spill-overs resulting from the change in the economic constitution. The fact that the authors do not seem to be able to distinguish between the five constitutions and the potential effect of the economic constitution mutation might be an indication that this distinction is somewhat artificial from the outset and that one might need to speak of a unified constitution or at least acknowledge the intertwining of certain constitutions to a greater extent. The final chapter (third part) reiterates the concerns voiced in second part of the book, but mainly focusses on the issue of democratic deficit and offers a bleak outlook on the future of the EU, stating that this time, the EU is not doing a good job at properly reforming itself through the crisis.

In sum, Tuori and Tuori's contribution offers a very readable and detailed account of the events that have led to the Eurocrisis, from both a legal and economist perspective. Mostly, the two disciplines are linked well, and both economists and lawyers will benefit from the authors' work. However, the writers sometimes also get a bit lost in details or lack focus concerning their initial theoretical framework. The book would have benefited from a more thorough application, as the concluding chapters enter discussions that we have seen before, such as the democratic deficit debate. At the same time, the interesting argument about the change in economic constitution could have been more elaborate and sharply formulated. Nevertheless, the book will help policymakers and scholars alike to understand the crisis better and put it into context of constitutional developments. Whether one agrees with the separation of different constitutions and the notion of pacemaker constitutions or not, the authors have chartered important territory for the understanding of the connection between EU constitutional law and its relation to economics.

Competing Interests

The author declares that they have no competing interests.

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