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Glinavos, I.

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A Crisis Beyond Law, or a Crisis of Law?

Reflections on the European Economic Crisis

Ioannis Glinavos[*]

Abstract

This paper attempts to locate the place of law in debates on the economic crisis. It suggests that law is the meeting point of politics and economics, not simply the background to market operations. It is suggested therefore that the law should be seen as the conduit of the popular will through political decision making onto economic systems and processes. The paper argues that the crisis can be seen as being the consequence of the dis-embedding of the political from the economic, and it is this distance that causes legal frameworks to operate in unsatisfactory ways. With this theoretical basis, the paper examines the sovereign debt crisis in Europe. The European debt crisis in general and the plight of Greece in particular show why plasticity in policy making is necessary and also reveal why current orthodox solutions to economic calamities fail. The inflexibility of the neoclassical understanding of the state-market relationship does not allow for avenues out of crisis that are both theoretically coherent and politically welcome. Such realisations form the basis of the examination of the rules framing the Eurozone. This paper, after conducting an investigation of exit points from the Eurozone, condemns the current institutional framework of the EU, and especially the EMU as inflexible and inadequate to deal with the stress being placed on Europe by the crisis.

Keywords: Eurozone, economic crisis, Greece, debt, Grexit.

A Introduction

Since 2008, the world in general and Europe in particular has existed in a state of continuous crisis. From the collapse of Lehman Brothers, to the credit crunch, to single, double, and triple dip recessions, from collapses in production, trade and consumer confidence to the sovereign debt crisis and austerity, it seems like we have lived through six years of unending bad news. Reflections on the role of law in the midst of this multifaceted crisis have ranged from viewing law as the source of the problem to envisaging law as a solution. Perhaps, some even argue, this crisis is post-law; it demonstrates the irrelevance of regulatory frameworks and legal rules in the era of global financialised capitalism. This paper seeks to explore the role of law in the crisis, envisaging law as occupying the space where

* Dr Ioannis Glinavos is Senior Lecturer in Law at the University of Westminster, i.glinavos@westminster.ac.uk.

economics and politics meet. Law in this regard (the paper hypothesises) is both the source of the problem and a tool for its eventual resolution. In attempting this reflection, the paper begins by examining the relationship between law, economics, and politics, utilising the Polanyian notion of economic orders dis-embedded from their social and political backgrounds. It continues by examining more closely an important instance of market disequilibrium, the sovereign debt crisis. This examination (with Greece as a focal point) allows us to test the notion that legal frameworks are to blame for what Laskos and Tsakalotos[1] term 'a lack of plasticity' in European policy making. Does law restrict policy and are current European institutional structures unable to provide a solution? Testing the feasibility of solutions to the European debt problem necessitates an evaluation of the legal possibility of the infamous 'Grexit'. The paper concludes by asking whether law reform can provide an exit from the crisis, or does the lack of institutional flexibility in Europe make 'Drachmageddon' inevitable?

B Law, Economics, and Politics: Seeking Balance

Karl Polanyi[2] made a distinction between embedded and dis-embedded economic orders that has become axiomatic in analyses of political economy since. Polanyi argued that embedded economic orders were inextricably linked to and inseparable from their social environment; dis-embedded orders, on the other hand, were a creation of the 19th century and were based on the idea of an independent, universal, market-based, economic rationality.[3] The financial crisis has reinforced the notion that a financial capitalism disconnected from the real economy and the interests of society is a dangerous and unsustainable development. Alongside this realisation, there is a growing perception that the 'technocracy' that has been a response to the crisis in many states leads to a progressively less-democratic capitalism which is unsustainable. The cornerstone of technocratic, supposedly apolitical policy making rests on the suggestion that de-politicised economic decision making ensures long-term stability and has been critically reinforced by the financial crisis. However, such a move to cement the dis-embeddedness of the economic from the political creates both unmanageable discontent and is self-defeating. Responses to the crisis have been dominated by the desire to erect legal barriers that separate the popular will from economic decision making. The last six years have been dominated by efforts to do the 'right' things (from a neoclassical economic perspective) while keeping at bay the 'populist' forces of resistance. While we can debate the extent to which the law caused the problem (by its presence, or most likely through its absence), we can agree that the law is much present as part of the solution, but in unanticipated ways. Law is there not in efforts to re-regulate or control markets but in establishing firewalls between politics and economics. It is surprising that a crisis that shares so much with the

1 C. Laskos & E. Tsakalotos, *Crucible of Resistance: Greece, the Eurozone and the World Economic Crisis*, Pluto Press 2013.
2 K. Polanyi, *The Great Transformation*, Beacon Press 1957.
3 I. Glinavos, *Neoliberalism and the Law in Post Communist Transition*, Routledge 2010.

Great Depression ended up in causing further desegregation of the economic from the political (with law as the tool), in total opposition to the movement for greater social embeddedness of market processes that was the response in the 1930s. This is not a development to be content with.

Market-advocates, even more than market-sceptics, stand to gain from the realisation that a growing disconnect between public support and free markets, embedded in legal structures, does more to undermine markets than state-sponsored attempts at re-regulation. We can no longer pretend that economic policy is a technical matter when the results of austerity and 'orthodox' thinking are social collapse in the south of Europe. The reason why the debate about better economic management and more legitimate economic decision making is essentially a political question is because it is only political processes that can determine the overall aims of policy with a degree of legitimacy and permanence that ensures the long-term survival of the capitalist project.[4] Economic policy design cannot be considered an issue of technical competence, a scientific endeavour. We are told that the market has rules that are akin to scientific rules and that these rules demand certain things of the state-market relationship and set frameworks that mandate what is beneficial and what is damaging to the market and by extension the society as a whole. Market needs are in accord with social needs, subject to this view. When social needs diverge from what is best for the market, however, the currently dominant analytical framework described above requires that social requirements take a back seat to the needs of the market. Determining a hierarchy of needs and goals for government policy however cannot be made the prerogative of so-called scientific economic analyses. It is only politics which can determine the aims of a system of governance, not markets or economic theories. Any democratic society aspiring to live in a state governed by law should see such law determined in reflection of the popular will. A society governed by laws created on the basis of their compatibility with 'technical competence' are inching away from democracy, towards what we could, in the context of contemporary capitalism, call a 'dictatorship of finance'. Is such a state an acceptable solution to Europe's problems? Latin America experienced authoritarian impositions of neoliberal projects based on 'technical expertise' in the past with catastrophic social and economic consequences. Is such a model one we want to emulate in 21st-century Europe?

A modern European democratic state pre-supposes a balance of interests between markets and states, between economics and politics. But in discussing where the balance should be between markets and states and what the role of law is within such a balance, we need to address the question of what capitalism aims to achieve. Indeed, we may need to ask the question of what the market aims to achieve. We need, in other words, to find what the goals of policy should be before we start debating the technical means employed to reach those goals. Asking such questions suggests a radical break with the current policy of leaving economic policy issues to the 'experts'. Of course, there is a place for technical

4 I. Glinavos, *Redefining the Market-State Relationship: Responses to the Financial Crisis and the Future of Regulation*, Routledge 2013.

expertise in law making but only after we answer the question of what capitalism is for and what the role of markets is. Only then can we use economic efficiency arguments to determine the means to achieve these objectives. Economic considerations, whether or not in the guise of science, should not determine every aim of policy. As I stressed in *Redefining the Market-State Relationship*, it is our prerogative as citizens to determine what the market is for, what the state should do, and the shape and structure of our economies. The acceptance of free markets as an effective way to achieve optimal outcomes should not mean that the public is robbed of choices. Citizens ought to have a choice about fundamental questions as to how we live our lives, choices extending far beyond the selection of goods and services. Citizens should have a choice as to the aims of the economic system and as to the outer legal boundaries of that system. The financial crisis allows us to revisit the capitalist settlement of financialisation, of the domination of financial services over the global economy, and the tool to implement a change, to find a new balance, is the law.

I A Case Study in Disequilibrium: The Sovereign Debt Crisis

The debt crisis that has plagued Europe since 2010, placing question marks over the survival of the Eurozone and the European Union as a whole, is an excellent example of the role of law in dis-engaging markets from their social surroundings. Further, the debt crisis brings to the fore the propensity of market-friendly reforms, and the legal structures they are based on, to restrict policy options when they are most needed. In seeking to show the consequences institutional design can have on the political economy of a country and of the continent (in the case of Europe), the paper proceeds to present a short history of the sovereign debt crisis in Europe, especially in Greece, where the effects of dis-embeddedness have been most acute.

One may wonder indeed why the crisis moved from being the spawn of financial markets to a crisis in the real economy and subsequently to a crisis of state indebtedness. Why has this transmission from finance to high-street to sovereign bond markets taken place considering what one would presume to be a sophisticated understanding policy makers (internationally) had of the features of economic crises and their consequences? Why did not Ben Bernanke, the former Chairman of the American Federal Reserve, who is a scholar of the Great Depression see this coming and do something to avert it? One answer for inactivity or the ineptitude of political classes on both sides of the Atlantic is provided by Paul Krugman.[5] He suggests that policy makers know that Keynesian expansionary policies are needed in recessions to boost demand and rebalance the economy, but their hands are tied by fear of market reprisals. Governments have in fact demonstrated this knowledge historically by acting decisively when markets fell into crises. A recent example is the expansionary policies pursued during the first stage of the global crisis from 2007 to 2010. However, why have they failed to act since 2011? One could argue that the IMF and the European institutions have made things worse, arguing in favour of pro-cyclical fiscal policies when theory

5 P. Krugman, *The Return of Depression Economics*, Penguin 2008.

and practice both demonstrate that their effect is to deepen recessions.[6] Europeans (especially the Germans) have insisted on contractionary policies and fiscal consolidation in Greece, Italy, Spain, everywhere in the Eurozone in fact, despite the fact that it is demonstrated daily that such pro-cyclicality is locking the south of Europe into a debt spiral.

Krugman's answer is that policy choices nowadays are motivated by fear of the market. It is what we could call a 'market confidence' game that restrains political choices and prevents demand-side economic proscriptions to pave a way out of crises.[7] Assuming this is true, one has to enquire why markets demand recessionary policies ignoring the fact that they are bad for the economy. The answer is that there is no direct correlation between policies bad for economic development and loss of profits for investors, who, depending on their position within the market, stand to gain from a variety of indicator movements. The handling of the current crisis, despite its ineptitude, had certain investors win both when states propped up their banking sectors to keep them from collapse and when subsequently states tried to radically reduce their (recently exploded) debt burden. Policy makers therefore find themselves in the peculiar situation of doing the 'wrong' thing to appease a market that wins all the time. Of course, one should not underestimate the ideological sclerosis that leads to insistence on contractionary fiscal policies. The neoliberal obsession with a minimal state necessitates austerity and contraction, even when the economic results are (to say the least) disappointing. The UK is a good example of this trend. Nonetheless, we have to concede that markets cannot play a dominant role in the way in which a political economy functions, unless allowed to do so by whoever yields power and possesses authority.[8] It is important therefore to determine first who has power and second to assess where they get this power from. Strange has argued[9] that whoever can gain the confidence of others in their ability to create credit will control the economy. The scale of economic activity nowadays (in advanced capitalism) is such that accumulation of wealth (on a traditional Marxist analysis) is not enough to power the system. What does power the system is the capacity to attract credit and to accumulate debt.

One of the great paradoxes of our times is the expectation that international outcomes are borne of national policies. This by-product of globalisation handicaps governments who are on the one hand expected to react to international market imperatives but can only influence directly national policies. This is why, for example, reform proposals of a liberal trajectory are meant to be national in origin but international in effect, determining a country's comparative advantages over the rest of the world.[10] Strange's assessment of finance as a national and simultaneously global phenomenon offers support to the explanation above. For Strange,[11] the financial structure has two inseparable aspects: it comprises of

6 Glinavos 2013, p. 96.
7 *Ibid.*
8 S. Strange, *States and Markets*, 2nd edn, London, Pinter Publishers 1994, p. 23
9 *Ibid.*, p. 30.
10 Glinavos 2013, p. 97.
11 Strange 1994, p. 90.

political economy structures through which credit is created and of the monetary system that determines the relative values of moneys in which credit is denominated. The first power is generated by the dynamic between states and banks, the second between states and markets. A financial structure therefore is the sum of all the arrangements governing the availability of credit plus all the factors determining the terms on which currencies are exchanged. It is through these interconnected mechanisms that crisis can spread from one aspect of economic activity to the others, like the infamous contagion that poisons sovereign debt markets in Europe.

Greece presents an obvious case study of both legally imposed restrictions on policy making and a good example of the effect market pressures can have on policy discretion. Both these elements help explain the lack of plasticity in Greek policy making, and also offer an opening to the institutional make-up of the Eurozone, which explains the lack of original thinking on the part of European institutions. The Greek problem erupted after the national election in 2009 and the revision of official figures, showing the deficit at 12.7% of GDP in 2009, while the national debt, according to the government's own estimates, amounted in January 2010 to 125% of GDP. This promptly became a process of rapidly increasing spreads between Greek and German bond yields. Faced with the legal restrictions on sovereignty imposed by the framework of the Economic and Monetary Union (EMU), when presented with a loss of confidence in the markets Greece had very little room for manoeuvre. The only way a country can deal with a market crisis or a loss of competitiveness, without devaluing its currency, is by producing more efficiently, or by producing more cheaply. As efficiencies are difficult to achieve and time-consuming to implement, Greece has been pressured by its partners in the Eurozone to 'reform' its economy via cost savings. This means that Greece has to reduce wage spending, which inevitably means that it has to lower the population's standard of living. Such internal devaluation, it was hoped, would allow Greece to retain or to regain some of its lost comparative advantages and mimic the effects of currency devaluation, which of course was not an option within the Eurozone.[12]

The terms of the first Greek bailout in 2010 were exactly aimed to achieve such an internal devaluation. As was predictable, and indeed predicted, the 'assistance' offered by the Troika of EU, IMF, ECB did not improve Greece's fiscal position, both because the enforced retrenchment deepened the recession and because the measures required were beyond the willingness and the capacity of the Greek political establishment to implement. Greek society was equally unwilling to accept austerity and who can blame them? In the words of Keynes: "There has never been in modern or ancient history a community that has been prepared to accept without intense struggle a reduction in the general level of money income".[13]

The result was that Greece needed another bailout. The second bailout was indeed agreed at the end of 2011, but this time it also required the participation

12 Glinavos 2013, p. 99.

13 J. Keynes, *Collected Writings*, Vol. 20, Activities 1929-1931, London, Macmillan 1981, p. 64.

of the private sector in an effort to reduce Greece's unsustainable level of debt. After this deal went through with a lot of fanfare, the realisation dawned that the reduction in the debt burden achieved was nowhere near enough to bring the debt-to-GDP ratio close to the 120% level the IMF considers the threshold for affordability. Data for 2011 showed Greek debt at 170.6% of GDP even though Greece reduced its deficit to 9.4% from 10.7% in 2010 and 15.6% in 2009.[14] Faced with the prospect of the IMF withdrawing from the Greek rescue plans, the Europeans agreed on November 2012 yet another deal to cut Greece's debt by €40bn, projecting a drop in debt to 124% of GDP by 2020 (involving cuts in the interest rate on official loans, extending their maturity by 15 years to 30 years, and granting Athens a 10-year interest repayment deferral).[15] The continuing deteriorating outlook for Greece (debt reached 175% in 2014[16]), even after the alleged achievement of a primary budget surplus in 2013, continues to fuel talk of an IMF withdrawal.[17]

The Greek problem and its handling demonstrate the propensity of market-friendly legal frameworks to reduce policy discretion when it is most needed. At times of crisis, policy makers have the difficult task to address economic calamities while continuing to carry popular consent and to act for the benefit of their citizens. Institutional structures that prioritise the interests of investors, however, or proclaim the superiority of market mechanisms in the distribution of benefits and costs of economic activities, create the risk that policy making becomes disconnected from the popular will. Such disconnection is not an abstract evil; it carries a very real risk of the disintegration of the body-politic and threatens the survival of democracy and the maintenance of peace.[18] An investigation of the sovereign debt crisis in Europe therefore assists in explaining how constitutionalising market superiority (elevating economic governance beyond the reach of normal political process further dis-embedding economic structures from their sociopolitical basis) risks everything, including the survival of the market itself. The next section explores further this notion of institutional deficiency by looking into the make-up of the Eurozone and how the attempt to create eternal institutions serves to de-legitimise the European project, plus undercut efforts to deal with the crisis.

C The Need for Plasticity in Policy Making

A key problem in addressing the financial and sovereign debt crisis has been Europe's institutional capacity (or incapacity) to respond to shocks. As mentioned

14 Reuters Euro Zone Cut Fiscal Deficit in 2011, debt up (22.10.2012) <www.reuters.com/article/2012/10/22/us-eurozone-debt-idUSBRE89L0B120121022> (last accessed 17.3.13).

15 Glinavos 2013, p. 101.

16 Ernst & Young Eurozone Forecast - Greece (September 2014) <www.ey.com/Publication/vwLUAssets/EY-Eurozone-Sep-2014-Greece/$FILE/EY-Eurozone-Sep-2014-Greece.pdf> (last accessed 21.11.14)

17 M. Stevis, 'IMF and Europe Part Ways Over Bailouts', *The Wall Street Journal*, 11 October 2013, <http://online.wsj.com/news/articles/SB10001424052702304500404579127521104414230>.

18 Glinavos 2013, p. 102.

earlier, this has been described as a lack of plasticity in policy making, a phenomenon that this paper blames on a problematic understanding of the role of law in balancing economics and politics. The concern is that if legal structures lack flexibility, they are unable to soften the blows dealt by crises. An incapacity to deal with unpredictable and rapidly changing situations comes from the construction of legal frameworks on the basis of market-friendly requirements demanding less flexibility for policy makers. This constitutionalisation of pro-market economic decision making may render policy making more predictable for market participants but makes legal frameworks and policy responses inflexible. When stress is applied, as for example by the European sovereign debt crisis, these inflexible structures risk breaking under intense political pressures. Politics inevitably can be constrained by legal frameworks only for certain periods of time and under certain circumstances; their resilience reaches its limits when the disconnect between economic decision making and democratic choice becomes too wide.[19] In Greece, this break point will manifest as soon as a new election is called, where pro-austerity parties are expected to be defeated. A core provision ensuring predictability of decision making in market outcomes is the notion of the irreversibility of the monetary union. It is to this central plank of European policy that we now turn in an attempt to unveil the restrictive nature of legal arrangements in the Eurozone threatening with ever deepening crises.

The underlying hypothesis of the following discussion is that the legal framework bringing together the European Union and the Eurozone is deficient in that it fails to be flexible enough to accommodate policy changes required to deal with significant shocks. A central example is the capacity of Member States to leave the EU as a whole, or the Eurozone in particular. A related issue is the ability of the EU, or the Eurozone, to expel members that are no longer considered able to remain within the groups. The nature of the European project as a forward-only moving locomotive is to blame for the lack of flexibility.[20] As mentioned above, it is argued here that institutional and legal inadequacies do not prevent situations from occurring, but lacking the tools to deal with them tend to make things worse. As the old axiom goes, there are no dead-ends in politics. The problem is however that solutions outside the legal framework and institutional arrangements, even if politically negotiated, risk further deconstruction of the European project. It is for this reason that the institutional framework should accommodate the possibility of both a multi-speed Europe and of withdrawal from the various spheres of integration. It is suggested that institutional frameworks should allow space for democratic politics to determine the future for each political entity. A re-engagement of economics with politics in a Polanyian movement needs a different type of law than the one currently supporting European institutional structures.

The obvious place to begin a discussion of departures from the process of European unification is Greece. The year 2012 was replete with talk about a possible 'Grexit' (a term beloved of the press, denoting a Greek exit from the

19 *Ibid.*, p. 103.

20 *Ibid.*

Eurozone). The alleged achievement of a primary budget surplus in 2013 and a positive trade balance (after significant rebalancing of imports and exports) is likely to revitalise a debate as to Euro-membership in Greece in 2014. Rather than showing progress through continued Euro-membership, the two facts mentioned above (budget and trade surplus) make the case for unilateral default and euro-exit even more compelling. It is against this background that a discussion needs to be had concerning both the possibility of a unilateral exit from the Eurozone, and possible expulsion. It has often been argued that Treaty provisions for withdrawal from the EU would be incompatible with the nature of the Union, which involves the intention of the Member States to work towards an 'ever closer union'. The position as to withdrawal from the Union has altered after the passing of the Lisbon Treaty which entered into force on 1 December 2009. Article 50 of the Lisbon Treaty explicitly makes provision for the voluntary secession of a Member State from the EU. Specifically, the exit clause provides that a Member State wishing to withdraw from the EU must inform the European Council of its intention; the Council is to produce guidelines on the basis of which a withdrawal agreement is to be negotiated with that Member State; and the Council, acting by a qualified majority and after obtaining the consent of the European Parliament, will conclude the agreement on behalf of the EU. The withdrawing Member State would cease to be bound by the treaties either from the date provided for in the withdrawal agreement or, failing that, two years after notification of its intention to withdraw.

On the basis of the above, it appears that the right to withdraw from the Union introduced by the Lisbon Treaty is a genuinely unilateral right. The right to withdraw is not for instance preconditioned on adoption of a constitutional change that a Member State cannot accept but exists independently. Athanassiou[21] stresses that it is not the element of negotiation that would make a Member State's withdrawal consensual (as opposed to unilateral) but the absence of restrictions on a Member State's right to withdraw. This is perhaps because the exit clause represents the recognition of a political reality as a sovereign Member State cannot be coerced into honouring commitments it no longer has an interest in. However, and this is crucial for the purposes of our discussion in relation to the sovereign debt crisis, the exit clause in the Lisbon Treaty contains no special provisions on the requirements for the withdrawal of a Member State which has adopted the Euro. The possibility of a Grexit presupposes the possibility that a state part of the EMU would be able to leave the Eurozone while remaining in the EU.

One interpretation of the Lisbon withdrawal right is that withdrawal from EMU without a parallel withdrawal from the EU would be legally inconceivable. Unlike EU participation, EMU participation is a legal obligation for all its Member States from the point of entry onwards. While a Member State may be free to denounce its EU participation and repudiate its treaty obligations in their entirety, it would not be free to go back on its decision to join EMU without

21 P. Athanassiou, 'Withdrawal and Expulsion from the EU and EMU: Some Reflections', *Legal Working Paper Series*, No. 10, ECB December 2009, p. 24.

breaching a binding obligation, under the EC Treaty, unless it were also to withdraw from the EU. Consequently, it seems that the only way to withdraw from EMU is to withdraw from the EU using Article 50 of the Treaty and then try to rejoin the EU but asking not to re-enter into the monetary union.[22] The alternative would of course be to negotiate an EMU exit with other the Member States, but this is not realistic considering the long negotiations it would entail and the need for ratification by all Member States to any treaty amendment. Perhaps as a matter of urgency, a unanimous agreement by the European Council leading to the issue of a European regulation could be sufficient despite the legal uncertainty that this could entail.[23] The problem with this solution however is not so much theoretical but practical. In the current political and international environment, a speedy decision by all Member States to any EU-wide change, especially one allowing one of the Eurozone members to leave, is difficult to conceive.

Indeed, it could be argued that a genuinely unilateral right of withdrawal would be unthinkable in the context of EMU due to the incompatibility with the language of EU Treaty provisions and Protocol 24 on the Transition to the Third Stage of Monetary Union. It is difficult to envisage an agreement to withdraw against the references in the legal instruments to the 'irrevocability' of the substitution by the Euro of the currencies of the participating Member States and to the 'irreversibility' of the monetary union process.[24] Perhaps an exit from EMU was never properly theorised because of the complex network of rights and obligations that EMU entails for its participating Member States and their central banks, which cannot easily (never mind automatically) be resolved through a withdrawal. We are left with the result therefore that only an agreed exit from the Euro area is possible, yet practically extremely unlikely for reasons already mentioned. EMU is a sub-set of the EU, which is why the Statute of the European System of Central Banks and of the European Central Bank – lying at the heart of the ESCB and the Eurosystem – is annexed as a Protocol to the EC Treaty. While after Lisbon the possibility of unilateral withdrawal from the EU also implicitly recognises the possibility of unilateral withdrawal from a subset of the EU (namely EMU), we cannot in conclusion argue that the European institutional framework can accommodate the secession of a Member State from the Eurozone. This lends credence to the hypothesis posited earlier that the EU's institutional structures are inflexible and therefore deficient in the sense that they limit policy options, even when these options are necessary due to political or economic realities.

So far we have been discussing the feasibility of exit from the Eurosystem, or the EU, at the instigation of a Member State battling a severe economic crisis (Greece) or one that has a change of heart about membership (for example the UK). There is another aspect of this discussion however. What would be the

22 Glinavos 2013, p. 109.

23 E. Dor, 'Leaving the Euro Zone: A User's Guide', 2011-ECO-06, *Working Paper Series*, October 2011, IESEG School of Management <http:// my. ieseg. fr/ bienvenue/ DownloadDoc. asp ?Fich= 1046781054_2011-ECO-06_Dor.pdf> (last accessed 17.3.13).

24 Athanassiou 2009, p. 24.

institutional treatment of a Member State that ceased to cooperate with EU institutions to a degree that the other members wished to expel it from the Union or the Eurozone? There is no treaty provision at present for a Member State to be expelled from the EU or EMU. The closest that Community law comes to recognising a right of expulsion is Article 7(2) and (3) TEU, allowing the Council to temporarily suspend some of a Member State's rights (including its voting rights in the Council) for a 'serious and persistent breach by a Member State of the principles mentioned in Article 6(1)' of the EU Treaty.[25] If a right to expel Member States from the EU or EMU does not exist, then could such a right be asserted? Let us consider once more the current case of Greece. If the Greeks were to elect someone who proves less willing to deal with international lenders and reacts to a withdrawal of financial support by European institutions by introducing capital controls and other measures restricting freedom of movement for services, capital, and people, we would have a situation where a Member State is in breach of fundamental treaty obligations. We assume in this scenario that the Greek government seeks to remain in the Eurozone and the EU but does not wish to cooperate in implementing an austerity plan as a pre-condition to the re-commencement of assistance, and we also assume that other EU Member States do not wish to authorise restrictive measures. It is not inconceivable that extreme measures taken to address a crisis can be accepted by European institutions and partners. Cyprus for example was allowed to introduce capital controls in Spring 2013 as part of a rescue deal for its banking system. Measures in violation of the treaties would in such a case be borne out of necessity (dealing with the consequences of bankruptcy) rather than an act directed to provoke expulsion from the EU. If the EU moved to expel Greece regardless, this would then be done against the wishes of the Greeks to continue their membership of the EU. If then EU members (minus Greece) voted for a treaty amendment to expel Greece, they would fail as such action would necessarily entail an unauthorised treaty amendment in breach of Article 48 TEU.[26]

To make matters worse, any attempt to expel a Member State would compound the complexities that arise in relation to a state's voluntary withdrawal because of the risk of legal challenges by disadvantaged natural persons, legal entities, or even countries objecting to the loss of the rights that they or their nationals may have acquired from membership of the EU (one could assert, on any reading of the treaties, a legitimate expectation of maintaining membership benefits in perpetuity). Participation in the European Union gives rise to a wide web of rights and obligations to citizens, companies, and governments. To erase all those obligations at a stroke by expelling the Member State would create huge confusion and would penalise ordinary citizens and businesses who rely on their rights of residence and free movement.[27] The position in summary is that the exhaustive list of sanctions provided for in the treaties does not include a right to

25 Athanassiou 2009, p. 32.

26 Glinavos 2013, p. 110.

27 Hansard, Parliamentary Under-Secretary of State, Foreign and Commonwealth Office (Baroness Symons of Vernham Dean) 28 April. Ref. 180-428-05, 1998, Column 160.

withdraw 'in protest' against a fellow Member State's failure to comply with its treaty obligations; the same is true of expulsion, which is not catered for in the treaties, however serious or repeated a Member State's non-compliance may be and however much its departure may be desired by its partners.[28]

The conclusion seems to be rather secure, therefore, that a Member State cannot be expelled from the EU or the Eurozone. Let us remember however that while the EU's institutional make-up does not allow for expulsions, EU institutions could make life for an intransigent Member State impossible within the Union. Consider for example what life would be like for Greece without continued financial support for its state finances and its banking system. Sovereign insolvency within the Eurozone is not a situation that can be maintained, as the suffering inflicted on the population would most likely be deemed unacceptable.

D Conclusion

This paper began by posing the question on where we should place law in debates about the financial crisis. To a degree, the place of law in contemporary political economy has been misconceived. Law is either blamed for creating the preconditions for the crisis, due to its absence (lack of regulation, severe de-regulation), or seen as a technical fix (better or more pervasive regulation post crisis). Law however is at its core the meeting point of politics and economics and it should be celebrated as such. Law is not simply the background to market operations but the conduit of popular will through political decision making onto economic systems and processes. One way of viewing contemporary capitalism is as an incidence of disequilibrium between the economic and political. Market-based rationality and supposedly scientific 'technical' solutions shape our political economy and use law as a tool to implement 'orthodox' solutions disregarding political imperatives. The crisis therefore can be seen as being the consequence of the disembedding of the political from the economic, and it is this distance that causes legal frameworks to operate in unsatisfactory ways. It is, in other words, the flawed conceptualisation of regulation and not the actual implementation of technical rules that lies at the core of the problem. This paper has examined the sovereign debt crisis in Europe as the prototypical incidence of disequilibrium. The European debt crisis in general and the plight of Greece in particular show why plasticity in policy making is necessary and also reveal why current orthodox solutions to economic calamities fail. The inflexibility of the neoclassical understanding of the state-market relationship does not allow for avenues out of crisis that are both theoretically coherent and politically welcome. Such realisations form the basis of the examination of the rules framing the Eurozone. This paper condemns the current institutional framework of the EU, and especially the EMU as inflexible and inadequate to deal with the stress being placed on Europe by the crisis.

28 Athanassiou 2009, p. 36.

The one-size-fits-all structure of the Eurozone and the assumptions of permanence of economic and political structures is to blame for the sclerosis of Europe and its unwillingness or inability to respond to shocks. While, as the paper notes, the introduction of an EU exit clause by the Lisbon treaty inserts a degree of flexibility in the European monolith, it is too little to address the core of the problem that stems from Euro-membership. When the current economic and legal framework fails, when a political demand becomes prevalent for a change of direction, an inflexible institutional system can only serve to de-construct the European project. This paper is not anti-European and not anti-Euro. It is rather pragmatic in acknowledging that if the people of Europe (or Greece for that matter) wish no longer to be part of the European project, they will not be constrained by institutional arrangements. Would it not be better one wonders, if policy making had sufficient plasticity to accommodate the popular will, instead of being determined by preachers of orthodoxy?