Numerical rules or political government, that is the (European) question

Agustín José Menéndez

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Abstract
Numerical rules can be defined as legal rules, the operative part of which is an economic indicator. This peculiar recombination of the technologies of government through law and governance by numbers is the result of the return of the regulatory ideal of neutral government in the 1970s (powered by the amalgamation of ordoliberal and neoliberal ideas into what may be called neo-ordo-liberalism) and the search for solutions to the contradiction at the heart of European integration after 1971: the will to have a common currency without the will and institutional means to ensure its political government. The ground for the emergence of European numerical rules was laid by the establishment of the European Monetary System in the late 1970s, which resulted in the subjection of national monetary policy (and to a lesser extent, national fiscal policy) to relevant economic constraints. European numerical rules were codified and thus juridified in the Maastricht Treaty, concretised in the Stability and Growth Pact, and retooled in the wake of the financial, economic and fiscal crises of the 2010s. Cumulated experience confirms that the elimination of discretion in the process of application of numerical rules is an illusion. In fact, resort to economic indicators to define the operative part of legal rules does not do away with discretion, but merely changes the way in which discretion is exerted. This is so because economic indicators are not sources of objective and impartial economic knowledge, but social constructs, open indeed to be articulated in different forms. The curious case of the structural deficit as defined in the Stability and Growth Pact illustrates the point quite vividly. The need to resort to discretion in the process of application of numerical rules should be explicitly acknowledged instead of denied. Otherwise, the result will be the cloaking of discretionality, which breeds arbitrariness.

Keywords  Rules · Principles · Numerical rules · Discretionality · European Union law · Monetary policy · Fiscal policy · Arbitrariness

Agustín José Menéndez
agustmen@ucm.es

1 Departamento de Filosofía y Sociedad, Despacho 219, Facultad de Filosofía, Universidad Complutense de Madrid, Plaza Menéndez Pelayo s/n, 28040 Madrid, Spain
European economic governance is structured around a series of numerical rules, that is, seemingly legal rules characterized by the fact that their operative part is an economic indicator. This is the case of the rules enshrined in Article 1 of Protocol 12 of the Treaty on the Functioning of the European Union (hereafter TFEU) according to which the stock of public debt should be below 60% GDP and the annual public deficit lower than 3% of GDP. Or the rule contained in Articles 2A and 9.1, first paragraph, of the consolidated text of Regulation 1466/97, according to which the structural annual deficit of each Member State of the European Union (EU) should not exceed 0.5% of GDP. By the same token, the monetary policy to be applied by the European Central Bank (ECB) is largely determined by the evolution of consumer prices, the increase of which should remain in the vicinity of 2% in the medium term, according to point 5 of the ECB’s monetary policy strategy statement (ECB 2021), which operationalizes Article 119.2 TFEU.

This article aims at setting European numerical rules in their wider political and legal context (first section), at accounting for the key role they play in the governance of economic and monetary union (second section) and at exploring their shortcomings (third section).

Firstly, numerical rules are a hybrid technology of power, which recombines legal form and economic substance, corresponding to a specific understanding of the relationship between economic knowledge, politics and law. In particular, numerical rules are both an attempt at rescuing the key normative vision underpinning the old liberal paradigm of government through rules (neutral government), by means of turning upside down the way in which economic knowledge was put to political and legal use in the Democratic and Social State (neutral economic knowledge).

Secondly, I consider the extent to which the central role assigned to numerical rules in the European Economic and Monetary Union (EMU) is the result of a particular political constellation. One in which there was a political will to launch EMU, but there was no agreement on the way in which the resulting EMU should be governed. In such a context, numerical rules became an alluring alternative because they seemed to allow economic and monetary union to proceed in the absence of a previous political union.

Thirdly, governance through numbers is based on the assumption that numerical rules can redeem the unfulfilled promise of “classical” strict legal rules, namely, the complete elimination of political discretion in the process of application of the law, thus allowing for a “neutral”, “apolitical” application of the law. If, however, we pay attention to the experience we have had so far with numerical rules in the Eurozone, we will be forced to conclude that discretion, instead of having being eliminated, is simply being cloaked, in the process creating the conditions for the thriving of arbitrariness.

This is why, fourthly, the main conclusion of the article is that numerical rules do not constitute an alternative to the discretionary political government of monetary and fiscal policy. The numerous European crises that have followed one after the other in the last 15 years provide abundant evidence that monetary and fiscal policy simply cannot be put on automatic pilot.
The genealogy of numerical rules: from government with rules to governance through numbers?

In this section, I offer a summary account of the genealogy of numerical rules. By looking back in legal and political history, we will be in a position to consider the extent to which numerical rules result from the coupling of the search for legal rules capable of being applied in an automatic fashion (without having resort to any form of discretion) and the conflicts around the use at which economic knowledge, encapsulated in economic variables, should be put.

In such a spirit, I start by considering the techniques of social integration characteristic of triumphant liberalism in the nineteenth century. Strict legal rules were the key legal device through which the liberal state claimed to limit itself and create the legal space in which subjective rights, modelled on the right to private property, could flourish (“The law of the liberal state: between strict legal rules and bourgeois positive morality” section). The fact of the matter, however, was that legal rules were much less strict in practice than in theory. Antinomies, loopholes and all kinds of ambivalences and ambiguities were largely unavoidable. As a result, legal rules were actually even if silently integrated by reference to bourgeois positive morality, in particular, to the ideal of the good (bourgeois) pater familias. It was only as long as such morality was socially hegemonic that the pretenses of neutral rule application could be maintained (“Discretion uncloaked, political economy detached from moral philosophy and turned into economics” section). By the end of the nineteenth century, social conflict was pervasive all across Europe and would result in radical social transformation. In the aftermath of the First World War, and even more markedly after the Second World War, the role of the state and of the law in social integration was radically transformed. The objective was no longer to ensure the preservation of the existing socio-economic order, but to transform the socio-economic structure in line with the normative aspirations to which society was committed, as reflected in the formal or the material constitution. This prompted not only a different understanding of the composition of law (a combination not only of rules but also of principles, inviting a recoupling of law and politics), but also a wide reliance on the knowledge produced by economists, regarded as essential in order to illuminate political choices, leading to government with numbers (“Governing with principles and rules, governing with numbers” section). The financial and economic crises of the seventies were interpreted as revealing the limits of the political steering at the core of the Democratic and Social State. Neoliberal and ordoliberal views were combined into a hybrid ‘neo-ordoliberalism’ to mount an attack on economic interventionism and in favour of a revamped form of bourgeois constitutionalism which put economic use at the service of constraining political discretion (“Governance through numbers” section). It would be in such a framework that numerical rules would emerge.
The formal constitution of nineteenth-century liberal states was typically composed of a series of legal and political rules that limited the power of the state, and in the process, were supposed to ensure the enjoyment of the natural rights of individuals, basically conceived as property-owners. Taken at their face value, the key role of liberal constitutions was a negative one, namely to limit and fragment the power of public institutions. The implicit but fundamental assumption was that both state power (ultimately embodied in the monarch and in the executive, socially and economically responsive to the interests of the haute bourgeoisie) and natural rights (outstandingly, the right to private property) were not only pre-constitutional but also pre-political.

In brief, a happy constitution (Clavero 1997) was one that tamed the pre-political power of the state in such a way that alleged the self-stabilising proclivities of a social order based on private property could be fully operative.

The key legal technology in the bourgeois constitution was that of legal rules. If produced by a rational (i.e. liberal bourgeois) legislator, they would be amenable to be applied in an automatic fashion and without exception, thus eliminating the need for all forms of interpretation. Judges and bureaucracies could then be mouthpieces of the law. This was the belief which fueled the writings and the political actions of those favouring the codification of all legal norms, outstandingly of civil laws, the actual constitutional norms in a bourgeois legal order (see e.g. Bentham 1998).

Discretion uncloaked, political economy detached from moral philosophy and turned into economics

Liberal constitutionalism was dominant in most of Europe during the long nineteenth century. However, its many limitations and contradictions were quite evident all through and would become unmissable during and after the First World War, when political leaders aimed, without success, to recast bourgeois Europe (Maier 1975).

On what concerns the technology of social integration, the pretense that legal rules could be applied in an automatic fashion was always unrealistic. Firstly, the full rationality of lawmakers is an assumption bound to be frequently contradicted in actual reality. Limited knowledge and the force and strength of particular interests make it the case that it may be even far exceedingly optimistic to assume even the bounded rationality of lawmakers. Secondly, all legal norms, including rules, are written in the natural language, not in a formalized language as is the case with logic. As a result, they are bound to be occasionally ambiguous. Furthermore, antinomies (several opposing rules competing to be applied to the case) and loopholes (the lack of a rule applicable to the case) were and are unavoidable (Bobbio 1993). The combination of these two factors entails that rules, in the famous characterization of Herbert Hart (1961), are bound to have a core of certainty and a penumbra of doubt. Moving from the literal tenor of the rule to its operative implications requires...
the exercise of discretion, even if highly constrained by the institutional structure and practice of the law (Hart 1961; Kelsen 1967; Alexy 2002). This is why the equation of legitimacy in a modern legal order is complex, and cannot be reduced, even if it is decisive, to the (hopefully democratic) legitimacy of the process of drafting the general legal rules (Menéndez 2001).

Still, there is no doubt that liberal bourgeois law played a key role in the stabilization of the socio-economic order. Such a role was not played, however, by the legal rules as mythologically described by liberal legal theorists, but rather by legal rules as constructed and applied with the help of positive bourgeois morality. This process remained essentially invisible as long as such morality was hegemonic in society.

As a result, the bourgeois constitution not only cloaked the extent to which the different bits and pieces of the executive steered society and economy but dissociated such government from economic knowledge. What was needed to steer society and economy was virtuous political actors, i.e. carriers of bourgeois positive morality (encapsulated in the mythical figure of the prudent pater familias. Indeed, the very objectives set by bourgeois political economy were, like the discipline itself, deeply reflective of a certain positive morality. Consider for example the key objective of balancing the budget. That was never a mere technical objective, but above all, a moral goal, an expression of the virtue of continence at the collective level. By the same token, the “soundness” of money was associated with the morality of society as a whole. Crucially, the relevant economic knowledge, as Hayek would theorise in retrospect many decades afterwards (Hayek 1989, originally published in 1974), was bound to be dispersed among individuals, and to be produced in a fully decentralized fashion by markets, and conveyed through prices.

Liberal hegemony was however soon challenged by the growing tide of social conflict. By the turn of the century both legal formalism (see for example Kantorowicz 1906/2011) and bourgeois political economy (Marshall 1890) were under heavy argumentative fire. In both cases, we can observe an attempt at purifying the disciplines of their implicit moral objectives. In the case of economics, such move led to reconfiguring the discipline, from political economy into positive, classical, pure economics (Milonakis and Fine 2009). This was a deeply ambivalent move but full of implications. Among which was the redefinition of disciplinary methods, increasingly modelled on those of mathematics and the natural sciences. This led not only to a change of the form in which economists presented what they claimed was the knowledge they produced (the formalization and mathematisation of economics) but also a transformation of the very perception of that knowledge (which was no longer moral but technical knowledge).

Governing with principles and rules, governing with numbers

Two world wars and a catastrophic interwar period created the conditions under which the bourgeois liberal state was replaced by the Democratic and Social State. This radically altered not only the social expectations about the role of the state and the law in the integration of society but also the very kind of state and the very kind of law that was felt to be socially required. The point of formal and material
constitutions was no longer merely to restraint the state, but once and at the same
time, also to create public institutions capable of radically transforming society in
the normative direction agreed upon by a society as part of the basic social contract
(cf. Article 3.2 of the Italian Constitution).

Once the state was required to intervene to reshape society in the semblance of
an agreed normative template, a sustained and conscious effort was needed to know
the fabric of the socio-economic structure, and to foresee, to the extent that that was
possible, the implications of alternative courses of action. The shift from liberal to
democratic and social law rendered quantitative economic knowledge into a neces-
sary tool and auxiliary of democratic government through law (Rose 1991). In such
a context, econometrics was born as a discipline capable of producing the economic
knowledge for the democratic transformation of society. Indicators such as GDP
were created and started to be widely used (Coyle 2014).

This new style of government may be labelled as government with numbers. Under it, legal rules were still fundamental, but they were demystified. At the same
time, new formal constitutions, such as the 1946 French and the 1947 Italian ones,
or quasi-constitutional documents, like the 1949 German Basic Law, fostered a
reconsideration of the shapes and sizes in which legal norms came. Those constitu-
tional documents were articulated by legal principles which were no longer under-
stood as political maxims or mere dogmatic reformulations of positive rules, but as
fully binding legal norms, in the process “positivizing” fundamental critical moral
principles. This would alter legal practice, and in due course, the very way in which
law was theorized (not least resulting in a renewed interest in legal argumentation
Alexy 1989).

What was emerging with force were in fact the structural implications of the need
of integrating a plurality of concerns and goals standing in a complex relationship.
The need is arguably characteristic of all societies, but it was only rendered explicit
in the Democratic and Social state. The result was a radical shift of perspective
when it came to discretion. Discretion had to be kept within bounds, and when pos-
sible, minimized, but where it unavoidably persisted, it had to be acknowledged, and
ultimately, politically framed. This was the proper way to avoid a fall into decision-
ism (Crisafulli 1952).

In particular, this accounts for the specific role assigned to quantitative economic
knowledge. Economic data were not regarded as an alternative to political decisions
undertaken in the grammar of law, but as means with which to enlighten and give
rational grounding to discretionary choices. In other words, numbers were a fun-
damental source of knowledge not only for democratic governments but also for all
the members of the public, the political implications of which were to be decided
politically.

**Governance through numbers**

The monetary and economic crisis of the early 1970s unleashed a period of eco-
monic and political turbulence (Brenner 2006). The unexpected simultaneous mani-
festation of stagnation and inflation (the so-called stagflation) seemed to defy the
capacity of Keynesian policies of macro-economic steering to stabilize the socio-economic order. This created the conditions under which neoliberals and ordoliberals joined argumentative forces in a ‘neo-ordo-liberal’ counter-offensive that stood the chance of being successful. In particular, ‘neo-ordo-liberalism’ attacked discretionary macroeconomic interventionism and aimed to replace it with a ‘neutral’, ‘apolitical’ governance of the economy. This would render state action foreseeable for private actors. In other words, discretionality would be encased, and in the process, room would be created for private planning (Friedman 1948; Kydland and Prescott 1977) as a result of the neutralization of politics (Spagnolo 2017). In such a context, the full enjoyment of private property, entrepreneurial freedom and sound money would be guaranteed, and the conditions would be created for the flourishing of free competition (Menéndez 2022).

The technology of power of ‘neo-ordo-liberalism’ combines a recovery of the centrality of legal rules, characteristic of the constitutionalism of old, with the cooptation of economic knowledge, redeployed at the service of constraining and fragmenting public power. Governance by numbers (Desrosières 2008; Supiot 2015) becomes the technique through which discretionary steering can be replaced by automatic steering, rendering possible to reconcile the fragmentation when not pulverization of public power with stability. ‘Constitutional economics’ (Buchanan 1987) turns upside down Democratic and Social constitutionalism, by decoupling constitutional commitments from democratic legitimacy, in the process generating ‘new’ forms of ‘constitutionalism’ (Gill 1998).

Numerical rules would emerge in this specific paradigm, the almost casual recombination of the technology of law and governance which was said to allow for the creation of the first major currency which was not ultimately backed by a state. Numerical rules would fit like a glove to the political needs of European political actors willing to create and economic and monetary union, but incapable of agreeing on the terms and purposes of its government, as we will see in the next section.

From European government with numbers to European economic governance through numbers

In this section, I consider the transformations which led from the practice of the coordination of national monetary and fiscal policy with the help of numbers (“The shocks of the seventies and the lateral breakthrough of neo-ordoliberalism in European integration” section) to the peculiar ‘empire of rules’ that the post-2008 incarnation of European Monetary Union (EMU II) has become, one in which we can observe a whole wealth of numerical rules under which, however, cloaked discretion thrives (“The financial, economic and fiscal crises which led to EMU II” section). A decisive propelling factor of these changes was a radical shift of social and economic visions (“The European Monetary System: The emergence of implicit monetary and fiscal rules” section), that led to the emergence of implicit but actually encasing monetary rules in the European Monetary System (EMS) (“The European Monetary System: The emergence of implicit monetary and fiscal rules” section),
expanded into fiscal policy and duly codified in the Maastricht Treaty, and further
tightened with the Stability and Growth Pact of 1997 (“EMU-I: Rendering monetary
and fiscal rules explicit” section).

The shocks of the seventies and the lateral breakthrough of neo-ordoliberalism
in European integration

The collapse of the Bretton Woods order left the European Communities lacking
a monetary infrastructure. The ensuing monetary turbulence (Brenner 2006) was
perceived as a threat to both the common market and the “positive” policies of the
Communities (not least the common agricultural policy). The economic recession
that hit the Western world in the fall of 1973 only increased the problems that the
Communities faced. A vicious circle was unleashed: the more there was a need for
common action, the more difficult it was to reach agreement on the common policies
to implement, not least because the economic performance of Member States tended
to diverge.

It was under these specific conditions that a basic contradiction became outstand-
ing in European politics: national political actors, including parliaments, agreed on
the need and urgency of creating some form of common monetary and economic
policy, but disagreed, and disagreed deeply, on what objectives should be pursued at
the European level and how they should be pursued.

For such reasons, the many attempts at establishing some form of European mon-
etary order between 1971 and 1978 failed (James 2012). It was only by the end of
1978 that a (very) partial consensus emerged among European governments, much
along the lines preferred by the [then] German government, assigning priority to the
fight against inflation. This rendered possible the establishment of a new monetary
infrastructure, the European Monetary System (EMS).

Before analysing the EMS (“The European Monetary System: The emergence
of implicit monetary and fiscal rules” section), it is pertinent to consider how such
consensus (slightly surprising from the vantage point of 1971, and even 1977)
materialized.

Key in that regard was the 8 years of monetary turbulence and high inflation
between 1971 and the signing of the agreement on the EMS.

Turbulence in currency markets shifted power from public institutions to the key
actors in reborn international financial markets (Helleiner 1994: chapter 5). As a
result, the resuscitated haute finance acquired an enormous influence over the rela-
tive exchange rates of currencies. Market actors made use of such power to favour
policies that, in the name of fighting inflation, solved the distributive conflict
between capital and labour in favour of the former. This created a major incentive to
introduce deflationary policies, if only because states implementing reflationary pol-
cies faced the headwinds coming from international financial markets, manifested,
among other things, in recurrent runs against their currency.

In addition, double-digit inflation became part of everyday life from 1973. The
rates of inflation were not only high and largely beyond any form of institutional
control but were soon rather diverging. At any rate, persistent inflation only height-
ened distributive conflicts within European societies, which in turn tended to further
fuel the rise of prices (Streeck 2014).

Under such circumstances, the belief in the feasibility and superiority of eco-
nomic interventionism, and in particular, of active macroeconomic policies, was
severely weakened. Keynesianism was still powerful through most of the seventies
when European states mobilized both monetary and fiscal policy levers to restart
the economy. In that regard, it is frequently neglected that the Member States of
the European Communities attempted (even if without success) to coordinate their
reflationary policies (European Economic Community 1974; European Commis-
sion 1975). Western economies, however, got stuck in a peculiar state of low growth
combined with high inflation (the so-called stagflation). This was interpreted by
many as proving that it was close to impossible to steer the economy through active
monetary and fiscal policies (Callaghan 1976; an exploration of the underlying para-
digmatic shift in Medhurst 2014). Keynesian tools seemed unfit to deal with simul-
taneous depression and inflation, and no obvious ways of adapting them to serve the
new realities seemed to be in sight.

It was a matter of time that visions of alternative to those at the core of the
embedded Democratic and Social state emerged. The renewed fortunes of what
used to be called ‘quantity’ theories of money, and were now labelled monetar-
ism, favoured erecting more or less formal walls of separation between monetary
and political authorities and focusing monetary policy on the fight against inflation
(Smith 1991). The present understanding of the ‘independence’ of the central banks
was forged then and there (Leaman 2001; Mee 2019). That would in its turn reduce
the room for maneuver of fiscal authorities (deprived of the monetary lever), some-
thing which was assumed should scale down their distributive goals, refocusing their
action on balancing the budget.

The European Monetary System: The emergence of implicit monetary and fiscal
rules

Even if neoliberal and ordoliberal ideas were on the offensive by 1978, the agree-
ment that brought about the EMS was however largely tactical, and the result ambiv-
alent (see Ryner in this issue). What had changed by 1978 was that even the govern-
ments which were keen to pursue active macroeconomic policies had come to see
fighting inflation (‘calmer les prix’ in the apt French expression) as a priority. The
hope for interventionists was that the EMS would allow to put an end to the rise in
prices, recreating the political space in which the normative goals of the Democratic
and Social State could still be pursued.

Formally speaking, that expectation might seem reasonable. The EMS seemed a
rather technical arrangement aimed at recreating a modicum of stability in the rates
of exchange of the currencies of the states adhering to the mechanism, by means
of setting upper and lower ceilings to the values of each currency. In principle, all
countries, and not only those with a weak currency, were required to intervene to
ensure that all national currencies remained within the bounds agreed.¹

However, the actual functioning of the system was much more imbalanced. As
we already pointed out financial markets put uneven pressures on the exchange rates
differing currencies, depending on the judgment they passed on past and present
policies of each state. In the absence of explicit and enforceable rules requiring all
states to intervene in support of parities, countries which were not fully or perma-
nently ‘trusted’ by the financial markets were under considerable pressure to emulate
the policies of countries which were regarded as ‘reliable’ by investors, or negotiate,
not exactly from a position of strength, a realignment of parities within the EMS.
Because Germany, with its Bundesbank, was favoured by markets, all EMS central
banks were under a far from weak constraint to follow the Bundesbank, which was
starting to follow monetary targets in the implementation of their monetary policy.
At the basis of the EMS, therefore, was an implicit monetary rule, largely defined by
the Bundesbank.

As a result, the actual functioning of the EMS was subject to a series of expecta-
tions that constrained de facto, even if not de jure, the discretion of the states that
were part of the arrangement when designing their monetary, and also fiscal, poli-
cies.² Crucially, such expectations were relative and quantified. Relative to the per-
formance of the states trusted by markets (i.e. Germany) and quantified, as markets
‘read’ national performances by means of considering the evolution of a series of
key economic indicators. As a result, the template of what would become numerical
rules can be seen as emerging in the context of the EMS.

It is usually claimed that the EMS not only made a major contribution to the
curfing of inflation across the Communities but also pre-empted oscillations in
exchange rates that would have undermined the common market and the substanc-
tive policies of the Communities. However, it is important to stress that this came at
a price. National political processes did not only lose control over monetary policy
but rather obviously lost it to the Bundesbank, which was an epistocratic institu-
tion (legitimised by the alleged technical knowledge of its members, not by demo-
ocratic representativeness) which for all states, bar Germany, was moreover a foreign
institution. In such a way, to the external constraint represented by financial markets
were thus added external monetary and partially fiscal constraints, resulting from
the policies implemented by German central bank, which, being extremely zealous

¹ This was the apparent purpose of the ‘convergence’ factor which was calculated for all currencies.
² Indeed, the judgment that financial markets passed was not limited to monetary policy, but extended
to economic policy as a whole. That is the very source of the projection of the goal of monetary policy
(‘sound money’) to fiscal policy and other economic policies (resulting in ‘sound public finances’). Still,
the implicit fiscal norms were weaker than the monetary ones for three reasons: (1) until 1987, parity
change was still possible, something which created room for divergent fiscal policies; (2) stocks of public
debt were relatively low, so there was still room to have resort to public debt; (3) the German Treasury
was more accommodating than the Bundesbank, and indeed also less single-mindedly focused on the
pursuit of ‘stability’ objectives, even more so after the fall of the Berlin Wall in 1989, which triggered
German reunification and a large increase of dedicated public expenditure.
of its independence, was not open to be easily influenced through the German government, itself constrained by the bankers sitting in Frankfurt.

**EMU-I: Rendering monetary and fiscal rules explicit**

**The three pieces of the European monetary puzzle**

As we pointed out, the birth of the EMS was the result of the emergence of an overlapping consensus on the need to curb inflation in all Member States of the EEC. The partial success of the EMS created the conditions under which the appetite for full monetary union grew, not the least because it was implicitly assumed that in such a way it would be possible to transcend some of the limits which were characteristic of the EMS (not least, the hegemony of the Bundesbank, which was resented not least by the French government).

In the process, the original contradiction at the heart of European integration only became bigger: European governments grew even more committed to monetary union while disagreeing even further on how to design and govern such monetary union, despite a widespread lack of appetite for a full-blown political union.

How was then possible to agree on the Maastricht terms for EMU? The answer is closely related to the fact that living under the EMS made Europeans grow used to the constraining of monetary and fiscal policies by implicit numerical rules. And susceptible of considering the substitution to political government by explicit numerical rules as a means of squaring the European circle.

**The necessary precedent: implicit self-commitment to monetary union through the liberalization of the movement of capital**

The EMS was introduced as a temporary and provisional arrangement to guarantee a modicum of exchange rate stability while awaiting full monetary union (which had been set as a goal of European integration by the 1970 Werner Plan). In principle, however, there was no reason why the EMS could not be turned into a permanent arrangement.

As part of the push towards the single market designed in the 1985 White Paper, however, European governments would take a fundamental decision which they constructed as a commitment towards monetary union, and which basically rendered extremely difficult to sustain the EMS: the liberalization of capital movements (Directive 88/361). Deprived of the lever of capital controls (even if admittedly a lever which was increasingly malfunctioning), states were bound to experiment even more difficulties in preserving some leeway in the design and implementation of their fiscal policies, as financial markets gained leverage as additional enforcers of the implicit monetary and fiscal rules at the core of the EMS.

From that perspective, the ‘inconsistent quartet’ (Padoa-Schioppa 1994) was not so much a description of the tensions at the core of the European constitution of money, as reflective of the mechanisms through which the hand of those reluctant to proceed with monetary union was to be forced. It is in such light that we can account
for the preparatory work for monetary union undertaken by the Delors Committee, in which for the first time central bankers took a leading position, reflecting the domination of monetary over fiscal policy under the EMS (Committee for the Study of Economic and Monetary Union 1989).

The trigger (but not the ultimate cause): a wall comes crumbling down

Even if most national governments had come to regard monetary union as required by the national interest (Moravcsik 1998), there were institutional and ideological obstacles on the road to its realization. The fall of the Berlin Wall in November 1989, a powerful symbol of radical political transformation, would contribute to accelerate and facilitate monetary union.

Firstly, the end of the cold war with the undeclared defeat of the USSR created the conditions under which German reunification (as will turn out, the absorption of Eastern Germany into Western Germany: Giacché 2013) became conceivable. Under such circumstances, the German government could present the renunciation of the D-mark and of the influence if not hegemony that the Bundesbank had acquired in the setting of monetary policy in Europe as a necessary sacrifice to prove to other Member States that a reunited Germany would remain fully committed to European integration (Gilbert 2012). Under such circumstances, it was much easier to circumvent the frontal opposition of the Bundesbank to proceed with monetary and economic in the absence of a previous and complete macroeconomic convergence. In normal times, the negative views of the Bundesbank would have rendered impossible both projects. Secondly, many other governments, outstandingly the French, saw in the creation of a single currency a way of tying up Germany to the common project, and in the process, overcoming German hegemony.

The final piece of the European monetary puzzle: the convenient suspension of disbelief on the role of markets as ultimate guarantors of trust in money

By 1991, there was an overlapping agreement among European governments on the convenience of creating a single currency and a single monetary policy. Still, they were still confronted with the original European contradiction. A common currency seemed to require the creation of a single European political center, i.e. a European government, because it was assumed that no viable monetary order could exist if not backed by a state (not least, by its taxing powers) ready to resort to fiscal and monetary levers to stabilise the economy. There was however no appetite among

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3 A further question, which is not necessary to settle for the purposes of the present argument, is whether monetary union was caused by the convergence of national economic interests (as Moravcsik 1998: chapter six claims) or itself the result of the geopolitical transformations brought about by the collapse of communism and the reunification of Germany.

4 The German central bankers were also against the terms of monetary union with Eastern Germany.

5 The costs of braving the waves of international markets when speculating against the national currency were occasionally huge, and quite clearly weighed on the minds of political actors (cf. Przeworski 2021).
governments to create a European state capable of acting as guarantor of last resort of the new currency.

This final obstacle was overcome by the timely conversion of European leaders to the fundamental assumptions of ‘neo-ordo-liberalism’. The claim that the trust essential to erect a monetary system was not produced by states, but was at the end of the day sustained by markets, as they sought to ‘minimise the costs of making exchanges in the process of trading’, attracted politicians seeking to square the apparently impossible circle of moving to a single monetary policy without moving into political union (Goodhart 1998). Key in that regard, as we saw, was the EMS interregnum, during which we noticed the suspension of disbelief about the substitution of political government by governance through numbers. From there followed a progressive conversion into the overall ideological framework of neo-ordo-liberalism, and the neglect of the backstop role that public power plays in upholding any functional monetary system (on how neo-ordo-liberal ideas spread pushed by non-ordo-neo-liberal politicians, Scharpf 2014).

**Maastricht: Monetary and fiscal rules are made explicit**

With states committed to monetary union, and neo-ordo-liberal ideas offering an apparent means of avoiding the need of creating a supranational state to back up the new currency, the path was cleared to EMU, which was finally decided in 1992, a fundamental pillar of the Maastricht Treaty. States with weak currencies (led by France) obtained the collectivization of the power to define monetary policy; however, the real winners were the states with strong currencies (led by Germany) which imposed the projecting to the supranational level of an updated and extended version of their own monetary arrangements. However, the uploading process implied changes and adjustments. Among these, not the least was increased weight of explicit monetary and fiscal rules, which were expected to serve as a substitute for both the non-existing common political government and for the embedment of monetary and fiscal rules.

The result was a design which was premised on the strict separation between monetary and fiscal policy. The former was left in the hands of a federal central bank which not only was guaranteed institutional and operational independence by the Treaties themselves but was given the fundamental mandate to preserve the value of money (art. 127.1 TFEU), thus radicalising the mandate of the Bundesbank. Furthermore, and in contrast with what is the case with other central banks, ECB’s independence has been constructed as extending to the definition of the concrete monetary rule operationalizing its mandate. In its turn, fiscal policy was formally

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6 Very especially in a context in which private banks were increasingly assuming more power in the actual process of money creation, as the deregulation of their activity proceeded at full force.

7 The independence of the Bundesbank was not until 1992 guaranteed in the German Constitution, but in an act of the German Parliament (of 26 July 1957). The pursuit of monetary stability was presupposed, not explicitly mandated (cf. Article 12 of the Act). In addition, the Bundesbank was deeply embedded into the German political and socio-economic structure, thanks to its federal structure and to the fact that independence did not mean lack of communications with the government (cf. Article 13 of the Act).
left in the hands of Member States, and consequently, of the national governments in parliament, at the same time that walls of separation between the national treasuries were erected through the “no bailout” principle (article 125 TFEU), and by eliminating from the Eurozone design the pre-existing collective fund to provide financial assistance to states experiencing a fiscal crisis (the balance of payments fund) (now article 143 TFUE, which is only applicable to non-Eurozone states).

Numerical rules emerged in this context as a functional alternative to the non-existent European economic government. In the absence of a politically defined supranational general will capable of steering supranational economic policy, the governance of EMU was to be guaranteed by agreeing upon and subsequently enforcing a set of numerical fiscal rules. Initially, such rules were those setting a ceiling on the stock of debt at 60% of the GDP, and on the annual deficit at 3% of the GDP, which was to a large extent reflective of the circumstances prevailing at the time at which they were written (Lops 2019). This seemed to lead to an EMU wired by governance technology (ruling through economic indicators). However, the effectiveness of such indicators was ultimately supported not by peer pressure or other implementation techniques of governance, but by legal sanctions (see now 126.11 TFEU). Numerical rules were born out of this combination.

Interlude: The end of the EMS

The negotiation of the Maastricht Treaty took place at a very peculiar conjuncture. The Bundesbank was raising interest rates to contain the growth of inflation in Germany, triggered by the increase in public expenditure and private consumption after reunification. At the same time, popular support for the Maastricht Treaty, not least in France, was very thin. The mix of increasing interest rates and political disarray led to the explosion of the tensions which had cumulated within the EMS since 1987, when the adjustment of the central parities had been discontinued, and new states had joined, despite their patent lack of macro-economic convergence with Germany (e.g. UK and Spain). Turbulence was multiplied by speculative operations facilitated by the recent liberalization of capital movements. In September 1992, some countries formally left the EMS (UK, Italy), while what was left of the monetary arrangement was watered down by the dramatic widening of the bands of fluctuation of currencies. This did not result in a reconsideration of the goal of monetary union, but in further commitment, on the side of national governments, to full monetary union. And thus to numerical rules.

Fleshing out monetary and fiscal rules: strengthening their strict and automatic character

The key elements of EMU had been defined in the Maastricht Treaty, in the terms that we have already considered. However, it remained to be clarified how the monetary and fiscal rules were to be operationalized. The Maastricht Treaty set monetary stability as the overriding goal of monetary policy, but, as has just been pointed out, left the concretisation of monetary rules to the ECB itself. Once the ECB was established (1998), its Governing Council set as its monetary target an inflation
Numerical rules or political government, that is the (European)…

rate below 2%, measured by reference to consumer prices, something that critically excluded asset prices. In 2003 the target was refined, as “below, but close, to 2%”. The fiscal rules set at Maastricht (the 60% debt and the 3% deficit) were the result of a bargaining process which left them open to be developed in different ways. In particular, they could be constructed as not having as their objective to eliminate deficits, or for that matter public debt per se, but only to prevent ‘excessive’ deficits and ‘excessive’ debts (Guarino 2013). In other words, EMU as defined in the Maastricht Treaty could (but only could) be regarded as reinforcing the power of states to get indebted within limits and for a good reason, for example, to achieve the objectives enshrined in Article 2 TEC. By the same token, and on the basis of the proposals of the Italian and the British delegation, the ceilings were flexible in a double sense. Firstly, the Commission should take into account whether, even if over the ceiling, deficit and debt were moving towards target; moreover, an occasional excessive deficit was unproblematic if ‘exceptional and temporary’. Secondly, even if debt or deficit went over the targets, no automatic sanctions were foreseen, but rather a monitoring procedure would be launched, which only if the breaches persisted and the state took no adequate action, could, but only could, result in fines being imposed on the delinquent Member State by the Council of Ministers. Whether to sanction or not remained, thus, a political decision, to be taken on the basis of all relevant facts (which certainly could not but include consideration of the possible consequences of sanctioning one state over the economy of the Eurozone, and the EU, as a whole).

However, a good deal of the flexibility built into fiscal rules was eliminated with the writing of the Stability and Growth Pact in 1997, which quite explicitly aimed at preventing not only ‘excessive deficits’ but deficits as such. In the name of preserving the room for fiscal maneuver during crises, ‘ordinary’ fiscal policy was to be subject to tighter constrains. The deficit target was no longer to be 3%, but close to balance or surplus (Resolution annexed to Regulations 1466/97 and 1467/97, point 1). Moreover, the intrusiveness of the monitoring and sanctioning process was increased, through a series of procedural and substantive obligations imposed on states which did not comply with the new target. The political resolution which crowns the Stability and Growth Pact indeed ‘invites’ the Council ‘to impose sanctions if a participating Member State fails to take the necessary steps to bring the excessive deficit situation to an end as recommended by the Council’. (Resolution, point 3). The fact that this was a ‘mere’ political declaration did not detract from the force with which it altered the normative context in which not only the companion Regulations but even Treaty provisions came to be constructed. The ‘positive morality’ underpinning the Stability and Growth Pact supported interpreting fiscal numerical rules as ‘automatic’ rules knowing of no flexibility and of no exception. In the process, it became clear that fiscal rules were not to be understood as simple governance arrangements, but that some decisive political actors were keen to see in them strict legal rules. The legal component in the governance/law mixture got stronger.
The financial, economic and fiscal crises which led to EMU II

The financial and fiscal crises that hit the EU in 2008 revealed the extent to which numerical rules were dysfunctional if understood as strict rules, not least because it proved impossible to apply monetary and fiscal rules without causing major damage to the socio-economic structure of the EU (Mody 2018). Quite tragically, though, the EU, and in particular the Eurozone, opted for policies which were presented as implementing the existing rules, but above all, opted for reforming the numerical rules with a view to make them even stricter.

The European constitution of money did not resist the combined impact of the financial, economic and fiscal crises. Austerity policies combined the formal pretence of observing the fiscal rules with actually breaking them (indeed, that was the underlying theme underpinning the rulings of the German Federal Constitutional Court in Gauweiler and in Weiss (German Federal Constitutional Court 2014, 2016, 2020). At the same time, European institutional actors have opted for the formal tightening of fiscal rules, thus claiming to further encase discretionary fiscal policy. Quite predictably, in an almost osmotic fashion, the discretion that was (selectively and asymmetrically) curtailed on the fiscal side of the macroeconomic equation re-emerged on the monetary side. In other words, the less the leeway recognised to governments in the implementation of their monetary policy, the more the discretion that was almost forced to employ the ECB, precisely the institution designed not to have democratic legitimacy (and responsibility) and thus not capable of enjoying discretionality.

Narrowing down the scope for discretionary fiscal policy

A new set of fiscal rules has been established with a view to further limit the power of Member States when designing and implementing fiscal policy, so much so that absolute priority is to be given to balancing the budget in the short and mid runs, even at the cost of undermining social policies:

• First, existing fiscal rules have formally been made more demanding. States are obliged to comply with their medium-term budgetary objectives, which require deficits between −1% GDP and surplus (even tighter, −0.5% when public debt is over 60% GDP).
• Second, additional fiscal rules (including the deficit and debt trajectory objectives) have been enshrined into the Stability and Growth Pact.
• Third, Member States are now obliged to patriate into their constitutional laws the European deficit ceiling (the ‘debt brake’ in media parlance); such obligation is established not in EU law as such, but in the idiosyncratic Fiscal Compact.
• Fourth, states are under the obligation of making part of their legal orders rules that would apply automatically in case that fiscal objectives are breached, leading to automatic spending cuts (a sort of reversed and pro-cyclical automatic stabilisers)
Numerical rules or political government, that is the (European)…

A set of ‘macroeconomic indicators’ have been established with a view to limit the discretion of Member States in the overall design of their social and economic policies (Regulations 1176 and 1174/2011).

It should be noted that, since the 2005 reform of the Stability and Growth Pact, the relevant measure of the deficit is the so-called ‘structural deficit’. The structural deficit is not the actual deficit, but the figure that results from ‘discounting’ the positive or negative effects that the economic cycle has on public accounts.

From monetary rules to the unleashing of monetary discretion

The net result of the European government of the crises and structural reforms implemented in their wake has been to empower the European Commission to constrain even further national fiscal policy. That notwithstanding, capitalist economies cannot but move from one disequilibrium to another, with massive potential consequences (Ciocca 1987). Unless polities are resigned to suffer the consequences of these uncontrolled waves and flows, something unlikely in societies committed to democratic government, discretionary macroeconomic policy, capable of reacting to actual developments, is required. Unsurprisingly, the more that fiscal policy has been (arbitrarily and selectively) constrained in the Eurozone, the more that monetary policy has been unleashed from constrains, in the process tearing down the wall of separation between the two, the first fundamental rule on which the European constitution of money was built, as we saw in the “EMU-I: Rendering monetary and fiscal rules explicit” section.

Unsurprisingly, the ECB is the supranational institution which has gained more power in the last years (Menéndez 2014). From our present perspective, however, one specific power gain is decisive, namely, that resulting from the emergence of a constitutional convention according to which the remit of monetary policy is to be as wide as necessary to achieve the goals of monetary policy, independently of the (narrow) legitimacy basis of the ECB, and of the extent to which this has effects upon fiscal policy. This has been confirmed by the ECJ in the Gauweiler ruling, closely relying on the conclusions of AG Cruz (European Court of Justice 2015: par. 111). The spectacular opposition of the German Federal Constitutional Court to this move (German Federal Constitutional Court 2020) remains essentially biteless (but see Dani et al., 2021). The result is a redefinition of monetary goals in the most expansive possible ways, including the acquisition of public debt in secondary markets in massive amounts. This has created the conditions under which the ECB has put in place policies that have massive fiscal effects, as widely acknowledged in public discussion (even by the ECJ itself, which does not deny that, but merely argues that what matters is the intent of the ECB, not the economic consequences of its actions).

To reiterate the point, this outcome is not only not surprising, but highly predictable. By rendering almost inoperative the fiscal lever of economic policy, the structural reform of the European constitution of money has shifted the pressure to compensate cyclical fluctuations to the other main macroeconomic lever, i.e. monetary policy. Admittedly in a fashion which does not only undermine democratic
government (because the ECB is by design isolated from the processes of democratic preference-formation) but which is proving increasingly inefficient. The so-called EU Next Generation package, despite its modest size relative to the problem which is said to be aimed at tackling, simply proves that the limits of macroeconomic stabilisation through monetary policy have been reached.

**On the impossibility of numerical rules becoming an alternative to political government**

In this section, I argue that European governance through numerical rules has failed to deliver. Three are the main underlying causes. Firstly, it is wrong to assume that economic indicators, in themselves, are always the source of impartial and objective knowledge. Indicators are social constructs, and the degree to which they produce knowledge depends on the soundness of the underlying economic models. Blind trust in the objectivity of economic indicators merely empowers the economists or administrators that define such models, to the detriment of representative institutions (“Numerical rules are not self-applying because economic indicators cannot but be constructs” section). Secondly, the fiscal and monetary policy cannot be put on automatic pilot; stabilisation in a capitalist economy is a never-ending process, not the state towards the economy ‘naturally’ leans (“The steering of fiscal and monetary policy cannot but involve a combination of commitment and discretion” section) Finally, by acritically believing that numerical rules are fully effective in constraining discretion, we end up cloaking it, and as a result, fostering arbitrariness (“The pretence of curbing discretion results in the cloaking of arbitrariness” section).

**Numerical rules are not self-applying because economic indicators cannot but be constructs**

Governance through numbers promises to preempt discretion and, consequently, the need for an additional input of legitimacy when applying rules. The plausibility of such a claim depends on numerical rules, in contrast with ‘classical’ rules, being susceptible to being applied in an automatic fashion. As we saw, the definition of the operative part of the rule by reference to an economic indicator is supposed to do away with the structural features of classical legal rules that stand in the way of their being capable of being applied without exercising discretion. Whether the aim is to eliminate discretion to render possible private planning (as neo-ordo-liberals have traditionally argued), or to render possible monetary union in the absence of an agreement on how to shape the European government of the Eurozone (the rationale of governance through numbers in EMU), or the two at the same time, is rather immaterial.

Twenty years of experience with European numerical rules proves that the substitution of the ‘classical’ operative part with an economic indicator does not create the
conditions for an automatic, discretion-free application. As was the case with classical legal rules, the pretence of automaticity can only be kept by having resort to some form of positive morality (that prevailing among the technicians administering supranational fiscal and monetary policies).

This is so because economic indicators are not hard facts, open to direct and uncontroversial observation, but economic constructs. Neither inflation nor GDP nor, for that matter, deficit or debt figures is the results of raw and simple calculus, but, on the contrary, they are the product of complex computations, which moreover can be made following different criteria (de Vlieger and Mugge 2020). The intrinsic ambiguity of such measures entails that the discretion that is said to be excluded by resort to economic indicators, is actually constitutive of economic indicators themselves. With decisive consequences. What weight is assigned to different items in the calculus of inflation rates (should we consider only consumer prices, or also asset prices, and if so, which ones and assigning them which weight), or how debt and deficit are calculated may result in opposing conclusions regarding compliance of the rules. But if that is so, then we are confronted with the paradox that what look like strict rules are however capable of being complied and breached once and at the same time.

To what extent the form of the ‘numerical rule’ may hide discretion, and consequently open the door to arbitrariness, is illustrated by what has arguably become the key fiscal rule in the European Semester, the one requiring that the structural deficit be lower than 0.5% GDP. On the face of it, this rule should not only reduce the number of choices available to national parliaments and governments when designing fiscal policy, but also simplify the work of the Commission and the Council of Ministers. However, the fact of the matter is that the structural deficit is a rather complex and slippery construct. It is not the actual deficit but rather the figure that results from ‘discounting’ the positive or negative effects that the economic cycle has on public accounts. Consequently, what is said to be the ‘structural deficit’ depends on which model of the ‘economic cycle’ is chosen. There are many such models. As a result, huge variations are possible in the calculation of the structural deficit.

Suffice to illustrate the point the case of Spanish and Irish structural deficits in the period 2000–7. In 2008, the IMF calculated that during the said period, Ireland had run an annual surplus at an average of +1.3% GDP, and Spain at +0.5% GDP. In 2012, the IMF revised the figures, on the basis of a different model for both economies which resulted in a different way of calculating the deficit. Ireland was now said to have run an average deficit of 2.7% GDP, Spain of 1.2% GDP (Wolf 2015:85). From being regarded as exemplary cases of fiscal rectitude, both states were now classified as close to fiscal delinquency.

The steering of fiscal and monetary policy cannot but involve a combination of commitment and discretion

Government through numbers assumes not only the inefficiency and self-undermining character of the political steering of fiscal and monetary policy but also that it is possible to stabilise complex modern economies through rules. Whether implicitly
or explicitly, the assumption is that rules are superior to discretionary choice. In the previous section, we showed that rules, no matter how designed, cannot but entail discretionary choice. To that it should be added now that the very fact that, as was already pointed, economies move from one imbalance to another, without ever reaching an equilibrium entails that even if we were able to formulate strict rules, such rules will be incapable of discharging the task of stabilising the economy. Monetary and fiscal policy, even if defined by reference to ‘rules’, cannot but be discretionary. This does not entail a case for ‘pure’ discretionary policy, but rather for a wise and prudent combination of commitment and discretion, more effectively achieved through a principles and guidelines, as is characteristic in the Democratic and Social State.

At the same time, it is important to notice that these new and renovated numerical rules hollow out democratic government not only directly, but also indirectly. In particular, the efficacy of the new fiscal rules has been found to require increasing the monitoring and disciplinary powers that European institutions hold, and, at the very same time, shifting supranational decision-making from majoritarian to minoritarian voting. This is perhaps most clearly illustrated in the workings of the instrument through which the Eurozone provides financial assistance to Member States in fiscal need, the European Stability Mechanism (Mangia 2020).

The pretence of curbing discretion results in the cloaking of arbitrariness

If what looks like a new advanced form of strict rules are proven to require discretionality in their application, then numerical rules came out as being the mere semblance of what they pretend to be.

This does not only imply that the dream of writing self-applying legal rules is one bound to fail to be realised, but one that is deeply dangerous, susceptible to turning to be an actual nightmare. This is so because the fundamental consequence of the discourse on numerical rules is to present what really is an exercise of political discretion as the technical (when not technocratic) application of a rule. The form of the economic indicator hides the variation in the definition of such indicator (as pointed before, the figure of the structural deficit is dependent on the underlying economic model used for the purpose of calculating the figure). Or the selective application of the rule (for example, different criteria can be applied depending on the extent to which the Commission and a qualified majority of the Council regard the policies of a given government as more or less acceptable). In both cases, discretion is cloaked behind the formally ‘objective’ discourse of the economic indicator which defines the operative part of the rules, breeding arbitrariness.
Conclusions: ‘Numerical Rules’ are not rules, and they should not be approached as if they were rules

In this article, I have shown that the sleep of fiscal and monetary rules has produced economic and political monsters. EMS, EMU I and EMU II were premised on both the feasibility and desirability of subjecting macroeconomic steering to numerical rules. However, numerical rules, no matter how sophisticated, do not do away with the instability intrinsic to modern capitalism (especially acute in financialised capitalism). As a result, constraining discretion in the design and implementation of monetary and fiscal policy has proven only easy in purely formal terms; in actual fact, the outcome has been the transformation of explicit discretion into cloaked arbitrariness.

Monetary and fiscal ‘rules’ are not (and should not) be approached as self-applying rules, but at most can serve as guidelines, whose ultimate soundness depends not only on the premises on which they are grounded but also on the ability with which they are applied. Discretion cannot be eliminated, but at most legally framed, because the goals of macroeconomic policy are unavoidably many. Pretending otherwise has led the Eurozone close to a cliff. To avoid falling from it propelled by the coronavirus crisis and the outfall of the war in Ukraine, the last thing we should do is to fast ourselves to stupid rules (Prodi 2002). Indeed, numerical rules have been set aside for the time being. That is, however, far from enough. In the absence of an alternative design of the monetary and fiscal infrastructure of the European Union, pressure will mount on a return to the present fiscal and monetary rules after the emergencies are declared over, despite the fact that divergences within EMU are likely to grow.

References

Alexy, R. 1989. (1989) A Theory of Legal Argumentation. Oxford: Oxford University Press.
Alexy, R. 2002. Theory of Constitutional Rights. Oxford: Oxford University Press.
Bentham, J. 1998. ‘Legislator of the World’: Writings on Codification, 1998. Law and Education, Oxford: Oxford University Press.
Bobbio, N. 1993. Teoria generale del diritto. Torino: Giappichelli.
Brenner, R. 2006. The Economics of Global Turbulence. London: Verso.
Buchanan, J. 1987. The Constitution of Economic Policy. The American Economic Review 77 (3): 243–250.
Callaghan, J. 1976. Leader’s speech, Blackpool 1976. Available at http://www.britishpoliticspeech.org/speech-archive.htm?speech=174
Ciocca, P. 1987. L’instabilità dell’economia. Prospettive di analisi storica, Torino: Einaudi.
Clavero, B. 1997. Happy constitution. Cultura y Lengua Constitucionales, Madrid: Trotta.
Committee for the Study of Economic and Monetary Union. 1989. ‘Report on economic and monetary union in the European Community’ available at http://aei.pitt.edu/1007/
Coyle, D. 2014. GDP: A brief but affectionate history. Princeton, NJ: Princeton University Press.
Crisafulli, V. 1952. La Costituzione e le sue disposizioni di principio, Milano: Giuffrè.
De Vlieger, J. and D. Mügge. 2020. ‘The Ambiguity of Public Debt Measures’, in C, Caruso and M. Morvillo, Governing with numbers. Economic indicators and the budget decision in the constitutional state, Bologna: Il Mulino, 33–53.
A. J. Menéndez

Dani, M., J. Mendes, A.J. Menéndez, H. Schepel, and M.- Wilkinson. 2021. It’s the political economy! A moment of truth for the Euro-zone. International Journal of Constitutional Law 19 (1): 309–327.

Desrosièr, A. 2008. Gouverner par les nombres. L’Argument Statistique II. Paris: Presses des Mines.

European Economic Community. 1974. Council Decision 74/120/EEC of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community, Official Journal L 63, of 5.3.1974, pp. 16–18.

European Commission. 1975. ‘Report on the application of the Council decision of 18 February 1974 on the attainment of a high degree of convergence of the economic policies of the Member States of the European Economic Community and the conformity of the policies pursued with the objectives set’, COM (75) 93 final/2, available at http://aei.pitt.edu/15260/.

ECB. 2021. ‘The ECB’s monetary policy strategy statement’, 8 July 2021. Available at https://www.ecb.europa.eu/home/searchreview/html/ecb.strategyreview_monopol_strategy_statement.en.html.

European Court of Justice. 2015. Opinion of AG Cruz in Case 62/14 (Gauweiler), ECLI:EU:C:2015:7.

Friedman, M. 1948. A Monetary and Fiscal Framework for Economic Stability. American Economic Review 38 (3): 245–264.

Giacchè, Vladimiro. 2013. Anschluss. L’Unificazione della Germania e il futuro d’Europa. Reggio Emilia: Imprimatur.

Gilbert, M. 2012. European Integration: A Concise History, Lanham: Rowman and Littlefield.

Gill, S. 1998. New constitutionalism, democratisation and global political economy. Pacifica Review 10 (1): 23–38.

Goodhart, C.A.E. 1998. The two concepts of money: Implications for the analysis of optimal currency areas. European Journal of Political Economy 14 (3): 407–432.

Hart, H.L.A. 1961. The Concept of Law. Oxford: Clarendon Press.

Helleiner, E. 1994. States and the Reemergence of Global Finance: From Bretton Woods to the 1990s. Ithaca, NY: Cornell University Press.

Kantorowicz 1906/2011 (pseudonym Gnavius Flavius), The Battle for Legal Science, German Law Journal, 12: 2005–2030.

Kelsen, H. 1967. The Pure Theory of Law. Berkeley, CA: California University Press.

Kydland, F., and E.C. Prescott. 1977. Rules rather than discretion: The inconsistency of optimal plans. The Journal of Political Economy 85 (3): 473–492.

Klopp, F. 2012. ‘Die Konstitution der EU: ein Fundamentaleinsatz’, in F. Klopp (ed.), Der Zugang zur Europäischen Union, Berlin: Aka Verlag, pp. 189–206.

Klopp, F. 2015. The European Union Constitution: A Guide to its History and Influence. London: Routledge.

Klopp, F. 2017. ‘The (terrible) functional constitution of the European Union: “Sound” money, economic freedom(s) and “free” competition’ in M. Goldoni and M. Wilkinson (eds.), The Cambridge Handbook on the Material Constitution, Cambridge: Cambridge University Press, forthcoming.

Milonakis, D., and B. Fine. 2009. From Political Economy to Econometrics. London: Routledge.

Mody, Ashoka. 2018. Euro Tragedy: A Drama in Nine Acts. Oxford: Oxford University Press.

Moravcsick, A. 1998. The Choice for Europe: Social Purpose and State Power from Messina to Maastricht. Ithaca, NY: Cornell University Press.
Padoa-Schioppa, T. 1994. ‘Capital Mobility: Why is the Treaty Not Implemented?’, in idem The Road to Monetary Union in Europe. Oxford: Clarendon Press.

Prodi, R. 2002. ‘Le pacte de stabilité est-il stupide?’, Le Monde, 15 November 2002.

Przeworski, A. 2021. ‘From Revolution to Reformism’, Boston Review. https://bostonreview.net/politics/adam-przeworski-revolution-reformism.

Rose, N. 1991. Governing by Numbers: Figuring Out Democracy. Accounting Organizations and Society 16: 673–692.

Ryner, M. 2022. ‘Is European Monetary Integration Structurally Neoliberal? The Origins of the EMS and the 1977–78 Locomotive Conflict’, in this issue

Scharpf, F. 2014. ‘The eurocrisis as a victory of neoliberalism?’, in J.E. Fossum and A. J. Menéndez, The European Union in Crises or the European Union as crises, ARENA Report 2/14, 143–154.

Smith, D. 1991. The Rise and Fall of Monetarism. Harmondsworth: Penguin.

Spagnolo, C. 2017. Il voto apolitico. Il sogno tedesco della rappresentanza moderna (1815–1918), Bologna, Il Mulino.

Streeck, W. 2014. Buying Time. London: Verso.

Supiot, A. 2015. La Gouvernance par les nombres. Paris: Fayard.

von Hayek, F. 1989. The Pretense of Knowledge. American Economic Review 79 (6): 3–7.

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Agustín José Menéndez is professor of political philosophy at the Universidad Complutense. Author of Justifying Taxes, The Constitution’s Gift (with J E Fossum) and Challenging European Citizenship (with E D H Olsen). He was editor in chief of the European Law Journal and is currently one of the managing editors of the European Law Open.