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Austerity, Grexit and the Battle for the Euro

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Does the European Central Bank ('ECB') have the mandate to do 'whatever it takes' to save the Euro? While the German Constitutional Court answered the question with a clear 'no', the European Court of Justice suggested that the ECB did in fact have that mandate. This judicial battle for the Euro, however, is only part of a story that involves political power struggles between Merkel and Tsipras; that saw the emergence of ideological schisms in the EU; and created the real risk that for the first time a Member State would be forced to leave the EU.

In July 2012, at the height of the financial turbulence in the Eurozone, Mario Draghi announced that within its mandate, the ECB would do '[whatever it takes](#)' to save the Euro. The Euro was 'irreversible'. Yields on peripheral bonds should reflect that unshakeable commitment. To buttress it, the ECB promised to purchase government bonds on secondary markets in unlimited amounts, a programme known as Outright Monetary Transactions (OMT). The ECB would become, in effect - albeit indirectly and conditionally - the Eurozone's lender of last resort.

By all accounts, 'Draghi's bazooka', without being triggered, had an immediate and significant impact - reducing government bond yields not only for Greece but also for Italy and Spain. It was as a result of this promise - and not any programme of austerity - that ailing Eurozone states could again borrow at 'rational' rates of interest, and that fears of financial contagion were assuaged.

But was Draghi's weapon fully licensed? There were serious doubts, and these were translated into a constitutional challenge in Germany, headed by the Eurosceptic politician Peter Gauweiler, who took the case to the German Constitutional Court in Karlsruhe. [OMT, it was argued, was ultra vires as a matter of both European and German constitutional law, falling outside the competence of the ECB.](#)

The German court agreed with the complainants and, in accordance with its legal duty under EU law, referred the case to the European Court of Justice for a [preliminary ruling](#). This was more of a threat than a question, however, with the German court signposting OMT's illegality along with an interpretation of OMT that would render it [Kosher but also, by many accounts, impotent](#).

On 16th June 2015, the European Court of Justice delivered its long-awaited [ruling](#). In a rebuff to the German Court, the ECJ gave OMT the green light, rejecting the conditions Karlsruhe had demanded, and indicating its own ultimate authority over the matter. If Karlsruhe's challenge was a bluff, it had been called.

Because of the nature of the EU's judicial architecture, the case now returns to Karlsruhe, where the German justices are faced with a dilemma: back down and risk the loss of any remaining aura of constitutional omnipotence or fight their ground and risk outright constitutional conflict with the ECJ.

The EU's teleology

Although it will be interesting as a matter of judicial relations to see how Karlsruhe responds, more significant is what the saga reveals about the contradiction at the heart of the constitution of Economic and Monetary Union (EMU), and - given the centrality of EMU to the project of integration ('[if the Euro fails, Europe fails](#)') - at the heart of Europe itself.

To simplify a complex constitutional predicament, the justification for OMT depends on a claim accepted by the ECJ but rejected by the German Court: the 'Euro is irreversible'. This contradiction reveals a fault-line at the core of the project of integration, bringing into open conflict two opposed understandings of what it means to belong to the Euro - and to the EU: the first based on a functionalist teleology and the second an ordo-liberal rulebook.

The first suggests a dynamic process of integration through steps of 'de facto solidarity' and functional spill-over from economic to political integration (the end justifies the means). This applies to monetary unity just as to market integration, the Euro acting as a centripetal force for the countries of

the Eurozone, as well as others set to join - a logic that was accepted by the financial markets in the run up to the single currency when interest rates on government borrowing across the area converged. It would also push towards the rescue of states if they ran into difficulty - hence towards OMT, along with other rescue programmes such as the European Stability Mechanism (ESM). Whether this is conceived as a moral, political or constitutional duty matters little. Integration is unstoppable.

The second insists on establishing clear constitutional lines between politics and economics through guarantees of separation between the state and market (the means justifies the ends). In this view, EMU was constituted substantively on the basis of German ordo-liberal ideology. The European Central Bank would be 'the most independent central bank in the world'; its remit would be much narrower than the Bank of England or the Federal Reserve. Accordingly, its primary aim would be to secure price stability, catering to German fears of inflation. And the logic of action within and across EMU would be the avoidance of moral hazard: there would be neither monetary financing of the budget by the ECB, nor solidarity between Member States, as both would undermine the incentive to prudent economic management.

If both functional and ordo-liberal logics motivated the project in tandem since the outset, and could be sustained without conflict in normal times, they became increasingly fractious in post-crisis Europe. As OMT reveals, the tension is now palpable: irreversibility can only be maintained for each and every state if the Eurozone is willing to protect its weakest members. Solidarity, however, is a term that falls on deaf ears to those who insist on a philosophy that prizes efficiency and economic discipline above all else. Which will triumph? The functionalist teleology of Euro irreversibility that mandates solidarity or the normativist logic of ordo-liberalism that proscribes it? *Telos or nomos?*

The answer so far, as so often, has been a fudge, the circle squared with a deceptively simple formula: rescue with conditionality. Debtor states (and in turn the banks that funded them) would be rescued, but only on strict conditions of public austerity (and relatively little in the way of banking reform). This was given a judicial seal of approval by the ECJ in [Pringle](#), and a constitutional seal of approval by way of Treaty Amendment, in article 136 TFEU, formalizing the European Stability Mechanism (ESM). Tying loans to adjustment programmes would be a way to ensure both rescue

and austerity, avoiding moral hazard by ensuring that bailed-out states would act as if under market pressure to maintain sound finances. The loss of fiscal autonomy would fit a broader strategy, encapsulated in the Fiscal Compact, to frame the crisis narrative as one of public debtor profligacy rather than private creditor irresponsibility, penalizing taxpayers rather than banks, and labour rather than capital.

The fudge was not ideologically or politically neutral. It contributed to the 'greatest bait and switch in history', turning a crisis of imprudent northern banks into one of profligate southern states. This was a class-specific switch, privileging those with assets and punishing those – invariably the weakest and most vulnerable in society - who rely on public services and social solidarity. Conditioning bail-outs on austerity also maintained the fiction that austerity was rationally demanded - despite all the [evidence to the contrary](#).

Contesting the Euro

When Syriza was elected in January 2015 on a specifically anti-austerity but pro-European platform – not only as a matter of public policy, but also as a matter of political ideology – the fudge was sorely tested. As a result of its explicitly social democratic programme, and its willingness to confront its European partners, battle lines took shape. Positions were clarified.

On one side was Syriza itself, buttressed not only by an election mandate and an overwhelming domestic popular vote in the *Oxi* referendum (rejecting the bail-out conditions proposed by Merkel & co), but also by a phalanx of Nobel Prize winning economists and decorated public intellectuals. We were reminded not only that austerity was economically irrational (for Greeks as well as for creditors, if the overall long-term goal is to maximize returns) and that Greek debt was unsustainable (a position eventually [conceded publically](#) even by the IMF), but also that Germany's export led strategy had [benefitted from cheap credit](#) elsewhere, and that historically the relationship between debtors and creditors is a [complex one](#).

On the other side was a German-led bloc of nations, with diverse reasons for wanting to avoid any deal that seemed generous to the Greeks: some pushed by an increasingly nationalist domestic agenda; some adopting a calculated strategy and rational act of punishment to deter Syriza imitators,

most significantly perhaps, Podemos in Spain; others reluctant to permit relaxation of a programme that had been inflicted on their own people. This position was buttressed by fewer intellectuals, but was solidified by the trio of Brussels men heading the EU institutions (Juncker, Dijsselbloem and Tusk), despite the extraordinary sluggish economic recovery and human cost of austerity in the Eurozone.

Against this background, the ECJ's ruling on OMT was lost in the political fog of war. Clear enough, however, was that it was trying to have its cake and eat it: fears about the break-up of the Euro were 'unjustified' but so were German concerns that OMT would bypass austerity, as any actual bond-buying would only be permitted for a country already in an adjustment programme. The ECB's authority could be maintained, along with the Euro's unity, and – crucially - without jeopardising the ordo-liberal principles of EMU.

But as events transpire, both integrationist and ordoliberal pillars look to be made of alabaster. Less than a month after the ECJ delivered its OMT ruling, German Finance Minister Schäuble put 'Grexit' on the table, or rather on the back of an envelope, signaling willingness and some preparation to reverse the Euro, at least for one country. The functionalist teleology, captured by the motto of 'ever closer union', has fatally been [called into question](#) by the German hegemon.

If the myth of irreversibility is shattered, so are the ordoliberal rules of the game. The threat of 'Grexit' itself opens up a Pandora's box given the lack of exit procedures. And little noted is that OMT does potentially bypass conditionality, working (as in Spain and Italy) without any adjustment programme officially having been triggered, a fact conveniently ignored by the ECJ.

Whether in the framework of budgetary surveillance and sanction, in the new programme of Quantitative Easing, or in the ECB's strategic use of threats to freeze liquidity in Greece, legal norms and forms are bypassed or mutated in order to further the project of integration, now in a [conspicuously authoritarian manner](#). But the ideology of austerity is maintained.

To what end? If it looks as if Greece's left-wing government was 'punished', this is less because of its profligacy and more because of its temerity to challenge the dominant ideology. In what looks

like conceding the futility of this fight in current conditions, Tsipras ultimately seemed to conclude - in full harmony with neo- and ordo-liberal rhetoric - that there was after all, 'no alternative.' At what cost to the idea of democracy?

The rules of the game

It is important at this point to raise a counter-argument. Each member of the Euro-group was democratically representing its own constituency, many of whom had put themselves through harsh austerity programmes. Why should Greece be spared? Wasn't there some truth to the German joke that Greece was like a household voting to refuse repaying its mortgage to the bank?

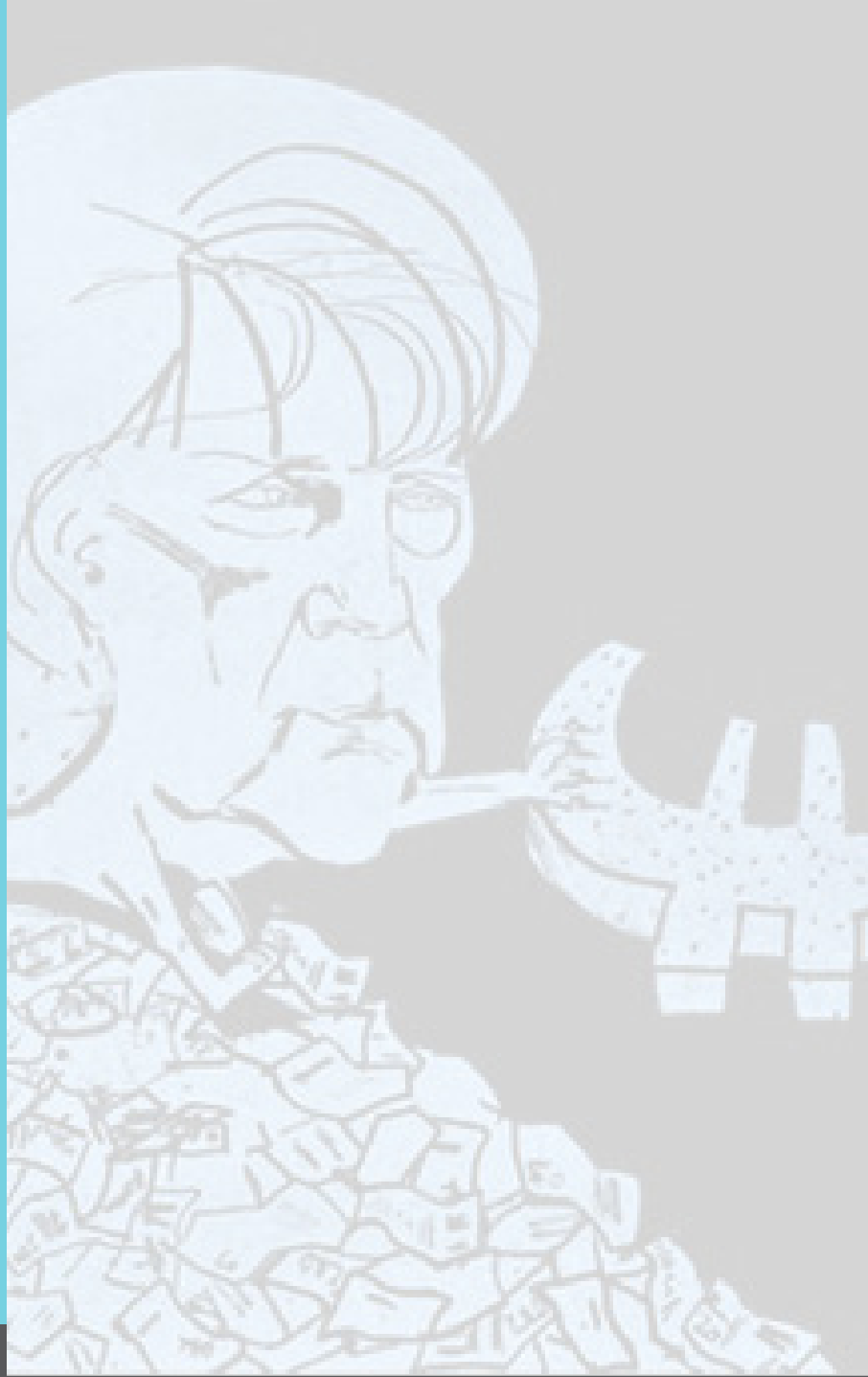
Aside from the dis-analogy between households and governments, encouraged by [rhetoric about frugal Swabian housewives](#), and the misleading implication that all countries can have economic policies like Germany, the negotiations were perplexing. Would rational interstate bargaining really mandate further austerity, reducing the pie from which creditors would be repaid? It was curious that the EU institutions, entrusted to safeguard the European interest as a whole, sang from the same hymn sheet as the pro-austerity national governments.

To be sure, the Euro-group could not legitimately entertain any openly redistributive programme even if this would have been the most rational and justifiable course of action. The European institutions are not structured in a manner that legitimises overt redistributive politics. The Euro-group, a shadowy institution, anyway exists above the rules, as [caustically noted](#) by its own President.

But to focus on this institutional gap alone misses a broader point about the current relation between democracy and capitalism. Redistributive policies are obstructed by the frameworks of neo- and ordo-liberalism - except, it seems, those that benefit the wealthy. In the current skirmish between solidarity and austerity, there is, so far at least, a clear winner. Although OMT does nothing to change that, in bringing constitutional conflict between the ECJ and the German Court into the open, it shows that interpretation of the rules of the Euro game is now *systemically* contradictory. The battle for the Euro is far from over.

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