

Book Review: Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges by Federico Fabbrini

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In Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges, Federico Fabbrini outlines the impact of the Euro crisis on the constitutional and legal architecture of the European Union, arguing for a shift from constitutional arrangements rooted in 'accident and force' to systems 'designed on the basis of reflection and choice'. Francesco Costamagna welcomes this as a refreshing challenge to the assumption that movement towards an EU super-state is the best solution to current challenges.

***Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges*. Federico Fabbrini. Oxford University Press. 2016.**

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Towards a 'More Perfect Union'?

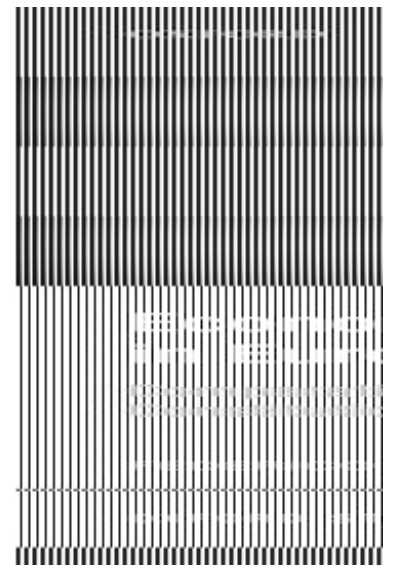
This book by Federico Fabbrini closes by quoting Mario Draghi's reference, during a speech at the Harvard Kennedy School of Government in October 2013, to the need to create 'a more perfect Union'. The notion recalls the Preamble of the US Constitution and it captures better the agenda for the EU than the 'ever closer Union' catchphrase enshrined in the Treaty.

Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges aims at contributing to this objective by offering, in the first part, a sound analytical assessment of the constitutional impact of the Euro crisis and, more importantly, of the anti-crisis measures, and by proposing, in the second part, solutions to the problems created by ill-conceived measures often agreed at the eleventh hour. Drawing inspiration from a quote in Alexander Hamilton's Federalist Paper No. 1, which opens the book, Fabbrini makes a compelling case for the need to move from 'constitutional arrangements established out of accident and force' to 'constitutional systems designed on the basis of reflection and choice' (19).

The analysis adopts a legal perspective by comparing the constitutional implications on the EU institutional setting and the allocation of powers therein with the US constitutional architecture. The choice of the comparator is based on eminently factual considerations – i.e. the comparable levels of economic development and similar population sizes – and it rests on the postulate that the EU is an entity that can be compared with a full-blown constitutional system like the US one. In so doing, the book shrugs off the idea that the EU has a more complex nature, hybrid or *sui generis* so to speak, combining constitutional aspects with others that found their roots and logic in international law.

Paradoxes of the EU Constitutional Architecture after the Crisis

The comparison with the US enables Fabbrini to identify three main paradoxes that characterise the new architecture of economic governance in Europe. The first paradox is one of centralisation as the book argues that the current EU setting is, at least with regard to budgetary affairs, more centralised than the US despite the latter being conventionally held as boasting a strong central government. This claim is substantiated by looking at EU institutions' enhanced capacity to interfere with member states' budgetary policies after the reform of the Stability



and Growth Pact, the introduction of new coordination mechanisms and the adoption of the Fiscal Compact. All these reforms, the author argues, have caused unprecedented centralisation powers in the EU, unduly restricting member states' budgetary autonomy.

The second paradox touches upon the increasing activism of national and supranational courts in economic and monetary affairs. The book claims that the level of judicialisation in Europe in these fields is much higher than in the US, a country known for the strength of judicial review. The claim is made after taking into account a diverse set of cases where both national courts and the Court of Justice dealt with measures taken to respond to the Euro crisis. This increased level of judicialisation of economic and monetary affairs is worrisome according to Fabbrini, as it potentially encroaches upon a territory that would be better left to political bodies. One of the reasons put forward to explain the increased involvement of courts, and especially national ones, is the systematic recourse to international agreements to regulate these matters.



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Third, the author identifies a paradox of domination, as the new setting has crystallised, or even reinforced, the predominance of bigger states over smaller ones to a degree that is unheard of in the US. The EU, originally premised on the rule 'one state, one vote' prevailing in the international realm, has seen a shift toward intergovernmental arrangements, where stronger States have a stronger say and, generally speaking, a new equilibrium that is premised on the hegemonic role of Germany.

The description of some of these paradoxes tends, somewhat inevitably, to gloss over a more complex reality, as the factual elements on which it is based are less straightforward and coherent than suggested. This is the case, for instance, with regard to the issue of over-judicialisation. Indeed, the level of involvement and activism of judicial bodies is far less impressive if measured against the magnitude of reforms that have been adopted and their impact on individual rights and the functioning of national welfare systems. In particular, the Court of Justice has been extremely deferential toward the decisions taken by the decision-makers and, taking full advantage of the restrictiveness of Treaty rules on judicial standing, it has turned down any individual challenge of austerity measures. In reviewing such a situation, some distinguished legal scholars (see [Kilpatrick](#), for instance) have argued that the rule of law is one of the main casualty of the crisis and the anti-crisis strategy adopted by the EU.

The same goes for the paradox of domination, which seems to overlook the existence of multiple cleavages and thus multiple (unstable) equilibria within the EU, apart from the one between big and small member states. Likewise, the shift toward a hegemonic order dominated by Germany has been less linear than it may appear. This is attributable to both the hegemon's reluctance to fully play this role and the capacity of some EU institutions and actors to muscle their way in order to achieve certain objectives. Be that as it may, there have been cases where key decisions have been made despite the German opposition. The clearest example in this regard is the decision by the European Central Bank to proceed with the quantitative easing even in the face of a strong and sustained resistance from Germany.

Any Way Out? Some Proposals

The fact that certain factual assumptions can be challenged does not mean that the reading proposed by Fabbrini in this book is to be discarded. Quite the contrary, indeed, as it offers a slightly unconventional perspective of the EU post-crisis architecture, offering a solid basis for solutions that are interesting and certainly worth discussing. First of all, the book proposes to strengthen the fiscal capacity of the EU. This is a proposal that has been launched and discussed several times over the last few years, but whose realisation have proven elusive so far, despite the existence of a strong consensus over the beneficial impact that it may have on the functioning of the EMU. In particular, the book, again drawing inspiration from the US experience, highlights that it may help to rebalance the relationship between the EU and member states on budgetary affairs, countering the trend toward over-centralisation. The transition 'from fiscal constraints to fiscal capacity' is the defining feature of 'a more perfect Union' that, as mentioned above, does not necessarily entail putting further constraints on the member states' fiscal and budgetary autonomy. Respect for the values of federalism – here intended as a synonym of decentralisation – is key for the sustainability of the EMU.

Second, the book calls for restoring the centrality of the EU legislative process against the recourse, or even the abuse, of international law instruments for the management of economic and monetary affairs in the EU. This move would increase the legitimacy of the adopted measures, bringing back into the frame the European Parliament, which has been largely sidelined during the crisis. But, even more importantly in the eyes of the author, the move would act as buttress against judicialisation by putting the decisions taken at EU level beyond the (over)reach of national courts. To this end, the book challenges the idea, upheld by the Court of Justice in the Pringle case, according to which states are free to act outside the framework of EU law as long as they do not violate EU primary law. According to Fabbrini, this constitutional interpretation is now unsustainable, as, *inter alia*, it would put the legislative powers of the European parliament at the mercy of member states. Furthermore, the analysis shows that EU institutions have already been entrusted with a far-reaching mandate to intervene in the economic field, especially after the entry into force of the Lisbon Treaty, even though some important limits remain and, to ensure greater involvement of the EU legislative process in the EMU, there would be the need for a revision of EU legislative competences in this field.

Third, and lastly, the book mounts a compelling case for the creation of executive government at EU level so as to halt the slip toward a 'post-democratic executive federalism' and, at the same time, to offer some resistance to the hegemonic turn taken by the integration process. Distancing itself from previous proposals – which mainly aimed at beefing up the position of the Commission – the book argues for the strengthening of the President of the European Council. This should occur by having them directly elected by the European citizens and by giving them key powers, such as appointing the members of the European Commission or vetoing EU measures that threaten 'the EU federal compact'. A President of this sort should, according to Fabbrini, impede that the European Council, inevitably bound to become the most important deliberative body with regards to economic issues, could fall prey of hegemonic states, while at the same time providing more visibility and unity to the integration process.

Questions can be raised on each of these solutions' merit and feasibility (although Fabbrini argues that taking them 'as a package' would make their adoption more likely as this would help to even out overall benefits and drawbacks for all the concerned actors). But apart from that, they represent a refreshing attempt to take distance from the

mantra that ‘an inexorable movement toward an EU super-state’, no matter at which cost, is the only way forward. Indeed, respect for its national components and their autonomy is rightly seen as a key feature of a ‘more perfect Union’.

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This review was originally posted on [EuVisions](#).

Note: This review gives the views of the author, and not the position of the LSE Review of Books blog, or of the London School of Economics.



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