

Embracing austerity: should budget stability be a constitutional rule to cope with the global economic and financial crisis?

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Abstract:

National legal systems increasingly appear to be burdened with the necessity of coping. Situations of an “outdating” of the Law can arise when law-making tasks insist on being entirely joined with the nation-state viewpoint. These everyday situations can introduce matters whose legal solutions may not be found within systemic boundaries, rather, beyond them. To an extent, the Law, as it has been respectively defined through time, is losing its effectiveness as a means of regulation in correlation with increasing globalization. This paper seeks to confine the unforeseen consequence of the current economic and financial crises by arguing that the constitutional recognition of the rule of budgetary stability can precisely serve as a solution to exit the current crisis. Whether or not this rule is adequate, necessary, feasible, and/or acceptable to a modern Democracy is subject to current legal and political, academic debate.

Keywords: globalization, economic crisis, financial crisis, constitutional democracy, budget stability.

I. Introduction

The main objective through the opening of new constituents under the European Union framework is to deal with adverse economic circumstances. Nowadays, it could be suggested that one of the most important topics in the spheres of economics, politics, and law is how countries can successfully emerge from the deepest recession since the Great Depression of the 1930s and how economies, policies, and Law can survive the *new crash*¹.

The reforms of Articles 109 and 115 of the German Constitution², followed by the reform of Article 135 of the Spanish Constitution at the end of 2011³ are paradigmatic. The main objective of both Constitutional reforms was to introduce a constitutional rule regarding budget stability. In other words, the new rules now recognize the legislative duty to guarantee as much as possible the balance between incomes and the expenses.

It is curious that the constitutional rules, being the most difficult to be amended due to the severity of the procedures, are becoming a main instrument in order to address or to give answer to the current economic and financial crises. On one hand, economic and financial crises used to be considered a cyclical (but not an everlasting) problem. In this sense, it is questionable that a Constitution is being the most appropriate tool to address these kinds of problems because a Constitution is a set of rules that result from a process of agreement with a vocation of durability. Therefore, it may be better to choose a legislative rule than a constitutional one. However, on the other hand, the tendency to balance the State budget is not a matter that yields general agreement. Rather, budgetary stability is key of trending, conservative politics.

In the case of Spanish constitutional reforms, many circumstances point to a desperate attempt by the Spanish government to assure its European Union partners of a real commitment towards solving its respective crisis. It seems that this was the explainable reason for the urgency and lack of deliberation of the constitutional recognition of budgetary stability⁴. In fact, the general obligation regarding the constitutional recognition of the budgetary stability rule in the Eurozone took place shortly after on December 9th, 2011 with the approval of the *Statement of the Heads of State or Government of the Euro Area*. This declaration was considered urgent to reform the Constitution (or equivalent standard) to introduce the concepts of budgetary stability and balanced budgets. Finally, on January 30th, 2012, the European Council finalized the intergovernmental draft of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG). All European Union member states signed the Treaty on March 2nd, 2012 with the exception of the United Kingdom and Czech Republic. Given the circumstances, following Embid Irujo, it could be suggested that the “constitutionalisation of the economic crisis”⁵ is taking shape.

¹ See Teubner, G., “A Constitutional Moment? The Logics of 'Hit the Bottom' (April 19, 2010), in *The Financial Crisis in Constitutional Perspective: The Dark Side of Functional Differentiation*, Poul Kjaer and Gunther Teubner, eds., Oxford, Hart Publishing, 2011.

² The reform of the German “Grundgesetz” was July 29th, 2009. The reform tried to stop the indebtedness of the Federation and the Länder. According to Article 109.3 of the German Constitution, the Federation, from 2016, may not have income credits higher than the 0.35 % of GDP. The Länder should have a budget in equilibrium from 2020.

³ The processing of the reform of Article 135 of the Spanish Constitution began at the end of August, channelled by the procedure of urgency and amendments. It was published on September 27th, 2011 (BOE, No. 233). The Preamble expressly states that the reason for the constitutional reform was the economic and financial crises. See the last issue of the Journal *Teoría y realidad constitucional*, Madrid, UNED, 2012, which deals with the topic of constitutional reform, and in particular, with the *constitutionalization* of the rule of budget stability

⁴ See Dávila, L., “La reforma constitucional”, 30.08.2011 (<http://www.expansion.com/blogs/paseo-aleatorio/2011/08/30/la-reforma-constitucional.html>)

⁵ See Embid Irujo, A., *La constitucionalización de la crisis económica*, Madrid, Iustel, 2012.

Contextually, the paper's first purpose is to shed light upon the complex interactions between globalization and the Law of a Constitutional Democracy. Secondly, the paper's objective is to explain how financial and economic crises (together as a global crisis) expose the weakness of the State and its Law in contrast with the strength of market rules. Thirdly, the paper attempts to underline how the solution to the debt crisis seems to be found in the general constitutionalization of the balanced budget. Lastly, doubt is cast upon the nature of this answer to the financial crisis, aboveall from the perspective of human rights and moreover, from the mean of constitutionalism as a political and legal construction whose main mission is to restrain public and private power.

Summing up the aforementioned, it could be said that the global economic and financial crises reveals at least two dramas: firstly, a growing tension between politics and economics that calls into question whether social power is still in the hands of the State or has passed to markets; and secondly, the erosion of the democratic system that is gradually moving away from the regulatory ideal of deliberation. As such, there appears to be a growing distance between citizens and politicians, who, these very same politicians are more and more being referred to as a “political class”. The work concludes by questioning the constitutionalisation of budgetary stability as being key to exiting the crisis by establishing in a “black and white” context and approach conservative principles as being principles of this “new” constitutional order that is arising. In this case, it may be doubtful if the genuine meaning of the constitutionalism of limit of power is in force.

Perspectively, political and legal science needs to offer alternatives. One of these could be the fight for a global public power (global constitutionalism, in the words of Ferrajoli). Or perhaps, there are less ambitious routes than prior, such as preserving the main political role of the State, whenever the State has a cosmopolitan outlook. In other words, maintaining the genuine sense of democracy and rule of law in a constitutional state that is linked to an increasing global society, becomes one of the main scopes of political and legal science⁶.

II. Globalization: Importance with the Rule of Law in a Constitutional Democracy

Political and legal changes in constitutional frameworks have been an ongoing topic of debate for jurists, both theoretical and practical. In current, constitutional democracies, parliamentary law does not have the privileged or exceptional position that it does in the liberal or legal state due to the role of the constitution, which is to preserve citizen rights and the rules and structure of the democratic system. Most modern legal systems have a written constitution with a rigid character (difficulties to revise), binding for the judiciary to be guaranteed (i.e., likely to be made effective by judges and courts). The substantive nature of the constitution is the most relevant peculiarity of the constitutional state, for the constitution not only regulates bodies and procedures for law making, but it also establishes substantive content (rights, principles, values) that the legislator cannot overstep⁷.

⁶ See several critical argument of establishing a Global Constitution in Laporta, F., *El imperio de la ley. Una visión actual*, Madrid, Trotta, 2007.

⁷ See an excellent reflection on “neoconstitutionalism” and its theoretical and practical implications in Prieto, L. “Neoconstitucionalismo y ponderación judicial”, *Anuario de la Facultad de Derecho de la Universidad Autónoma de Madrid*, 5 (2001). On the other hand, see a very critical work with legal positivism from the perspective of the Constitutional paradigm, García Figueroa, A., *Criaturas de la moralidad: una aproximación neoconstitucionalista al Derecho a través de los derechos*, Madrid, Trotta, 2009.

Over the past few decades, legal theory has given attention to the implications for the praxis of the law into the constitutional paradigm. In this paradigm, the constitution has more than just a rhetorical worth. The binding nature of the constitution seems to change the balance or equality of powers between the legislator and the judiciary in the next sense. Parliamentary law ties the judge, but a judge cannot apply or use a legal norm, which can be considered as antithetical with a constitutional precept. *This requirement of consistency between parliamentary and constitutional rules involves delivering immense power in the jurisdiction.* Obviously, in regard to this power, the problem is that the judiciary lacks democratic legitimacy in comparison with the legislator.

The legitimacy deficit of the judiciary in a constitutional framework of course persists in being considered as an extraordinary problem. Although it can be said that this eminent problem requires today to incorporate or to take into account a new viewpoint or reflection, which is globalization and its impact on law. Indeed, Ferrajoli's *Principia Iuris*, which may be understood as a genuine treatise on Law and Democracy Theory⁸, adds this kind of reflection to the study of the rule of law in the constitutional democracy. After presenting a detailed theory on models of law in his first volume, beginning with the least sophisticated of models (law in primitive societies) up to perceived models of maturity (i.e., modern constitutional democracies), Ferrajoli reserved the second volume to the Theory of Democracy by focusing on the globalization process as a kind of a progressive Rule of Law stumble.

Globalization cannot be considered a new, genuine phenomenon. The Dictionary of the Spanish Royal Academy defines globalization as being a "trend of markets and corporations to spread themselves, reaching a global dimension that goes beyond national boundaries". Nevertheless, it is remarkable that the proposed definition for the twenty-third issue of the Spanish Dictionary considers the political and social implications of globalization by stating that globalization is "the process by which economies and markets, with the development of communication technologies, acquire a global dimension, so that there is increasing reliance on external markets and less on the regulatory action of governments".

David Held pointed out that the economy and economic relations operate as a driving force in contemporary globalization. One cannot perform a conceptualization of the nature and model of globalization without referring to this aspect⁹. Held suggests examining globalization from a wider perspective (rather than solely focusing on the economic aspects), taking into special consideration the mutation at the political level and more importantly, in the field of the Law. For this reason, Held identified globalization with structural changes in the scale or scope of social, economic, and political relations, as well as in its organizational principles¹⁰.

Globalization represents an economic process with high *technological support* in the continual development of new technologies in transportation, information and communication alongside *ideological* evolution (neoliberal political philosophy). Globalization also has remarkable *political effects* (larger interdependence between states and the subsequent weakening of the nation-state as a monopolistic power within its

⁸ See Ferrajoli, L., *Principia Iuris. Teoría del Derecho y de la Democracia* (2007), 3 vols., transl. from Italian by Andrés, P., Bayón, J. C., Gascón, M., Prieto, L., Ruiz Miguel, A., Madrid, Trotta, 2011.

⁹ See Held, D. and MacGrew, A., *Global Transformations* (1999), *the Global Transformations Reader* (2000), *Governing Globalization* (2002). Also see Held, D., and MacGrew, A., Goldblatt, D., Perraton *Globalization Theory. Approaches and Controversies*, Cambridge, Polity Press, 2007.

¹⁰ *Ibid.*

borders). Moreover, globalization generates *legal effects* that should be entirely necessary for legal theory and legal sciences to have a better understanding and greater exposure. For instance, today's standards of supranational bodies have greater weight than before (i.e., European Union) along with recommendations from other supranational institutions that operate in parallel to nation-states and the EU, such as the International Monetary Fund (IMF) or World Bank (WB). The last “soft rules” are not purely binding, but in practice, have a greater influence on the contents of state law.

Consequences of globalization that pose a clear legal challenge are the increasing ineffectiveness of the tributary; lax financial rules towards the of taxation of corporate profits and personal fortunes, and the privatization and subsequent deregulation of public sectors and industries. To counteract these changes against the law-making process, the growing use of government decrees have become more common in place of parliamentary law, leaving the judiciary only slightly convinced with regards to the applicability of law due to the complexities present between multiple sources and jurisdictions. As the result, until recently, to counteract the economic and financial crises, the presence of such discrepancies (in the aforementioned) has led to the inclusion of constitutional mandates regarding budget stability.

Political and legal sciences have approached globalization from varying viewpoints, though, however, there does exist an eminent consensus on two fronts. Firstly, a large portion of the global problems faced by nation-states transcend their traditional borders, whose effectiveness in resolve are just capable enough with the necessary government principles and global standards to address such issues, along with continual economic imbalances (i.e., environmental degradation; organized, transnational crime, and migration).

Secondly, legal and political concepts (in the domestic, national context) are increasingly becoming less explanatory. Moreover, the low fecundity of many explanatory categories is obvious with respect to the law making process (new and multiple sources), especially in their use or application (with the complexity in the application of sources of law with concurrent powers)¹¹. Regarding this mismatch between political and legal sciences, realistically speaking, attention must be given to Ferrajoli's recent works, whose preface admits (to some extent) that his theoretical approach towards the constitutional rule of law is not a theory of law in force, being that in practice, certain aspects are not precisely recognizable as a result of globalization. Hence, his insistence on “taking seriously” the possibility of a global public power (in the form of a global democracy) is a logical demand or corollary of the meaning of the constitutional State¹².

Furthermore, Ferrajoli's theory, which proposes the highest degree of effectiveness of the rights by setting up techniques of guarantee (“garantismo”)¹³, dispenses a crucial importance to the effects of globalization: the irreversible decline of the nation-state. This phenomenon makes entirely relevant the question about the weakness of democracy that is

¹¹ Walker, N., “The Idea of Constitutional Pluralism”, *The Modern Law Review*, Volume 65, Issue 3, pgs 317–359, May 2002.

¹² See the Preface to *Principia Iuris*, op. cit., V y VII.

¹³ The existence of *rigid, binding and guaranteed* Constitutions, with a great number of material or substantive standards and demands, according to many authors, the need to redefine the theoretical paradigm of current constitutional Democracy. For Ferrajoli, such a paradigm is defined by what he calls “guarantees” that represent “the other side of the Constitutionalism”, and whose hallmark is the formulation of the “best assurance techniques to ensure the highest degree of effectiveness of the rights recognized constitutionally”, Ferrajoli, L., “Juspositivismo crítico y democracia constitucional” (transl. into Spanish by Córdoba L, y Salazar, P.), *Isonomia*, 16 (2002), p. 16.

traditionally linked to the framework of a nation. It is obvious that the decline of the nation-state does not mean the end of democracy, but important institutional reforms are required given that the current state of affairs over the possibility of democracy not exclusively being in the public powers of the nation-state. From this perspective, according to Ferrajoli, the expansion of constitutional democracy throughout the global order is, to some extent, the only available guarantee for peace and security in a world of growing inequality.

However, the challenge of a “global constitutional democracy” is far from arousing consensus among those who share the opinion about the weakening of both nation-states and their legal rules. This is not the most appropriate place to address the multiple and sophisticated criticism of the idea of a global constitutional democracy. Therefore, it can be enough to point out that there are several reasons to doubt the aptitude of such an order. For instance, the inability to achieve a global consensus about the institutions where competence must reside to create and apply the law along with the fear of power concentration in institutions too far from the citizenry (Zolo) are of concern. Also, the difficulty to agree upon constitutional principles at the global level is ever present given the vast, influential, cultural differences (Bayon).

Surprisingly, not even those authors who encourage global constitutionalism (by the likes of Habermas or Ferrajoli) defend the institutional and regulatory extrapolation of the nation-state’s constitutional elements to the global sphere. Thus, Habermas (for example) contemplates the construction of supranational bodies such as the European Union as being a step towards creating a common venue for deliberation beyond the traditional nation-state platform¹⁴. Regarding Ferrajoli’s viewpoint, this common-venue approach does not advocate for a world parliament, but rather, the existence of secondary guarantee-institutions (i.e., courts that enforce primary guarantees).

In fact, there exists an intermediate position between the globalism *strictu sensu* and the continuation of the traditional, nation-state *status quo*. This is the thesis of multilevel sovereignty (Pernice, Turégano): the political and legal participation (or involvement) in global affairs at every level of government (local, state, regional, and global)¹⁵. In this proposal for multilevel sovereignty, the nation-state maintains its role as principle actor on the road towards a global democracy. Likewise, the nation-state preserves its leading role in a globalized society without clearly distinguishing between domestic and foreign politics. In short, this thesis is almost as consistent with the ideals of ethical cosmopolitanism as the thesis of global democracy *strictu sensu*. But, it could be considered more realistic than the prior, since the nation-state should be a main political and legal actor in the gradual or progressive way of setting up global, public institutions for the sake of citizen proximity (aside from large tradition).

From a humble viewpoint, further discussion may determine that this multilevel proposal does not suffer from any danger. The detachment between politicians and citizens could increase given that keeping the state as the main political agent requires governments (not parliaments) to make decisions. In this sense, parliamentary, democratic deliberation becomes a simple formality in accordance to the model of multilevel sovereignty that presumes the emergence of law as being more Governance-based (with the ambiguity and

¹⁴ Habermas, J., *Zur Verfassung Europas. Ein Essay*, Suhrkamp Verlag, Berlin, 2011. There is a Spanish translation, *La constitución de Europa*, Madrid, Trotta, 2012.

¹⁵ See Pernice, I., “Multilevel constitutionalism and the Treaty of Amsterdam: European Constitution Making Revisited?”, *Common Market Law Review*, 36 (1999). To some extent, and with certain doubt, this is also the thesis of Isabel Turégano in order to challenge the nation-state crisis, see Turegano, I., *Justicia global: los límites del constitucionalismo*, Lima, Palestra, 2010.

vagueness of this political concept) than from genuine Democracy. It may be doubtful that governance equals democracy unless governance is built upon transparency and accountability.

III. The “Global” Economic Crisis

To briefly reiterate, globalization had originated in the economic and financial sectors, characterized by the development and expansion of markets beyond national boundaries, thanks in large part to technological advances and neoliberal, political philosophy with social advantages of self-regulation and deregulation of markets. Globalization has gone on to affect all kinds of social interactions (i.e., economic, financial, political, and cultural relationships).

One could argue that *global problems require global solutions*, problems and solutions that usually deal with proposals for institutional reforms to the realization of the rule of law at the global level (global, constitutional democracy; multilevel sovereignty; governance; etc...). Currently, able-minded citizenry around the world understand that we are facing a financial and economic “crisis”, whose characteristic is “global” in nature. In other words, the severity of current, financial problems correspond with the numerous economic, political and social problems that originated between 2007-2010 in the US and European Union, with a continuation into the present that constitutes a situation of crisis on a global scale. Consequently, how to address the crisis is not just economic in nature; rather, said crisis is also a challenge for political and legal sciences.

However, the economic crisis revealed the absence of financial market controls that generated greater risks for economic development. Neither nation-state law nor international public law was prepared to avoid the damaging effects on economies of financial transactions at the global level¹⁶.

The term “crisis” is commonly used in the medical field to explain a “sudden change in the course of a disease”. A crisis can also be associated with situations of continual doubt, modification, or termination, not to mention, having connotations such as difficult or complicated. Briefly, this current global crisis originated in financial markets through the issuance of risky, subprime mortgages and central bank (US Federal Reserve and European Central Bank) policies of low interest rates with subsequent increases in money supplies (liquidity injections)¹⁷.

With regard to subprime mortgages, it should be noted that many banks had traditionally acted as credit institutions whose liquidity depended upon savers' deposits. However, financial sophistication evolved with the creation of derivative instruments and products (i.e., mortgage-backed securities, structured investment vehicles, and credit default swaps). These exotic products were then marketed as securities through brokerages, investments funds, and investment banks, which were then offered to conventional and traditional banks to be sold amongst clients or investors. When home-price appreciated peaked, borrowers could were unable to refinance. Thus, mortgage-backed securities traded upwards while homeowner default had increased as well.

¹⁶ See Swchawrcz, S. L., “Leverhulme Lecture: The global financial crisis and systemic risk”, (November 9, 2010). Video, audio, and full text available at <http://www.law.ox.ac.uk/published/leverhulme2010.php>

¹⁷ Torrero Mañas, A., *La crisis financiera internacional y sus efectos sobre la economía española*, Madrid-Barcelona-Buenos Aires, Marcial Pons, 2011; Requeijo, J., *Odisea 2050. La Economía mundial del siglo XXI* (2009), Madrid, Alianza Editorial, 2011, p. 15.

This led to a “bursting of the bubble” that was already foreshadowed by top managers and authorities who were fully aware of the reality of investment bank balance sheets, resulting in stock market collapses and the bankruptcy of Lehman Brothers, notably referred to as “Black Monday On Wall Street” on August 15th, 2008. Soon after, further bankruptcies emerged with those of Merrill Lynch and American International Group that fueled a financial crisis of incalculable dimensions since banks in the majority of countries had distributed amongst its customers these so-called “toxic assets”.

It can be argued that bubble generation occurred since the beginning of the 21st Century with the expansionary monetary policies of central banks through the creation of low-interest rate environments up until the crisis revealed itself in all of its starkness. In other words, the economic model of growth based on the increase in production required cheap credit to increase public and private consumption (i.e., business investment, private consumption, and in some cases, public spending with particular focus on infrastructure and “welfare”). The crisis took place as a result of a mismatch between the real economy (inflation-fueled retractions) and securities on stock exchanges. The latter does not reflect actual state accounting of banks and companies.

Its controversy is still unknown whether this crisis is purely recessionary or stagflation-based (similar to the 1970's) with an estimated period of decline whose duration may be 3, 5 or 10 years. On the contrary, a real depression may exist. Once again referring to the medical metaphor of a crisis, the uncertainty of surviving a disease is present if it is a systemic crisis with dimensions equal to, or greater than, the Crash of 1929, which would then involve the collapse of the economic model¹⁸. So, if the current economic crisis is more akin to the Great Depression than the Yom Kippur War, it could be argued that the current crisis is equivalent to a state of coma, or even death of the patient¹⁹.

If we are immersed in a recession, then the law-making process (even law-application) needs the tools and concepts of economic analysis. Legal matters must give special consideration to the reflections that are made from the economic analysis of law that focuses its attention on the effectiveness and efficiency of rules; on the consequences of the implementation of the law, etc. But, if the hypothesis is feasible that it was a systemic crisis, in other words, a collapse of the economic model, “nothing will be as it was before”. It may be doubtful that legal codes and current legislation are truly able to deal with the waterfall of problems.

Surely, scholars in the coming decades are going to focus on the model of public expenditure and the sustainability of the welfare state in a (sort of) new constitutional order, where the most important thing will be the reliability that states and companies deserve from the markets.

IV. The So-Called Constitutionalisation of the Economic Crisis

The question in contention is whether or not the crisis is currently precipitating a constituent moment, at least in the European framework. *Grosso modo*, anxious situations or uncertainties are presenting themselves in the proposals on the immediate future of Europe as an economic and political union. This situation is not new. Take into consideration the failure of the Lisbon Treaty that attempted to advance the political

¹⁸ See Niño-Becerra, S., *Más allá del Crash. Apuntes para una crisis*, Barcelona, Los libros del lince, 2011, pp. 63 y ss.

¹⁹ See Requeijo, J., *Odisea 2050*, op cit., pp. 40 y ss.

construction and integration of Europe. However, in comparison with prior years, what has changed is the urgency to decide, the urgency to make a decision about whether European political integration is actually carried out and under what conditions such construction must take place.

Should the case be for the construction of a real political union, consideration would then be given to the nature of sovereignty; whether conceptual democracy needs revision (through the debate of how political representation benefits the citizenry or political class); on how to properly regulate and protect fundamental rights, and on how to efficiently implement the distribution of competences between European institutions and member states (within these, the interaction between state, regional, and local institutions). These topics would be the focus of both scholars and politicians. However, current events have shown that this logic (or discourse) is not actually inspiring the process of European, political integration. *The financial and debt crises have precipitated constitutional reforms in the member states and in the treaties of the European Union.* Such reforms have been understood as being fundamental tools for harnessing the economic and financial crises, the cornerstone being *the golden rule of budgetary stability* (i.e., the trend towards a balanced budget so that the planned amount of money for the public administration to spend is no greater than the income received).

The present economic crisis is going to cause certain guidelines (such as the balanced budget rule) to go beyond the realm of mere cyclicity by becoming permanently incorporated within the essence of political structures and legal systems²⁰. In fact, not only Eurozone countries, but also EU states and the main countries in the world have found in *the constitutionalisation of the rule or the principle of the budgetary stability* the only exit, or *the best way to cope with the financial and debt crises.*

Nevertheless, there exists a persistent anxiety regarding the construction of a European, federal state. Those states most affected by the financial crisis (despite their genuine intentions of participating in, and maintaining, a solid, political union) have genuine fears. These member states fear the endured ramifications of a procedural, transformational regionalization (i.e., “neo-colonialism”) at the discretion of those more economically robust and affluent member states, considering the varying degrees of perception between the “center-north countries”, “periphery-south countries”, and “side-line countries”. Those “periphery-south countries” that are more maltreated by the financial and economic crises (Greece, Ireland, Portugal, Spain, and Italy) are advocating for an affirmation of construction policies. They are betting on the strengthening of EU institutions. They would be consenting to the loss of sovereignty that would imply a “federalist” process, yet, clearly not “neocolonialist”.

The “center-north countries” (i.e., Germany, Holland, and Finland) have quite an interest in politically solidifying the Eurozone because they fear that the crises would become endemic (without a rescue or bailout of the “periphery-south countries”), with themselves eventually succumbing to the consequences. To this extent, it seems that they will refinance or rescue the peripheral countries. However, there seems to be a lack of sincere trust within the political union as a result of the harsh conditions of the rescues that requires a high degree of external intervention with possible, serious setbacks in the credibility of constitutionally guaranteed rights (health, education, pensions, employment conditions, research investment, etc.).

²⁰ Embid Irujo, A., *La constitucionalización de la crisis económica*, op. cit., p. 35.

Upon examining the current state of affairs, a clear conclusion that can be drawn from the principles at the heart of European, political consolidation (starting with budget stability) are principles that leave little room for the development of welfare policies and for solidarity among states in varying socio-economic conditions.

V. Who Should Be the Sovereign in this New Constitutional Order?

The *golden rule of budget stability* appears to be establishing itself as the anchor of a new, European, constitutional order where this rule represents one of the progressive conditions in the construction of a European political union. Furthermore, this rule seems to be undeniable regardless of its severity, in particular with economically inferior countries.

Budget stability is not an ideologically, neutral rule; rather, a liberal ideology compromised of positive noninterventionism. Perspectively, the assumption of this rule by the European Union leads to a questioning of the interaction between policy, law authority, and economics. With these anti-Keynesian measures in the medium-term for a real economy, it would seem that the golden rule of budget stability exclusively represents the interests of financial markets and investors²¹. Rating agencies that evaluate the effect or impact on the reliability of countries reveals that the main beneficiaries of risk volatility are the markets. Markets always benefit, either through the speculation of states and corporations that pay very high interest, or ensuring the receipt of interest on their loans in low risk countries.

VI. Conclusion

Before the Eurozone crisis, it was quite difficult to discern if the EU was walking towards a process of supranational constitutionalisation, that is to say, towards a federation of European states that would be able to compete with other economically powerful regions, such as the US or China. Today, the process of constitutionalisation is precipitating itself as a result of the economic and financial crises. Its effects and result are still the “positivization” at the highest level of the rule of budget stability. The mentioned rule involves set limits to welfare state policies, and ultimately, to the policies that trend to ensure equal opportunities for individuals to exercise their rights²².

If the political consolidation of the European political union were realized from the *constitutionalisation of austerity*, one might demystify the constitutional process since it could be argued that the processes of constitutionalisation (by itself) do not involve the guarantee of democracy and rights. The progress or setbacks that involve a constitutional process will depend on the content and the impact of the principles (or rules) that support such a process of constitutionalisation.

²¹ See George, S., *We the Peoples of Europe*, London, Ann Arbor M.I., Pluto Press, 2008, and her last work, *Leur crisis, nos solutions*, Paris, Editions Albin Michel S.A., 2010. Also see Ziegler, J., *Destruction massive: Géopolitique de la faim*, Seuil, 2011.

²² See Krugman, P., *The Return of Depression Economics and the Crisis of 2008*, New York; London, Norton, 2009 and also *End This Depression Now*, New York, N.Y. ; London, W. W. Norton, 2012.