### Issue 6, February 2016

#### Europe in Crisis

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Ontology and Theory for a Redesign of European Monetary Union

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Abstract

The Greek debt crisis opened up the policy discourse over Europe to the extent of an unprecedented extent of questioning of the original design of the Eurozone. Such a rethink requires an examination of how the European economy functions and the appropriate theoretical approach to analysing it. The purpose of this paper is to revisit the thinking behind the design of European Monetary Union and behind the Post Keynesian critique. While the mainstream response is couched in terms of addressing impediments to economic convergence through market forces, the Post Keynesian response focuses on the forces for divergence which the Eurozone framework currently exacerbates. In particular we argue that a focus on the forces for economic divergence and financial instability in Europe requires any monetary union to be supported by a system of fiscal support and a cohesive approach to bank regulation and support.

Keywords: European Monetary Union, ontology, divergence, Post Keynesian theory, regional finance

1. Introduction

The Greek debt crisis has had one valuable consequence. The situation posed such a strong threat to the functioning of the Eurozone (from Grexit or from Greece remaining in the Eurozone, depending on one’s perspective) that longstanding questions about the viability of the original design of the Eurozone have been given a much more general airing in public discourse than in the past. The situation has been recognised as a crisis for Europe; it is now accepted that sovereign debt is not necessarily risk-free and there is uncertainty as to whether the structure of the Eurozone can handle the consequences. Was this a crisis which was bound to arise sooner or later because of problems with the structure of the Eurozone? The way in which questions about long-term viability of that structure are answered depends crucially on which theoretical perspective is employed (implicitly or explicitly) and thus how the problems with the Eurozone are understood. It is thus the purpose of this paper to step back from the current detailed discourse in order to explore the source of Europe’s crisis in the design of the Eurozone, which has provided the basis for heterodox critiques in the past.¹

Behind the different theoretical perspectives lies a view of theory itself, how far it is a technical matter separable from politics. The groping towards an interim resolution of the Greek debt crisis exposed the strong political elements in the functioning of the European Monetary Union (EMU), whereby it became more widely clear that policy ideas cannot be detached from power relations. The original theoretical basis for design of the Eurozone treated political matters as separable from ‘technical’ economic questions. But it had not addressed the increasingly pressing questions as to the rights and obligations of members of a currency union, and the mechanisms by which such a union deals with imbalances of political power among its members. As Brecher (1957: 241) noted in a different context, public policy is the outcome of a power struggle over competing interests. ‘In this struggle, theory often emerges as the dominant group’s instrument for identifying its welfare with that of the community’.

Other crises have never pushed the Eurozone so close to the edge; what have been regarded as solutions in the past have had some limited success, deflecting the fundamental critiques which have

¹ The critique is offered at a fairly general level (see further Chick and Dow, 2012). The complex particularities of financial arrangements in the Eurozone provide the basis for much more detailed critiques (see e.g. Bibow, 2015).
consistently been expressed by heterodox economists. But this is no time to be complacent that these critiques have been validated by events. Rather the current climate provides an opportunity to spell out the theoretical arguments again; heterodox economists have had good reasons to criticise the design of the Eurozone which are much more fundamental than such procedural questions as whether it was right to include Greece in the Eurozone in the first place. Just as it is common in mainstream discourse to identify the causes of the global financial crisis in particularities such as the development of opaque structured products rather than anything more fundamental, there is a danger that the Greek crisis is seen in a similar light.

There is a rich vein of critiques of the design of the Eurozone dating from its inception (see e.g. Parguez, 1999; Arestis and Sawyer, 2001). The purpose of this paper is to revisit the foundations of these critiques, focusing on the Post Keynesian approach, set against the foundations of the approach on which design of the Eurozone was based at Maastricht. We start with the importance of ontology: how the economic system is understood, in terms of forces for real divergence or convergence, financial instability or stability. We further explore the relations between the real and the financial by focusing on the operations of banks in Europe. These ontological positions provide the basis for the different theoretical systems which underpinned the design of EMU and the Post Keynesian critique. From this critique follows the proposal for a system of fiscal redistribution and for bank regulation suited to a heterogeneous banking sector. It is argued that the mainstream understandings of fiscal union and banking union are in fact very different.

How the European Economy is Understood and Analysed

EMU was designed on the basis of an understanding of the European economy as naturally equilibrating except for impediments to the working of market forces, particularly those arising from different government policies and institutions. EMU was to be a central element of the strategy to promote a single European market. A single currency was seen as contributing to the breaking down of barriers between member economies, allowing for the reaping of real economies of scale in production, as well as efficiency in financial matters (Cecchini, 1988). If goods and factors could flow freely between European economies, with reduced transaction costs (including exchange rate uncertainty), then Europe could compete on an equal footing with the US. National governments still had control of some economic levers, so efforts to harmonise policies were seen as a mechanism for reducing the scope for different market conditions in different member states. But institutions, conventions and practices continued to sustain some barriers between national economies. Indeed it was understood that European economies differed in terms of productivity and also financial structure, and these too needed to be harmonised in order for the single market to be fully realised.

The early mainstream debates over how to proceed towards monetary union reflected two different views on how to harmonise productivity and financial conditions (Coffey and Presley, 1971). The ‘monetarists’ argued that the introduction of the single currency would itself bring real convergence about, by enhancing factor mobility and competition within Europe. But the ‘economists’ argued that real convergence was required first in order for the single currency and the new centralised central banking system to substitute successfully for national currencies and national monetary policy. In the event the Maastricht Treaty required convergence as a condition for entry into EMU, but convergence with respect to financial indicators rather than real indicators, in the spirit of the ‘monetarist’ strategy. This was symptomatic of a more general emphasis on monetary factors as the focus of macroeconomic policy in EMU and inattention to real macroeconomic factors. It was assumed that, once real convergence had been achieved, it would be sustained by EMU. There would therefore no longer be a need for national policy on exchange rates to address any divergence in productivity performance, or for independent monetary policy.

It was accepted that real convergence might take time. Yet EMU would mean that the valuation of sovereign debt denominated in euros would not reflect any remaining differences in real economic conditions between member countries. It was therefore crucial for market acceptability that the implications of such differences be minimised by a common European monetary policy which was not subverted by national fiscal policies. Therefore the constraints on debt and fiscal deficits which were central to the Maastricht Treaty were designed to address the need to avoid either default on the bonds issued by an offending member or
else financial support from the rest of the Eurozone (see for example European Commission, 1990: 107). Thus, when in fact economic conditions have diverged within the Eurozone, the strict limits on fiscal deficits and debt have been enforced by imposing deflation on weaker economies, introducing an overall deflationary bias. In some cases, of course, stronger Eurozone members (Germany and France) were allowed to violate the conditions in 2003. A different attitude was therefore apparently taken to the risk of default on sovereign debt or need for financial support on the part of different types of member state. The expectation that capital markets would punish member states which violated the strictures on deficits and debt did not seem to apply equally to all member states, just as during the recent crisis.

This mainstream understanding of the economy which underpinned the design of EMU was based on an understanding that any economic divergence which might emerge in spite of a common monetary and fiscal policy must be the outcome of barriers to trade or to movements of factors. It was anticipated that the effect of asymmetric shocks on any member state would be addressed by factor movements. Harmonisation of and constraints on national government policies, the strengthening of European institutions, and above all the introduction of a single currency, would thus allow market forces to promote economic and financial convergence. Thus for example the Greek crisis is widely understood as the outcome of a lack of harmonisation by Greece with conventions and practices elsewhere in Europe. If only this harmonisation could be achieved, it is implied, the problem would be resolved and the Greek economy would converge with the rest of Europe.

This understanding of economies as naturally equilibrating, but subject to constraints on free market forces, supports the use of general equilibrium macroeconomic models. Indeed the volume representing preparatory research on EMU (European Commission, 1990) is a clear illustration that this was the methodological and theoretical approach on which EMU was based. Crucially, this approach presumes the outcome of convergence (subject to constraints).  

The dominant theory employed was optimal currency area theory in the particular form developed by Mundell (1961), i.e. emphasising labour and capital mobility (see also McKinnon, 1963). Other versions of optimal currency theory had offered different, potentially conflicting, versions. Some contributors specified real economic convergence as a precondition for monetary union (specifying conditions in terms of how far economies had a shared susceptibility to shocks and/or coincidence of economic cycles for example), while others specified capacity to address imbalances from asymmetric shocks by means of fiscal transfers, for example. But it is telling that Mundell’s view dominated, reflecting the general equilibrium theoretical perspective whereby factor mobility was seen as allowing market forces to address any real imbalances without any need for further government intervention.

In other words, while optimal currency area theory allowed for the possible emergence of short-term productivity differences, an optimal currency area was one where factors were sufficiently mobile to promote convergence. (Factors would move until their returns were again equalised.) Further the Classical dichotomy held – inflation was a monetary phenomenon and, as was evident from the European Commission collection of academic research in the run-up to EMU (European Commission, 1990), only minimal attention was paid to the banking sector, other than as a passive conduit of capital flows. Typical of mainstream macroeconomics before the crisis, the possibility of financial instability was not contemplated; even more than real economies, the financial sector could be assumed to equilibrate.

Optimal currency area theory had aimed to identify groups of national economies which satisfied the conditions (e.g. a high degree of factor mobility) for being able to deal with balance of payments problems without recourse to exchange rate adjustment. The exemplar was those national economies which apparently coped with regional imbalances without regional exchange rates or regional monetary policy. Within national economies, any payments imbalances before full adjustment occurs were seen to be resolved by the payments settlement system, through the banks’ balances with the central bank. Similarly, within EMU, while some imbalances on the sum of the current and capital accounts of member states would emerge, they would be addressed in the short run by financial imbalances within the currency area (through

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2 Also the analysis is conducted at a highly aggregated level (with monetary policy represented by the target rate of inflation, for example).

3 See further Ishiyama (1975) for a review and Eichengreen (1993) for an updated review in light of the Maastricht Treaty.
the payments system) until real adjustment occurred. For EMU, the Trans-European Automated Real-time Gross settlement Express Transfer (TARGET) system, currently operating in its second-generation form as TARGET2, was set up to provide a level playing field for effecting payments settlements across the Eurozone. The system was seen as a precondition for the effective conduct of ECB monetary policy as well as the further promotion of financial integration. It was expected that the imbalances within the system would be small and short-lived.

In fact the TARGET2 transfers have become very substantial since the onset of crisis, indicating persistent imbalances, particularly between Germany’s credit position and the debit positions of peripheral member states, notably Greece and Ireland (Bibow, 2015: 71). There is a lively literature exploring the causal mechanisms behind these imbalances, notably as to whether or not they reflect balance-of-payments imbalances or simply a diversion of flows from the capital account to TARGET2 (see e.g. Sinn and Wollmershäuser, 2012 and Whelan, 2013).

Some commentators see the particular design of the TARGET system within the overall system of European monetary policy as simply distorting the way in which normal market forces naturally bring about adjustment to payments imbalances, impeding convergence. Others see the wider institutional framework of the Eurozone as being far too constrained to prevent divergence. According to this latter view, the TARGET2 imbalances in fact reflect the weakness of the institutional structures and policy tools in the Eurozone. The difficulties for governments in meeting deficit limits when faced with a national banking crisis have been compounded by the strictures on independent national central banks and the ECB with respect to directly financing governments. Even ECB financial support for banks has come up against the problem of the requirement for high-quality collateral just when public sector debt came to be seen as potentially risky (see e.g. Lavoie 2015b).

The Eurozone is accordingly understood from a heterodox perspective as a collection of economies, each of which was potentially unstable as an independent nation, but where the scope for collective instability has been reinforced by the institutional structures and practices of the Eurozone. A crucial factor has been the primacy given to money as the putative cause of inflation and capital markets as the key to promoting adjustment to payments imbalances. Fiscal policy has explicitly been constrained, treated as separable from (centralised) monetary policy, while unemployment has been seen as an issue only as a bi-product of the austerity policies required to enforce fiscal controls and achieve the inflation target rather than as a key policy concern.

The general equilibrium theoretical approach relies heavily on the mechanism of monetary flows. If a nation has a current account deficit and cannot attract sufficient capital to finance it, then the consequent outflow of funds will reduce local factor prices, restoring payments equilibrium (potentially on both accounts). The role of the banking system in effecting these flows is to intermediate, reducing loans when deposits decrease through a payments deficit and vice versa in the case of a surplus. This tight relationship may be mitigated by internal flows within a multinational bank, seen as transferring deposit-funded credit from one economy to another, but only when warranted by relatively high expected returns in the economy attracting such an inflow, in line with the general expected direction of capital flows.

But from a Post Keynesian perspective the process is quite different. The money supply is seen as being endogenously determined by the market for credit, albeit influenced by the central bank. In the absence of a negative relation between the return on capital and the interest rate, member countries experiencing a relative decline in productivity will experience not only a deterioration on the current account but may also experience a deterioration on the capital account as investment prospects weaken, which could be compounded by a reduced willingness of local banks to extend credit, and increased liquidity preference is satisfied by capital outflows. Such economies are forced therefore to adjust by introducing fiscal austerity; until (and if) this succeeds in improving the current account, the payments gap must be filled by borrowing. The ECB quantitative easing program has attempted to ease borrowing conditions. But the increased liquidity has not eased conditions in the real economy since banks have proved to be unwilling to accept the credit risk they perceive (thus increasing credit risk) and have preferred to exercise a high level of liquidity preference.
When he proposed an international central bank, issuing an international currency, Keynes envisaged a central payments settlement mechanism which would allow for temporary debit and credit balances. Cesarrato (2013) and Lavoie (2015a) discuss the extent to which the TARGET system accords with the Keynes plan. A critical difference is Keynes’s insistence on measures to ensure that surplus countries not only bore some of the burden of adjustment but would actually have to take the initiative in adjustment. This would remove the normal deflationary bias of payments adjustment. Although the ECB deposit facility currently attracts a marginally negative rate, this is clearly not acting as an effective incentive for surplus countries to adjust. An effective penalty rate is required. In the meantime the purported connection of general equilibrium theory between money injections and aggregate demand have not materialised because of high liquidity preference and weak effective demand.

The other possible parallel is with a national payments system. Lavoie (2015a: 10) points out that current account imbalances between regions within any member country are not seen as a problem (in making the point that they should not be a problem between Eurozone members either). Regional economies are generally given national fiscal support, among other factors within a national political and institutional structure promoting convergence. Further temporary imbalances can be handled within national branch banks or the interbank market, supported by the liquidity provision of the national central bank designed to sustain the official rate. There is no currency value or (generally) valuation of regional government debt by which a crisis could be identified.

But the Post Keynesian approach to regional finance has suggested that regional economies do face hidden balance of payments problems (Dow, 1986). Accounts are not kept on a regional basis, particularly with respect to capital flows, but changing regional patterns of economic performance still have consequences. It is often assumed that any resulting imbalances are offset on the capital account such that crisis-level financial constraints do not arise. But if capital inflows are insufficient to finance current account outflows (e.g. businesses experiencing a decline in demand unable to borrow to finance production, far less investment), there is no option but to accept adjustment in the form of reduced regional employment and income and/or increased labour out-migration. Indeed, far from offsetting current account imbalances, the capital account may add to them; destabilising real adjustment may discourage capital inflows even further. Bank credit is endogenous, but the regional supply depends on banks’ assessment of regional credit risk as well as the banks’ general level of liquidity preference.

This approach draws on the Keynesian theories of effective demand and liquidity preference and combines these with Myrdal’s theory of cumulative causation, emphasising the interdependence of the real and the financial. It has been applied to a theory of regional development by Chick and Dow (1988) and Rodriguez Fuentes (1998). Further, Bibow (2010), Chick (2000), Dow (1993; 1998) and Dow and Rodriguez Fuentes (2003) have applied the Post Keynesian approach to the European Union. Rather than the typical mainstream presumption that flows between regional banks and within national banks serve to promote regional convergence, these examples of Post Keynesian analysis of the regional pattern of credit creation and liquidity preference indicate that these flows can be an additional force for divergence.

This regional theory of banking rests on the Keynesian/Minskyan theory, not only of economic instability, but also financial instability. Credit supply is determined by bank assessment of lenders’ risk and expected returns, while credit demand is determined by borrowers’ assessment of their own risk and expected returns. The more credit supply is concentrated in centralised institutions remote from borrowers’ experience, the weaker the knowledge base (Porteous, 1995). The outcome is greater instability in credit supply, depending on ill-informed expectations. Given the experience of economic divergence and therefore financial vulnerability, investment planning (and thus demand for credit) in weaker regions is discouraged and high liquidity preference encouraged. Not only are financial systems in general vulnerable to instability, but the instability tends to be exaggerated in peripheral regions. This process contributes to, as well as feeds on, the forces for real economic divergence.

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4 Applications of the theory include Dow (1992) with respect to Scotland, Chick, Dow and Rodriguez Fuentes (2013) with respect to Spanish regions, Dow, Montagnoli and Napolitano (2012) with respect to Italy, and Amado (1997) and Crocco et al. (2014) with respect to Brazil; see also other publications arising from the Lente project at the Federal University of Minas Gerais in Brazil.

5 As a result, national monetary policy has differential effects on regional economies (Rodriguez Fuentes, 2006).
From a Post Keynesian/institutionalist perspective, each regional economy is understood to be conditioned by its own history and institutions in a way which cannot readily be altered; this understanding applies with much greater force to national economies. Rather than constraints, these factors have more often than not lent stability and coherence to national economies. Thus for example, while national banks may find themselves constrained in terms of funding compared to large international banks, they have superior knowledge of the credit-worthiness of local borrowers and a tendency to finance investment by local firms. Myrdal (1972) concluded that, on balance, the cumulative forces for convergence would tend to outweigh those for divergence within national boundaries. This judgement is reinforced by the common fiscal framework within a national economy.

But in an international context Myrdal concluded that the balance of forces was tipped towards divergence. Applying his analysis to the opening up of competition between members of the EU with the development of the single market, some economies fared better than others. Factor flows induced by these differences and encouraged by the single market are more likely to be disequilibrating than equilibrating. It is the more skilled workers who leave relatively declining economies first, further reducing factor returns. Similarly, just as within national boundaries, capital flight from relatively declining economies, combined with relatively high liquidity preference there, increases the perception of high risk attached to any new credit, thus discouraging its supply. The more factor mobility is encouraged, e.g. by the single European banking licence introduced in 1992, the more scope there is for the forces for divergence to operate. The increased concentration in the banking sector (following the initial flurry of competition) added to these forces by centralising bank credit decision-making, reducing the knowledge base on which loans could be extended in remoter parts of Europe.

The strong implication of this analysis is that, far from promoting real economic convergence among European economies, the efforts to open up the European market, particularly with a single currency, in fact added power to the forces for divergence, while removing mechanisms for counteracting these tendencies. Marelli and Signorelli (2015) provide evidence which supports this conclusion.

**Policy Implications**

The reason for exploring the basis of the different understandings of the European economy and their associated analytical approaches is that they lead to different understandings of the Eurozone’s current problems and therefore different policy solutions to those problems. On the surface there appears to have been one problem with the Eurozone: Greece has been in danger of defaulting on its debt and/or of seeing the only option as being to leave the Eurozone. Either outcome would be highly damaging for the Eurozone, given the presumptions that the Maastricht criteria would eliminate the possibility of default and that the establishment of the single currency was irreversible. Greece’s problems are however just a more extreme version of problems experienced elsewhere in the Eurozone’s periphery. In particular the recent fiscal problems of several peripheral European economies arose from the need to shore up weak banks and the consequent need for financial support at the price of austerity policies. The solutions being aired to address these problems were fiscal union and banking union, with discussion also of the ECB acting as a lender of last resort.

Each of these policy responses actually means something very different depending on theoretical approach and ontological foundation. Fiscal union from a mainstream perspective means a much more strict enforcement of the Maastricht rules on debt and deficits, as was required for example for Spain and Ireland. While Greece’s fiscal problems similarly arose primarily from the need to support its banks, the mainstream interpretation of the causes of the Greek crisis, and therefore the basis for the solution, is that information had been concealed by previous Greek governments, that Greek institutions and practices had not

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6 A single European monetary policy can thus be expected to have differential effects across member states (Dow and Rodriguez Fuentes, 2003).
7 There is also active discussion of a capital market union whose features would promote common institutions, practices and procedures throughout the Eurozone, encouraging further competition and furthering the process of securitisation which was an important driver of the crisis (Chick, 2008).
harmonised sufficiently with the rest of Europe, and that the standard mechanism for ensuring that Greece met the Maastricht restrictions on the fiscal deficit (austerity) was being resisted.

European banking union has been pursued both for consolidating the single currency and for ‘rebooting’ the euro area banking system (Bibow, 2015: 75-6). A particular motivation is to prevent recurrence of the fiscal cost of bank support, which makes it difficult for member governments to satisfy the Maastricht rules on deficits and debt. Bank failure would instead be dealt with at a European level, with ‘bailing in’ designed to protect the fiscal finances. Further, by thus detaching banks from national fiscal positions, the idea is that their uniform treatment would ensure a common cost of funding credit across Europe, thus ensuring uniform availability of credit to businesses in all member countries (European Commission 2014: 4). As with the fiscal union, banking union would involve a strict enforcement of common rules: prudential rules for European banks, a common supervisory framework and mechanisms for dealing with bank failures. The primary prudential focus is to be on capital ratios, while resolution of bank failures is to impose the costs on shareholders and bondholders rather than on the state.

It is of critical importance that the thinking behind the conceptualisation of banking union reflects the mainstream view that bank failures can be regarded as separable incidents, a microeconomic problem rather than a systemic macroeconomic problem. Without what are regarded as distortions, such as state support for banks, it is assumed that market forces within a common market will ensure stability. Since market forces operate by competition whereby there are inevitably going to be losers from time to time, the issue addressed by banking union is how to minimise the fall-out (in fiscal cost and in contagion of expectations) of individual cases of bank failure. The aim therefore is to do away completely with the role of central banks as lenders of last resort to commercial banks. There is to be no ‘fiscal backstop’ (Bibow, 2015: 86-90). Rather the lender-of-last-resort proposal from the mainstream perspective refers to the possibility of the European Central Bank lending to Eurozone governments, something which was long resisted on the grounds that this would violate the Maastricht prohibition on central bank monetisation of deficits. Overall then the mainstream policy agenda follows from a theoretical framework which still understands market forces as equilibrating as long as they are not impeded by money creation resulting from excessive fiscal deficits or other market ‘distortions’. If these deficits arise from bank support, then banks need to be exposed more to market forces (subject to centrally-established prudential requirements).

The Post Keynesian stance reflects the fact that regional balance of payments problems within economies rarely spark crises (even if they promote regional divergence) because of fiscal support at the national level, a national system of bank regulation and bank practices, and a lender-of-last-resort facility for all national and regional banks at the national central bank. Post Keynesian theory therefore indicates policy proposals which, like the mainstream approach, also involves fiscal union, banking union and a lender-of-last-resort facility. But in each case the meaning is very different from the mainstream proposals. The underlying Post Keynesian view is that there are powerful forces for divergence within Europe. The mechanisms promoting divergence have been given added force by EMU, since the Maastricht Treaty removed the normal policy tools for addressing the resulting productivity and payments imbalances. A single external value of the currency and a single official interest rate cannot accommodate differing economic conditions in different member states, where these differences are exacerbated by the increased openness of factor and goods markets promoted by the EU.

The Delors proposal (Committee for the Study of EMU, 1989) for a system of fiscal transfers between European nations was rejected. Yet this is how nation states address imbalances within their own boundaries. Even if regional policy has been eroded in many countries, reflecting the growing influence of market-oriented politics, the automatic fiscal stabilisers still serve to reduce regional disparities (Kaldor, 1970). For Post Keynesians, what is required is a sharing of revenues in order to counter the forces and effects of economic divergence, something which is normal within federal forms of economic and political union. This is a fiscal union in the spirit of cooperation (recognising that, as in a federal state, the direction of transfer changes as the fortunes of member states may change). This is very different from fiscal union as the attempted enforcement of fiscal rules which cannot succeed. Not only do governments not have control

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8 Little progress has been made on a common system of deposit insurance (see Bibow, 2015: 86, 90).
over their net deficits (Chick and Pettifor, with Tily, 2010), but even if they could be successful in controlling deficits, austerity policies would simply exacerbate forces for divergence.

Second, the banking sector is key, because credit creation and allocation are key drivers of the European economy, as well as potential sources of financial instability. While the mainstream policy for banking is to enhance the capacity for market forces to ensure efficient allocation of financial resources and financial stability, minimising state-led ‘distortions’, the Post Keynesian policy is to focus on the positive role for the state in partnership with the banking sector. It is argued that free competition in banking leads to concentration, diverting credit creation from productive activity towards speculation in centralised asset markets and from peripheral economies to large corporations located in the Centre. The state therefore has an important role in counteracting these tendencies. This role can extend from setting up state-run financial institutions tasked with extending credit to activities and regions ill-served by large international banks, to providing support for small local financial institutions. Thus for example Bibow (2014) proposes a Euro Treasury. Further, when central banks inject liquidity into the system to satisfy liquidity preference in the wake of the crisis, the conduit can be expenditure in, or credit to, sectors particularly disadvantaged by the crisis, as in the proposals for ‘people’s quantitative easing’. According to this view of the essential nature of the relationship between fiscal and monetary policy, central banks are lender of first resort to governments.

But the state equally has a fundamental role to play in ensuring the stability of the financial system. The latest financial crisis was spurred on by the deregulation of the financial sector since the 1970s (Chick, 2008). This process was a product of mainstream presumption of convergence as the normal state of the (unconstrained) world. While financial instability is the norm, the freeing up of the financial sector from the 1970s provided particular aggravation, whereby financial fragility was stoked up during the long period of the ‘great moderation’. Far from bank vulnerability occurring on an isolated basis, the norm is for bank vulnerability to be systemic, rendering the ‘bail-in’ solution unsustainable (Avgouleas and Goodhart, 2014). While the mainstream response is to try to minimise the state’s involvement in banking, focusing on the possibility of individual bank failure, the Post Keynesian response is to restore the traditional cooperative relationship between the state and banks. This relationship involved the banks enjoying lender-of-last-resort support from the state (and their consequent ability to attract short-term deposits with a high redeposit ratio) in return for submission to regulation and supervision to ensure the safety of those deposits (Dow, 2012). The important lender-of-last-resort function thus refers to the banks rather than government.

A European banking union from this perspective therefore involves a Europe-wide commitment to support retail banking in exchange for submission to regulation and supervision to ensure prudence. But there are dangers inherent in applying this policy at a European level. Historical relationships between state, banks and the public are important, and differ as between European economies (see e.g. Chick and Dow, 1997). Ultimately, the success of a monetary system derives from trust, which is a social phenomenon based on experience mediated through culture rather than calculative rationality. It would require careful and time-consuming development to arrive at a relationship between state, banks and public which would engender trust across Europe. In the meantime, the priority for European banking union is to facilitate the capacity of national authorities to act as lenders of last resort to their home banks. In turn this requires a recognition of the need for fiscal support, just one reflection of the inevitable interrelationships between monetary policy and fiscal policy which the Maastricht system tried to suppress.

Concluding Reflections

This discussion of the role of central banks illustrates well differences in viewpoint as to the nature of theory and policy advice. We have discussed the implications of ontological differences for theory and policy with respect to Europe. But there are implications too for how theory itself is regarded. In particular the mainstream closed-system approach encourages a view of theory and policy as being purely technical matters. The open-system Post Keynesian approach by contrast considers economic relations as bound up in social, political and ethical relations. Thus, for example, while trust for mainstream economists is a form of rational optimising behaviour, for Post Keynesians it involves history, sociology and politics in a complex way.
Certainly the mainstream analysis has paid considerable attention to institutional developments as an integral element of EMU. But these institutions have been understood as implementers of technical policies: controlling the European money supply according to an inflation target, controlling national fiscal policy, and more generally promoting institutional and policy uniformity across Europe. Yet the outcome has been far from what was anticipated. The economic divergence which has resulted has meant a very uneven distribution of costs and benefits, without any offsetting mechanisms other than those prompted by crisis situations. The response to crisis has clearly been political, surrounded by a range of stances as to what constitutes the rights and responsibilities involved in membership of a currency union. A monetary union without a fiscal union in the Post Keynesian sense has been proven to be unworkable, with disastrous consequences. A monetary union designed without reference to the detailed working of all aspects of the European banking sector has allowed the mainstream discourse to reject the idea of state support for banking, from which Post Keynesian theory would also predict disastrous consequences.

It has been argued here that the design and implementation of EMU was based on a theoretical structure which in effect assumed convergence as the default equilibrium position. Institutions and practices were required to limit impediments to real convergence, emphasising money and finance rather than real production. Given the crisis in Europe, the conclusion is inevitable that the cause must be that these institutions and practices were not fit for purpose and require reform to give more rein to market forces.

The heterodox critique is based on an understanding that economies are inevitably potentially unstable, such that institutions and practices are required to promote stability, recognising the inherent interdependence of the real and the financial in the economy and in government. It is on this basis that a more constructive (rather than preventative) approach is taken to the role of the state in Europe in terms of fiscal union and banking union, with the ECB acting as lender of first resort to governments and lender of last resort to banks.

To the extent that there is recognition that the design of the Eurozone is fundamentally flawed, there may be a political will to revisit Maastricht. If the mainstream theory’s foundational belief in market convergence is seen to be challenged by events, then there is a political case for exploring an alternative theoretical framework based on alternative foundations. It is hard, given the experience in the European economy since the global financial crisis took hold in 2008, for any economist to deny that financial and economic instability can persist, and that monetary and fiscal rules may not be sufficient to address it. Mainstream thinking may have absorbed some of these real developments. Yet we have shown here that the fundamental mainstream understanding of economies as normally equilibrating unless impeded by market imperfections persists in the type of policy solutions being developed in the Eurozone. Until the shortcomings in that understanding are fully grasped, any attempt to revise the Maastricht principles will inevitably fall short.

References


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SUGGESTED CITATION:
The Italian Crisis within the European Crisis. The Relevance of the Technological Foreign Constraint

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Abstract

The debate on the Italian economic crisis in the Euro zone should address a fundamental issue: what is the origin of the decline in productivity that affected the Italian economic system even before the European crisis begun in 2010? We argue that the effective demand can be revived only by governing the structural economic dynamics. Embracing a theoretical approach that may be called “structuralism” in line with the contributions by Leon (1965), Sylos Labini (1977) and Pasinetti (1993), we will propose to analyze the technological causes that may explain the balance-of-payment constraint affecting year by year the Italian growth. In this perspective we will introduce the notion of technological foreign constraint. We will argue that such a phenomenon, not the increasing public debt, constitutes the shock that deteriorated the Italian labour productivity in the last twenty five years. In the last part of the article we will also present an empirical proof of the previous thesis, by showing the technological dependence of the Italian economic system by the German economic system, through the estimation of the productivity gap equation. We propose this equation drawing inspiration from Paolo Sylos Labini (1984, 1993, 2004).

Keywords: Euro crisis; Italian decline; productivity gap equation; fiscal austerity; technological foreign constraint

1. Introduction

The Italian debate about the European economic crisis and particularly the Italian crisis, that appears as a crisis within another crisis, is characterized by different readings and different political proposals. In June 2010 three hundred heterodox scholars published an open letter titled “A restrictive policy worsens the crisis, adds fuel to speculation and can bring to the disintegration of the Euro zone. The direction of economic policy needs to be changed to prevent another breakdown on incomes and employment” (also called Lettera degli economisti). In particular, the open letter highlighted the consequences of German neo-mercantilism on the Euro zone stability. Since 2011 several heterodox Italian economists – among others Alberto Bagnai, who became very active in the debate through his successful blog goofynomics – endorse the necessity to exit from the Euro zone in order to put Italian economy on the path of recovery and sustainable growth. In order to realize the EU’s founding ideals, the EU would unravel the currency union and provide debt reduction for its most distressed economies (Bagnai, 2012).

An alternative way to manage the implosion of the Euro zone has been proposed by Brancaccio (2014). He proposes to build a social bloc around a hypothesis of ‘left’ exit from the Euro: a stop on capital flight; nationalization instead of foreign acquisitions of bank capital; an indexation mechanism of wages and control of some prices of basic goods to manage the changes in income distribution; the idea of a free trade area among the countries of Southern Europe. Other heterodox scholars proposed the constitution of two different monetary areas, the strong Northern European one and the weak Southern European one. However, not all heterodox economists support the exit from the Euro zone. For example, Lunghini (2015)

1 We most sincerely address our thanks to John T. Harvey for the opportunity to share our reflections on the piece and to Massimo Amato, Hervé Baron, Orsola Costantini, Andrea Fumagalli, Nadia Garbellini, Giorgio Gattei, Lucio Gobbi Antoine Godin, Andrea Salanti, Marco Veronese Passarella for their helpful comments. The usual disclaimer applies. Thank you to Emanuele Leonardi for his attentive final linguistic revision.

2 The letter was addressed to the Members of Italian Government and Parliament, to the Italian representatives in the European Union Institutions, to the representatives of the political parties and the trade unions, to the Italian representatives in the European Union Institutions and the ESB, to the President of the Republic. The promoters of the initiative were Bruno Bosco, Emiliano Brancaccio, Roberto Ciccone, Riccardo Realfonzo and Antonella Strati. See www.letteradeglieconomisti.it/english.htm.
argued that the EMU is similar to the Eagles’ Hotel California: it is programmed to receive but countries can never leave. Biasco (2015) underlined that the possible fragmentation of EMU in different clusters of countries will open a political process made of complex and long secret negotiations which could be extremely costly, both in political and social terms. Another interesting proposal, that has been also advanced by French heterodox economists like Frédéric Lordon, is a new European Clearing Union, that is an application of Keynes’ Bretton Woods proposal to regional monetary systems (Amato and Fantacci, 2014). Other authors (Bellofiore and Halevi, 2015; Cavallaro, 2015) stressed that finding a new engine for the Italian effective demand is the real way to exit from the crisis. The stakes are expansionary fiscal policy and investments planning which are able to reinforce the technological and organizational features of the Italian manufacturing sector together with a public demand which is able to change the expectations of the Italian entrepreneurs (Pini and Romano, 2015).

However the debate should address a fundamental issue: what is the origin of the decline in productivity that affected the Italian economic system even before the European crisis begun in 2010? Our thesis is that the effective demand can be revived only by governing the structural economic dynamics (Lucarelli and Romano, 2015). Embracing a theoretical approach that may be called “structuralism” in line with the contributions by Leon (1965), Sylos Labini (1977) and Pasinetti (1993), we will propose to analyze the technological causes that may explain the balance-of-payment constraint affecting the Italian growth. In this perspective we will introduce the notion of technological foreign constraint. We will argue that such a phenomenon, not the increasing public debt, is the shock that deteriorated the Italian labour productivity in the last twenty five years. In the last part of the article we will also present an empirical proof of the previous thesis, by showing the technological dependence of the Italian economic system by the German economic system through the estimation of the productivity gap equation. We propose this equation drawing inspiration from Paolo Sylos Labini (1984; 1993; 2004).

### 2. The Italian Decline: a Brief Literature Review

According to a relevant literature, that mostly adopts the standard neoclassical growth framework\(^3\), the Italian decline since the 1990s depends on a slowdown of its labour productivity. This kind of studies fail to provide a convincing explanation of the sudden stop of labour productivity growth experienced around 1996, after thirty years in which the GDP per hour was growing at the same percentage of the German one (from 100 in the 1970 to 180 around the 1995)\(^4\).

Saltari and Travaglini (2009) proposed a more helpful approach by interpreting the productivity delay as the result of shifts in labour supply and demand. The interaction between technological and non-technological shocks acts on the labour market equilibrium by affecting productivity and employment. Particularly Italian firms reacted to labour market reforms in the 1990s\(^5\) by reducing capital deepening and hiring low quality labour. Moving away from skilled labour had the main consequence of decreasing the growth rate of technological progress with an undesirable impact on both the growth rate of labour productivity and GDP. What remain to be explained is the origin of the shocks that are considered by these authors.

Several studies argue that the most important shock which affected the Italian economic system is the Italian public debt. It would be the consequence of almost uninterrupted rise beginning in the early 1970s\(^6\), with fiscal consolidation starting only in the mid-1990s. Following these analyses a succession of primary deficits lay at the origin of debt growth. But scholars who accept this approach do not consider several aspects, such as the effects of the real interest cost of debt and of the GDP growth rate. Such

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\(^3\) The same argument can be found in Ciocca (2012). However, he does not subscribe to a mainstream approach to economic growth.

\(^4\) This kind of literature is reviewed and critically discussed by Saltari and Travaglini (2009) and Bagnai (2015).

\(^5\) The Italian Parliament approved in June 1997 the so called “Pacchetto Treu” (Law No. 196) concerning measures to promote employment, that introduced more flexibility in the Italian labour market by allowing free hiring of individuals on a temporary basis. Bison, Rettore and Schizzerotto (2009) showed that while the reform had a major positive impact on the probability of being hired on a temporary basis at the first employment spell, the proportion of individuals attaining a stable occupation three years after their entrance into the labour market is only slightly lower after the reform than before it.

\(^6\) See also the collection of essays in Giavazzi and Spaventa (1988).
aspects have strongly affected the debt dynamics. These scholars should remember that in 1979 European nations created the European Monetary System (EMS), the antecedent of the euro zone. The EMS called on countries to keep their currencies trading within a fixed range of each other. In 1981, pressed by the Treasury Minister, Beneamino Andreatta, the Bank of Italy raised its discount rate to a peak of 19% and kept it above 10% until 1993. In the same year, another institutional reform contributed to increase the real interest cost of debt: the Bank of Italy “divorced” from the Italian Treasury, and was no longer forced to buy bonds left over from Italy’s debt auctions. This process had a dramatic impacts on Italy’s public finances.7

Also one of the most known Italian economists, who gave relevant contributions to heterodox economics, Augusto Graziani (2001, pp. 184-196) stressed the importance of public debt especially in order to analyze the new economic and social features that affected Italy after the onset of the EMU. However, Graziani agreed that the debt-GDP-ratio is not a correct index in order to measure the sustainability of the public debt. Regarding the origin of the burden of the Italian public debt, he took distance from the mainstream interpretation which considered the absence of control on government’s expenditure to be the main cause of the problem. He instead underlined the role of the increasing rates of interest decided, starting from 1981, by the monetary authorities. In his thought the main ratio of this monetary strategy should be found in the attraction of capital flows which are necessary to re-balance the Italian balance of payments.8

Secondly, Graziani clearly showed an advantage of the increasing public debt, from which Italian private enterprises benefited: during the 1980s the increasing deficit of the public sector together with the liquidity issuing represented a correspondent financial relief for the non-financial firms. They indeed had the opportunity to reduce their banking loans. At the end of the 1980s the Italian enterprises were characterized by healthy and safe balance sheets. Entrance into EMU has imposed a reversal in Italian own traditional economic policy: before Italy entered the EMS and again when Italy left the EMS (1992-96), the Italian monetary authorities enacted a policy of managed exchange rates, aiming at maintaining the dollar rate stable, while letting the lira depreciate vis-à-vis the German mark. In the presence of a unique currency, Italian industry tries to make its exports more competitive through a reduction in costs. Consequently, segments of production began outsourcing to small or middle-size firms located in Italy or in developing countries (Graziani, 2002).9

It should also be considered that a 150-year historical reconstruction suggests that the current high level of public debt is not a unique event in Italian history, as stressed by Bartoletto et al (2012): the peak reached in 1894 was almost identical to that of 1994. Italian history suggests that the debt crises may also terminate without resorting to default. Moreover “comparison between the late 19th century and recent decades shows that fiscal authorities were strongly committed to achieving fiscal sustainability in both periods, although during the latter period the effort by government leaders failed because of the worse macroeconomic framework, possibly influenced by more stringent European rules and by a lack of long-term planning at national level” (Bartoletto et al 2012, p. 37).

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7 See Gallino (2015), pp. 144-149. Recently this non-mainstream thesis about Italian public debt has been explained on the Wall Street Journal, see Dalton (2011).
9 The same cannot be said of Germany. As Graziani (2002, p. 99) argued: “When flexible exchange rates were prevailing in Europe (1973-78), and even in the subsequent years after the EMS was enacted, Germany managed to follow a very special foreign exchange policy (Thomasberger, 1993). On the face of it, Germany accepted, more than once, the appreciation of the German mark vis-à-vis other European currencies. However, the subsequent appreciations of the mark were lower than the inflation differential. Since Germany had, for many years, a substantial price stability, while other European countries could not avoid a slight but continuous inflation, the result was that the German mark, while being officially appreciated in monetary terms, was in fact devalued in real terms. Germany was thus able to join its technological superiority in production with the advantage of supplying its own products at decreasing relative prices. Owing to a similar strategy, Germany was accused of practising a neo-mercantilist policy (Ciocca, 1981; Hagemann, 1993). Nowadays, Germany is still able to move along similar lines, see Cesaratto and Stirati (2010).
3. It is not a Public Debt Crisis: the Technological Foreign Constraint

3.1 Public Debt, Private Debt and Fiscal Austerity in Europe

The high level of the public spending, mostly funded by the public debt, is one of the arguments used to explain the decline of the Italian economic system. Especially during the 1990s Italian policy makers argued that the growth of the public debt would inhibit private investments and thus GDP growth. Precisely in 1992 Giuliano Amato, the Italian Prime Minister, stressed the need to reduce the public debt in order to avoid the crowding out of the private investment. Therefore, according to policy makers Italian public debt had to be brought under control not only to contain the debt-to-GDP ratio, but also to support private investments. The thesis can be effectively criticized by comparing the Italian trend of investment-to-GDP ratio with other European countries, as we will show in section 3.2.

The austerity policies demanded by the European Union are based on the belief that public spending needs to be cut in order to reduce public debt. This is a mistake, as clearly pointed out by the signatories of the Manifeste d’économistes attérrés (Manifreto of the appalled economists) published in France by Askenazy, Coutrot, Orléan and Sterdyniak (2010) and the signatories of the Italian Open Letter (Lettera degli economisti 2010). In the short run, the existence of stable public expenditures restrains the size of recessions; in the long run, public investment and expenditures (education, health, research, infrastructures, etc.) stimulate growth. It is wrong to say that any public deficit further increases public debt, or that any reduction of the public deficit reduces debt. If reducing the deficit weighs down economic activity, this will make debt even larger. As a matter of fact, reducing social income also generates a decrease in tax revenue which brings about a further spread between the interest rate and the GDP growth rate. Particularly in a context where European countries are the main trading partners for the other European countries – the European Union being, as a whole, a rather closed economy. As a consequence, a simultaneous reduction of public spending in all EU countries cannot but generate a worsened recession, and thus a further increase in public debt. The explosion of public debt in Europe is mainly due to the bailout plans of the banking and financial sectors following the crisis occurred in 2007: the average public deficit in the Euro area was only 0.6% of GDP in 2007 (public debt was 66% of GDP) but it became 7% of GDP in 2010 (public debt was 85% of GDP).

As Table 1 shows, from 2007 to 2010 the public debt-to-GDP ratio in Europe seemed correlated with an increasing amount of the private debt-to-GDP ratio. The explosion of the government debt after 2007 was the result of a necessity to save the private sector, in particular the financial sector (see Table 2).

Note how, among European countries, those with the largest public debts are also those in which the rates of family savings are the highest and private debts the lowest. If, indeed, we were to consider the overall situation of debt (public debt + private debt), Ireland, Holland, Denmark and Great Britain would be the most indebted nations. According to this ranking, Italy and Greece would be among the most ‘virtuous’ countries.

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10 In this paragraph we update the arguments that have been originally presented in Lucarelli and Vercellone (2011) and in Lucarelli, Palma and Romano (2013).

11 Giuliano Amato’s economic policy was supported, from 1992 to 1993, by Luigi Spaventa, who served as the coordinator of the council of experts at the general department of Treasury. In 1993 Spaventa became Minister of Budget, and member of the cabinet of the new Prime Minister, Carlo Azeglio Ciampi.
Table 1. Debt-GDP ratios in Europe (%)

<table>
<thead>
<tr>
<th>Country</th>
<th>Public Debt-GDP</th>
<th>Private Debt-GDP</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>60.2</td>
<td>60.2</td>
</tr>
<tr>
<td>Belgium</td>
<td>84.1</td>
<td>84.1</td>
</tr>
<tr>
<td>Denmark</td>
<td>27.5</td>
<td>27.5</td>
</tr>
<tr>
<td>Finland</td>
<td>35.2</td>
<td>35.2</td>
</tr>
<tr>
<td>France</td>
<td>64.2</td>
<td>64.2</td>
</tr>
<tr>
<td>Germany</td>
<td>65.2</td>
<td>65.2</td>
</tr>
<tr>
<td>Greece</td>
<td>107.4</td>
<td>107.4</td>
</tr>
<tr>
<td>Ireland</td>
<td>24.8</td>
<td>24.8</td>
</tr>
<tr>
<td>Italy</td>
<td>103.1</td>
<td>103.1</td>
</tr>
<tr>
<td>Holland</td>
<td>45.3</td>
<td>45.3</td>
</tr>
<tr>
<td>Portugal</td>
<td>68.3</td>
<td>68.3</td>
</tr>
<tr>
<td>Spain</td>
<td>36.2</td>
<td>36.2</td>
</tr>
<tr>
<td>Sweden</td>
<td>40.2</td>
<td>40.2</td>
</tr>
<tr>
<td>UK</td>
<td>44.4</td>
<td>44.4</td>
</tr>
<tr>
<td>Euro Area</td>
<td>66.4</td>
<td>66.4</td>
</tr>
</tbody>
</table>


Table 2. Components of the Private Debt (% GDP)

<table>
<thead>
<tr>
<th>Country</th>
<th>Households</th>
<th>Corporate</th>
<th>Financial Sector</th>
</tr>
</thead>
<tbody>
<tr>
<td>Austria</td>
<td>53.4</td>
<td>52.3</td>
<td>50.7</td>
</tr>
<tr>
<td>Belgium</td>
<td>46.9</td>
<td>54</td>
<td>57</td>
</tr>
<tr>
<td>Denmark</td>
<td>129.4</td>
<td>147</td>
<td>n.c.</td>
</tr>
<tr>
<td>Finland</td>
<td>52.7</td>
<td>62.4</td>
<td>65.6</td>
</tr>
<tr>
<td>France</td>
<td>48.6</td>
<td>50.7</td>
<td>55.8</td>
</tr>
<tr>
<td>Germany</td>
<td>63.3</td>
<td>63.1</td>
<td>54.8</td>
</tr>
<tr>
<td>Greece</td>
<td>47.5</td>
<td>52.1</td>
<td>63.6</td>
</tr>
<tr>
<td>Ireland</td>
<td>98.7</td>
<td>117.9</td>
<td>89.4</td>
</tr>
<tr>
<td>Italy</td>
<td>39</td>
<td>42.2</td>
<td>42.8</td>
</tr>
<tr>
<td>Holland</td>
<td>118.5</td>
<td>119.8</td>
<td>115.4</td>
</tr>
<tr>
<td>Portugal</td>
<td>93.5</td>
<td>99.2</td>
<td>81.9</td>
</tr>
<tr>
<td>Spain</td>
<td>83.4</td>
<td>84</td>
<td>72.3</td>
</tr>
<tr>
<td>Sweden</td>
<td>69</td>
<td>78.7</td>
<td>n.c.</td>
</tr>
<tr>
<td>UK</td>
<td>100.5</td>
<td>103.2</td>
<td>87.8</td>
</tr>
</tbody>
</table>

Sources: Data Eurostat and Banca d’Italia elaborated by the Italian Ministero dell’Economia e delle Finanze (2011, p. 64) for the years 2007 and 2009; our elaboration on data Eurostat, Banca d’Italia and World Economic Outlook elaborated by McKinsey (2015, p. 14) for the year 2014.
The rise in public debt occurs while public spending, as a proportion of GDP, is stable or declining in EU at least since the early 1990’s, also due to the tax competition between European states.

The European Treaties prohibit central banks of the European Union to fund states which must find lenders on financial markets. The European Central Bank is also not entitled to subscribe directly to the public bonds issued by European states as it has been conceived as a body independent from the governments of the member states and thus it does not act as an issuing bank. The ECB may be considered as more akin to a currency board than a central bank, as De Cecco (1999, pp. 9-10) promptly noted:

The ECB Statutes do not give it the mandate to act, if necessary, as a lender of last resort. Supervisory powers will be left to the member banks, over their respective national banking systems. If financial fragility arises as a critical condition for the whole EMU financial market, the absence of positive enabling rules will not totally exclude the ECB from the possibility of acting as a Lender of Last Resort. But supervision by the member banks (or by the national supervisory agencies) ought to uncover cases of banking illiquidity in most of the countries of the EMU, at the same time, and report them to the ECB, of such a diffusion and gravity as to prompt its action as lender of last resort, after an interpretation of its status such as to grant it those powers. Suppose, however, that illiquidity is experienced by just one of the member countries’ banks. The national central bank of the country in question, if it has a stock of liquid national debt, can exchange government bonds for the illiquid paper of the banks that are in trouble. What if, however, the illiquid assets of the banks in trouble are of non marketable sort? Were they are marketable, even if at a capital loss, there would be no illiquidity problem. Thus, the very nature of the lender of last resort is denied if national central banks are restricted to exchanging low-grade paper against good marketable paper.\\(^{12}\)

These features of the ECB, based on widespread and yet arguable economic theories, have contributed to the crisis despite the extraordinary measures put in place by the central banker. The political chaos characterising the European Monetary Union has spread the fear of failure to pay interests and has encouraged sales transactions of bonds of European countries in trouble. As a result, interest rates on public debt soared, thus increasing the so-called spread with regard to German bonds. In this way, the unsustainability of the Greek, Irish, Spanish, Portuguese and Italian (the so-called PIIGS) public debt is fuelled. The Italian case is exemplary. At the beginning of 2012, Deutsche Bank, one of the five banks that control the market of CDS, began to sell Italian government bonds (BTPs) amounting to E7 billion. As a consequence, the value of BTPs began to decrease, while the spread with respect to German bonds began to increase, rising above 300 points first, and above 600 points by mid-November. In a mere few months, interest rates rose from 3% to 7%, which made the interest costs increase by around E8–9 billion. At the same time, the value of CDS increased almost fivefold, allowing enormous profits in terms of potential capital gains\\(^{13}\). Facing the increase in interest rates which makes unsustainable the public debt of the PIIGS due to financial speculation, the claim is to reduce public debt by cutting social expenditure, thus leading the European Union to a dreadful recession.

Recent empirical studies (Panizza and Presbitero, 2012) point out that the correlation among high public debt and slow growth does not imply causality: it may be that slow growth causes high debt. The case that public debt has causal effect on economic growth still needs to be made. Nevertheless austerity has been the main prescription across Europe for dealing with the continent’s “debt” crisis.\\(^{14}\) Empirical estimates of the impact of fiscal policy greatly vary, and the hypothesis of an expansionary effect of austerity measures does not appear to have a properly-built empirical support\\(^{15}\). Fiscal austerity in the presence of large public debts seems to have strong implications for redistributing income from taxpayers to the owners of such debt.

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\\(^{12}\) See, among others, De Grauwe (2011) and Brancaccio (2012).
\\(^{13}\) To deepen the point see Fumagalli and Lucarelli (2015).
\\(^{15}\) See Zezza (2012) for a detailed literature review on this point.
When public debt is financed by financial markets in foreign countries, interest payments on the debt will redistribute income to foreigners, thereby exacerbating the negative impact of austerity on domestic growth and making a lower debt-to-GDP ratio an impossible target (Zezza, 2012, p. 52). How can the European Union solve this puzzle?

As stressed by Pasinetti (2000), there are two distinct ways to reduce to zero the social burden of public debt: the first way is to eliminate the public debt altogether, whatever the level of interest rates may be. The second way is to bring interest rate and growth rate into equality. This last result holds, whatever the level of the stabilised debt-to-GDP ratio may be. It should mean pursuing a reduction of the social burden of the public debt, not through fiscal austerity, but through coordinated efforts to achieve lower interest rates and higher growth rates.

Austerity may be undertaken to demonstrate the government’s fiscal discipline to their creditors by bringing revenues closer to expenditures and by facilitating private investments\(^{15}\). The cuts in public spending which occurred in Italy are unprecedented in Italian history, but the effects on private investments are not relevant. As we will argue in the next section, the mainstream thesis that public debt and public spending explain the Italian decline demonstrates that there is still a lot work to do in order to understand the investments’ black box\(^{17}\). The international and specifically European crisis greatly contributed to the deterioration of Italy’s economic prospects, but in order to understand the slowdown of Italian productivity it is necessary to analyze the constraints that affect the Italian productive structure\(^{18}\).

3.2 The puzzle of the productivity

Undoubtedly the ongoing economic crisis has been exacerbated by the typical vulnerabilities of the institutional system of the European Monetary Union. The bad economic theories on which European monetary and fiscal policies are designed have played a relevant role (Pasinetti, 1998). However, in the Italian scenario, critical aspects are deepened by a production system which is already characterized by serious problems, as shown previously by the proposed literature review. The problems are mainly tied to the increasing inability in developing, within the national productive system, those technological innovations which are necessary in maintaining a relevant position on international markets. From the late 1980s onwards, the increase in private investments has in most cases turned into an increase of foreign imports, which were not accompanied by a recovery in exports sufficient to avoid an increase of trade deficit. Given these conditions of technological delay, the possible pursuit of expansive policies on the demand side would not necessarily turn into a growth opportunity. In other words, the growth of instrumental goods employed by business enterprises can represent a foreign constraint and activate a process of diminishing national income. The quota of investments in machinery over GDP is a variable which continues to assume an important role in the explanation of the growth rate. But beware of proposing a generic increase of investments! In fact qualitative evolution of investment goods has increased its importance, that is to say that the relevance of disembodied technological change has increased. Every change in the composition of instrumental goods – induced for example by technological evolution – has consequences over the productive processes in which they are employed, therefore also over the composition of final consumption goods.

Let’s suppose we are in the presence of two economic systems, system A and system B, both characterized, at time t0, by zero current account balances: imports are equal to exports. If, at time t1, in country A are introduced and spread, due to research and development, instrumental goods that are able to sustain production at lower costs and at the same time to influence the evolution itself of consumption goods, we will have two consequences. First, new consumption goods manufactured in A could replace consumption goods that A was importing from B. Second, the new instrumental goods manufactured in A will

\(^{15}\) Note the similarities with the theoretical approach to the economic policies adopted by Giuliano Amato and Luigi Spaventa in 1992.

\(^{17}\) In the following section we will propose a reading of the investments’ black box by following the suggestions by Robinson (1956), Leon (1966), Rosenberg (1983) and Sylos Labini (1984 and 1993).

be demanded by enterprises that are engaged in B to preserve their competitiveness. Lacking an increase of the knowledge developed in B, there will be a worsening of the current account in order to obtain the necessary technologies from A (at time t2); symmetrically, a surplus of the trade balance in A will be recorded. Thus the technological constraint assumes the characteristics of a balance-of-payment constraint. In an economic area where one single currency is used and fiscal and commercial re-balance mechanisms are not contemplated, this dynamics is incorrigible.

Figure 1. How a technological foreign constraint emerges.

In the period 1987–2012 the main industrialized countries in Europe have taken out the investments in relation to GDP. A growth in the ratio of R&D to GDP has coincided to the above, in particular in the ratio of Business Enterprises Research and Development (BERD) to GDP, indicating a progressive shift of productive specialization on innovation branches characterized by a higher intensity of research. This important transformation is framed in the more general process of development which has concerned the most advanced economies since post-WWII, bringing to the fore the role of scientific research and technological innovation, anticipating a new international division of labour based on the production of high-tech goods. What has entailed the interaction between technical advance and the evolution of the demand for goods and services of higher technological content originated by the growth of per capita incomes? It has outlined the boundaries of a structural dynamics tending to stimulate the redistribution of production from branches which are characterized by a relatively declining demand on others that instead are expanding and are characterized by the presence of new products. Not all the countries show the same trends, but the general frame is one of a reinforcement of expenditure in R&D running parallel to a reduction of the investments in machinery. Just to make some examples, Finland is characterized by a clear-cut reduction of the quota of investments in machinery over the GDP (about 8% in 1987, slightly less than 4% in 2011) and by a concurrent increase of the BERD quota over the GDP (from 1% to about 3% in the same period). Germany maintains a BERD quota level over the GDP slightly lower than 2%, which appears sufficient to guarantee a decreasing trend in the ratio of investments in machinery over the GDP from about 7% to 5% in the period considered). France too is characterized by a reduction of the variable of machinery investments/GDP from 4.5% in 1987 to about 3.5% in 2010) and by a constancy in the BERD/GDP quota slightly inferior to 1.5%. Differently from other countries, Italy is showing a stagnation in the BERD/GDP quota which always remains under 1% and does not tend to increase, accompanied by a growth of the quota of investments in machinery/GDP in the period from 1992 to 2008.

As stressed by Leon (1966, p. 77): “It could be said, when looking at ‘research’ laboratory, that scientists and technicians may well produce a complex ensemble of possible new techniques, rather than only one, among which the entrepreneur can choose. If the entrepreneur is bent only on increasing his profit without caring about the way in which such an increase is obtained, that complex could well include both superior and non-superior techniques. If superior and non-superior techniques are present at the same time, entrepreneurs will normally choose superior ones.”

To deepen the point, see Parrinello (2010).
Figure 2. Investment in other machineries and equipment/GDP (continuous lines) and BERD/GDP (dashed lines), 1987–2011.

Source: our elaboration (Lucarelli, Palma and Romano, 2013) on OECD data
If we will associate the investments in machineries, equipment and weapon system (henceforth investment in machineries) and the BERD, we will observe to which extent the investment dynamics is correlated to the structural dynamics of the productive system as a function of the level of specialization in branches at high intensity of research. The higher the ratio BERD/investments in machineries, the more the accumulation process proves to be knowledge-intensive, and vice versa.

**Figure 3. BERD/Investment in other machineries, equipment and weapon system, 1987-2014.**

Source: our elaboration on OECD data. The data for the BERD in 2014 are estimated by considering the 2013 rate of growth.

Of particular interest is the performance of Finland with a BERD/investments ratio always over 10% that is generally increasing until reaching 60% in 2010, unlike Italy which has a ratio permanently under 10% at least until 2012. Between these two extremes we find all the other examined countries, registering an increase of the above mentioned ratio, particularly Germany. Italy is a borderline case, but representative of the new paradigm: it is the country that has invested more than the others in instrumental goods, but at the same time it is also the one with the worst GDP growth.

The Italian economy stands out for a BERD/investments ratio totally stagnant, bringing the country, on the one hand, to maintain at a high level the quota of instrumental goods required for production and, on the other, making the demand of instrumental goods to be less and less satisfied by domestic production. All this occurs against a productive specialization more and more detached from the technological frontier and therefore insufficient in activating adequate technological expertise. The role of the accumulation model and of its ability at incorporating the processes of technological innovation can’t leave out of consideration the level of development in which a given country is situated. In fact, starting from the 1980s, the growth of international commercial exchanges turns out to be fuelled more and more by high-tech productions shifting from a 15% quota at the end of the 1980s to a 30% quota in the 1990s (Ferrari et al., 2002; 2004; and 2007), and it is with regard to these that the competitive ability of advanced economies has been increasingly measured. The tightness of the productive capacity of the different countries in respect to the foreign constraint has therefore defined itself in its capacity to export high-tech products in the markets, taking into consideration that the spread of innovation processes brought contextually also to a greater demand of these goods and to an increase of the respective imports. Differently from what has occurred in the most important
industrialized countries, starting from the 1980s – and more recently in a significant group of Northern European countries – in Italy the increase in the technological intensity of manufacturing imports has not in fact found an adequate counterbalance with the increase of the technological intensity of exports. The commercial deficits of the country in high-tech productions originate therefore from a structural unbalance between technology demand – the latter being coherent with that of other countries of advanced industrialization – and technology supply. The sharpening of these deficits in the long period is nothing but an outcome of the worsening of this unbalance. The reliance of innovative processes on the use of instrumental goods, which are the larger part of high-tech productions, has certainly exacerbated this unbalance.

4. Econometric Analysis

4.1 The Econometric Model

The empirical analysis develops a new version of the Sylos Labini function where labour productivity is influenced by innovation due to the dynamics of some economic variables (Sylos Labini 1984, 1993, 2004; Guarini 2009). The original proposal by Sylos Labini is an equation in which, in dynamic terms, the labour productivity depends positively on market (Smith effect), on the difference between wages and prices of machine (Ricardo effect) and past investments, while it depends negatively on current investments (disturbance effect). Dynamic economies influence labour productivity through, for instance, division of labour and learning by doing, as described by Adam Smith in 1776 in the Wealth of Nations, or by Young (1928). The Ricardo effect concerns the dynamic difference between wages and prices of machinery. It is important to quote the following remark by Ricardo: “Machinery and labour are in constant competition, and the former can frequently not be employed until labour rises” (Sylos Labini 1984, p. 168). If relative wages vary, then technological and organizational changes will be stimulated.

The productivity equation introduced in Sylos Labini (1984) is

$$\pi = a + bY + c \frac{w}{P_{ma}} (t-n) + d I(t-n) - e I$$

where $$I_{(t-n)}$$ is the long run effect and $$I$$ the short-run effect of investment. More generally the equation incorporates factors that operate both in short and the relatively long run, the latter being represented by the lagged variables; labour productivity $$\pi$$ is expressed as a function of total output ($$Y$$), that refers to the influence of the income growth rate considered an indicator of the market growth rate; the wages-to-prices of machinery ratio ($$\frac{w}{P_{ma}}$$); and the investment level ($$I$$); $$\pi$$, $$Y$$ and $$\frac{w}{P_{ma}}$$ are rate of changes, while $$I$$ represents the net addition to the stock of capital and therefore, its variation conforms generally to that change of the rate of change of the capital stock.

Sylos Labini presented in 1993 econometric estimates of the productivity equation concerning the manufacturing sector for different countries. The results for Italy and Germany are the following ones (Sylos Labini 1993, Appendix II)21:

**Italy (1960-85)**

$$\pi = 0.53 Y + 0.30 \frac{w}{P_{ma,1}} + 0.08 I_{(t-n)} - 0.06 I$$

$$R^2 = 0.84$$

(6.63) (1.70) (2.70) (2.43)

$$DW = 1.98$$

**Germany (1968-88)**

$$\pi = 0.29 Y - 0.66 \frac{w}{P_{ma}}$$

$$R^2 = 0.84$$

(3.25) (6.01)

$$DW = 1.98$$

21 The estimations were produced by Paolo Sylos Labini in collaboration with Mirella Damiani, currently at the University of Perugia.
It is meaningful that the Ricardo effect is positively correlated with labour productivity in the Italian case, while it is negatively correlated with the labour productivity in the German case during the 1968-1988. Sylos Labini did not provide an explanation of such unexpected result. We propose a new equation in which the dependent variable is the difference between the German labour productivity and the Italian one, and the dependent variables are the ones proposed by Sylos Labini.

\[
\pi_{\text{Ger}} - \pi_{\text{Ita}} = a + b_1 Y_{\text{Ger}} - b_2 Y_{\text{Ita}} + c_1 w/P_{\text{ma}}(t-n)_{\text{Ger}} - c_1 w/P_{\text{ma}}(t-n)_{\text{Ita}} + d_1 I(t-n)_{\text{Ger}} - d_2 I(t-n)_{\text{Ita}}
\]

We propose to call the above formula the Sylos Labini productivity gap equation.

The study regards Germany and Italy in the period 1995-2015 and draws on OECD quarterly data (from the first four months of 1995, to the second four months of 2015). The economic variables estimated are the following: the difference between the German rate of growth of the labour productivity and the Italian one, both defined as the GDP-to-total labour units ratio \((\pi_{\text{Ger}} - \pi_{\text{Ita}})\); the growth rate of value added for Germany (Smith G) and for Italy (Smith I); the growth of rate of relative labour cost, defined as the difference between wages and the prices of the investment goods, for Germany (Ricardo G) and for Italy (Ricardo I); the level of investment in Germany (Inv G) and in Italy (Inv I); a dummy variable that is 1 from 2007 to 2014 (the years of the great recession and the European crisis) and 0 elsewhere \((\text{dummy}_{2007-14})\).

4.2 Qualitative Analysis

A descriptive analysis of variables linked to technological capability is useful to understand the position of Italy vis-à-vis the European core countries and especially Germany. Barbiellini Amadei et al. (2011) show that, for a relevant part of Italian history, investment in foreign machinery represented for Italy the main channel for the introduction of new technologies. Particularly in the second half of the 20th century the purchases by Italian firms of disembodied foreign technological knowledge – as registered by the Technology Balance of Payments – appears to be particularly relevant. Up to early 1990s, Italy’s effort to purchase technology abroad stands out among OECD countries. More recently, however – at least in the last two decades – the dismal productivity growth seems directly associated with innovation activity under-performance more dependent than in the previous phases on the poor level of R&D efforts, particularly of the BERD, as argued in the previous paragraphs of this contribution.

The top import origin of Italy is Germany, that represents 15% in 2013\(^{22}\). We may expect that, given the fiscal austerity and the absence of public investments, technological or organizational changes affecting the Italian private sector will lead to an increasing demand of instrumental goods towards the Italian main trade partner characterized by a high technological specialization. As shown, among others, by Belitz et al. (2009), Germany boasts the world’s highest share of value-added output attributable to (R&D) intensive goods and knowledge intensive services. At the same time, the country possesses an extremely broad range of economic sectors that rely on R&D intensive goods and knowledge intensive services. German firms have strong competitive advantages in numerous industries, including vehicle manufacturing, chemicals, machine building, measurement and medical technologies, as well as business oriented services.

4.3 The Results

We estimated the Sylos Labini productivity gap equation by considering five different OLS models (see Table 3). Model 1 uses in the regression all the economic variables previously explained without lags. Model 2 introduced a lag in the Ricardo effects. Model 3 introduces two lags in the Ricardo effects and does not use the investments variables. Model 4 introduces two lags in the investments and does not use lags in the Ricardo effects. Model 5 introduces two lags both in Ricardo effects and in investments.

Empirical estimations show that the increasing gap between German and Italian productivities may be explained by the economic variables introduced by Sylos Labini. In fact, the coefficients that represent the

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Smith effect and the Ricardo effect are always significant in the five models we estimated. As we expected the Italian Smith effect is negatively correlated with the increase in the gap of productivity between Germany and Italy. To the contrary, the German Smith effect is positively correlated with the increase of the dependent variable. The investments variables are not significant. The dummy variable shows, as we expected, that after 2007 and especially after the 2010, the crisis reduced the gap of productivity between the two countries.

The meaning of the Ricardo effect, that describes technological and organizational changes stimulated by wages, needs attention. We should expect, by following the Sylos Labini analysis, that for each country the increase of Ricardo effect explains an increase in the labour productivity gap between the two countries. In the last two decades, when Italian Ricardo effect increases, then the gap between German productivity and Italian productivity increases. We interpret this result as a confirmation of the technological foreign constraint that affects Italy and advantages Germany, as we argued in the previous sections. The technological and organizational changes in the Italian enterprises lead to an increase in the investment goods that Italy imports from Germany. Then the first consequence is a stimulus for the German labour productivity. The advantage for the Italian labour productivity will be obtained in the future, but will not be sufficient to fill the gap.

### Table 3 Regressions of the Sylos Labini productivity gap equation

<table>
<thead>
<tr>
<th></th>
<th>π Germany – π Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Mod. 1</td>
</tr>
<tr>
<td>k</td>
<td>-0.158</td>
</tr>
<tr>
<td>Smith G</td>
<td>0.902 ***</td>
</tr>
<tr>
<td>Smith I</td>
<td>-0.953 ***</td>
</tr>
<tr>
<td>Inv. G</td>
<td>2.4017e-07</td>
</tr>
<tr>
<td>Inv. G (-1)</td>
<td>1.7468e-06</td>
</tr>
<tr>
<td>Inv. G (-2)</td>
<td>2.7572e-05</td>
</tr>
<tr>
<td>Inv. I</td>
<td>4.3858e-06</td>
</tr>
<tr>
<td>Inv. I (-1)</td>
<td>-6.4193e-05</td>
</tr>
<tr>
<td>Inv. I (-2)</td>
<td>2.6882e-05</td>
</tr>
<tr>
<td>Ricardo G</td>
<td>0.298 **</td>
</tr>
<tr>
<td>Ricardo G (-1)</td>
<td>0.206 *</td>
</tr>
<tr>
<td>Ricardo G (-2)</td>
<td>-0102</td>
</tr>
<tr>
<td>Ricardo I</td>
<td>-0.0794 *</td>
</tr>
<tr>
<td>Ricardo I (-1)</td>
<td>0.0747 *</td>
</tr>
<tr>
<td>Ricardo I (-2)</td>
<td>0.114 ***</td>
</tr>
<tr>
<td>dummy 2007/14</td>
<td>-0.611 ***</td>
</tr>
<tr>
<td>Adj. R²</td>
<td>0.709888</td>
</tr>
<tr>
<td>DW</td>
<td>1.925565</td>
</tr>
</tbody>
</table>

*p-value < 0.01 ***; p-value < 0.05 **; p-value < 0.1 *

Our estimations show that the sum of the coefficients of the Italian lagged Ricardo effects, that explain the increase in the labour productivity gap, is higher than the coefficient of the Italian non-lagged Ricardo effect, that vice versa explains a decrease in the labour productivity gap.\(^{24}\)

This result is consistent with the argument put forward by Cesaranotto and Strati (2010) in order to demonstrate that after the onset of the euro, Germany engaged in a neo-mercantilist model of development, that is a policy of competitive internal devaluation by depressing its real wage growth\(^{25}\). It is also consistent with the results obtained by Bagnai (2015): 1. the Italian decline can be explained by a progressive tightening of the balance-of-payments constraint and 2. the sudden slowdown of labour productivity in the

\(^{23}\) The case of Germany for the 1968-1988 period, in which the coefficient of the Ricardo effect – as estimated by Sylos Labini – was negative, represents an unexpected result.

\(^{24}\) Robustness tests were applied via heteroskedasticity-corrected estimations. Results are in line with our argument that technological and organizational changes in the Italian enterprises lead to an increase in the labour productivity gap between Italy and Germany. See the Appendix (Table A3).

\(^{25}\) See also Sabbatini and Zollino (2010).
1990s corresponds to a major shock on Italy’s external constraint that came from the core Eurozone countries.

5. Conclusion

Over the past 25 years, GDP grew in all countries, but the difference in growth rates reflects a non-homogeneous productive structure. GDP is a synthetic indicator of different variables, but the combination of the different inputs tends to hide the singularity of productive specialization. Investments still have a special role as they represent the most dynamic component of the effective demand, but in certain circumstances their increase may be counterproductive: increasing investments in order to support growth is not enough. Scientific knowledge is necessary in order to plan the innovations by the public and the private sectors. The programming of both knowledge and know-how implies a shift in technological paradigms that presupposes an industrial policy which is able to govern the structural economic dynamics. As underlined by Ciriaci and Palma (2016), while in Germany, knowledge-intensive business services act as a support to the development of the manufacturing sector with quite widespread diffusion across the entire industrial structure, the presence of a thoroughly innovative manufacturing sector for national competitiveness is what is still missing in Italy, where a relatively higher effort is made towards low and medium/low-tech subsystems. Precisely for these reasons, Italy does not need the structural reforms suggested by the August 2011 Letter to Italian Prime Minister, signed by Trichet and Draghi, that are thought for a country which remains heavily dependent on foreign technologies.

Trichet and Draghi presented the following measures as essential for the Italian economy:

a) We see a need for significant measures to enhance potential growth. A few recent decisions taken by the Government move in this direction; other measures are under discussion with social partners. However, more needs to be done and it is crucial to go forward decisively. Key challenges are to increase competition, particularly in services to improve the quality of public services and to design regulatory and fiscal systems better suited to support firms’ competitiveness and efficiency of the labour market.

b) A comprehensive, far-reaching and credible reform strategy, including the full liberalisation of local public services and of professional services is needed. This should apply particularly to the provision of local services through large scale privatizations.

c) There is also a need to further reform the collective wage bargaining system allowing firm-level agreements to tailor wages and working conditions to firms’ specific needs and increasing their relevance with respect to other layers of negotiations. The June 28 agreement between the main trade unions and the industrial businesses associations moves in this direction.

d) A thorough review of the rules regulating the hiring and dismissal of employees should be adopted in conjunction with the establishment of an unemployment insurance system and a set of active labour market policies capable of easing the reallocation of resources towards the more competitive firms and sectors. (Draghi and Trichet, 2011).

To the contrary, the necessary reforms should be designed to govern the cumulative movements of the macro-economic magnitudes (such as GDP, total consumption, total investment, overall employment, etc.) and the changes in their composition, that is, the dynamics of their structure (Pasinetti, 1993). In short, acting on the economic structure should assume some form of industrial planning. As Augusto Graziani claimed (1997), it is difficult for a country like Italy, until it is characterized by a weak industrial structure, to face the

26 Lucarelli, Palma e Romano (2013).
27 Ferrari (2014), pp. 53-54. See also Ferrari et al. (2002; 2004; and 2007).
28 We are referring to the Italian political debate on “reforms within the structure” during the 1960s. In that period, the Italian terminology “riforforme di struttura” meant something totally different from what today are called “structural reforms”. Particularly we are referring to the analyses of Riccardo Lombardi and Paolo Sylos Labini. In their contributions the term “structure” means “capitalist structure”. About Lombardi see Bartocci (2014), about Sylos Labini political interventions in the 1960s, see Roncaglia (2015).
competition of technologically advanced countries in an optimal currency area. Graziani concluded that, given the absence of the industrial policy, the compression of labor costs would be probably the easier strategy to face the new context.

Economic and social development, in the Schumpeterian, qualitative sense (Schumpeter, 1935), is in fact based on the structural changes, that are mostly related to the ability to ‘generate’ knowledge. Income growth and diversification of consumption have consolidated and expanded the need for goods and services with higher technological content, consequently they have fueled the growth of high-tech component in domestic consumption and international trade: the high technology, within the manufacturing international trade, rose from 10% (in 1985) to 30% (in 2008)\(^{29}\). The relevant variable is the technological intensity of investments, not the investment itself. The growth of research and development, specifically the ratio BERD / GDP, has reduced the need for increasing instrumental goods. Some might argue that the crisis of 2007 has affected investments. In fact, the crisis has only accelerated a consolidated phenomenon: the market has been in charge of selecting productive investment than conservative ones, by supporting companies that have a significant technological intensity. Without considering the serious economic policy mistakes that characterize the EMU, that we reviewed in the previous sections, European countries are facing a new techno-economic paradigm which makes planning economic policies more difficult than it was in the years of the Golden Age (1944–1973). The indiscriminate support of the effective demand may not be sufficient response to the crisis.

Considering the particular nature of the Italian crisis, characterized by the burden of the technological foreign constraint, a request for indiscriminate support of investments would be counterproductive: given the development path on which Italy stands, it would contribute to the increase of the Italian technological gap, as our estimations seem to confirm. On the contrary the point is understanding the structural dynamics of the system and re-programming the productive structure of the country. It is necessary to consider of what is actually produced, how to do it and for whom, urging a modification of the productive specialization towards branches characterized by a higher intensity of research and development. Only the production of innovative goods which are capable to address a technological change apt to go beyond national boundaries can reduce the gap of the country in a durable manner. This is what an industrial policy should mean\(^{30}\).

**APPENDIX**

**Table A1** A synthetic statistics of all variables of the regressions, using the quarterly observations 1995:1 - 2015:2

<table>
<thead>
<tr>
<th>Variable</th>
<th>Mean</th>
<th>Std. Dev.</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>(\pi ) Germany - (\pi ) Italy</td>
<td>0.176829</td>
<td>0.774963</td>
<td>-2.10000</td>
<td>1.80000</td>
</tr>
<tr>
<td>Smith G</td>
<td>0.321951</td>
<td>0.849135</td>
<td>-4.50000</td>
<td>2.00000</td>
</tr>
<tr>
<td>Ricardo G</td>
<td>0.231707</td>
<td>0.456470</td>
<td>-1.00000</td>
<td>1.30000</td>
</tr>
<tr>
<td>Inv G</td>
<td>121752</td>
<td>12545.9</td>
<td>104253</td>
<td>150763</td>
</tr>
<tr>
<td>Smith I</td>
<td>0.130488</td>
<td>0.726855</td>
<td>-2.90000</td>
<td>1.60000</td>
</tr>
<tr>
<td>Ricardo I</td>
<td>0.136585</td>
<td>1.16646</td>
<td>-4.30000</td>
<td>3.80000</td>
</tr>
<tr>
<td>Inv I</td>
<td>69622.3</td>
<td>12031.7</td>
<td>45627.0</td>
<td>88041.0</td>
</tr>
</tbody>
</table>

\(^{29}\) Data are taken from Palma e Prezioso (2010).

\(^{30}\) See Leon (2014).
Table A2 Correlation coefficients, using the observations 1995:1 - 2015:2; 5% critical value (two-tailed) = 0.2172 for \( n = 82 \)

<table>
<thead>
<tr>
<th>Smith G</th>
<th>Ricardo G</th>
<th>Inv G</th>
<th>Smith I</th>
<th>Ricardo I</th>
<th>( \pi ) Germany - ( \pi ) Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.0000</td>
<td>0.2985</td>
<td>0.0687</td>
<td>-0.0286</td>
<td>-0.0218</td>
<td>0.5396</td>
</tr>
<tr>
<td>1.0000</td>
<td>0.2720</td>
<td>0.1764</td>
<td>-0.0481</td>
<td>0.0131</td>
<td>0.2279</td>
</tr>
</tbody>
</table>

\[ \begin{align*}
1.0000 & \quad -0.2803 & \quad -0.1349 & \quad 0.3075 & \quad 0.1073 & \quad \text{Inv G} \\
1.0000 & \quad 0.1270 & \quad -0.2801 & \quad -0.1250 & \quad \text{Smith I} \\
1.0000 & \quad -0.0593 & \quad -0.2386 & \quad \text{Ricardo I} \\
1.0000 & \quad 0.1534 & \quad \pi \) Germany - \( \pi \) Italy
\end{align*} \]

Table A3 Regressions of the Sylos Labini productivity gap equation, heteroskedasticity-corrected

<table>
<thead>
<tr>
<th>( \pi ) Germany – ( \pi ) Italy</th>
<th>Mod. 1</th>
<th>Mod. 2</th>
<th>Mod. 3</th>
<th>Mod. 4</th>
<th>Mod. 5</th>
</tr>
</thead>
<tbody>
<tr>
<td>k</td>
<td>-0.495</td>
<td>-0.142</td>
<td>0.155**</td>
<td>-0.552</td>
<td>-0.9301</td>
</tr>
<tr>
<td>Smith G</td>
<td>0.935***</td>
<td>0.9394***</td>
<td>0.894***</td>
<td>0.9468***</td>
<td>0.949***</td>
</tr>
<tr>
<td>Smith I</td>
<td>-0.9881***</td>
<td>-0.9889***</td>
<td>-1.014***</td>
<td>-0.9791***</td>
<td>-0.9104***</td>
</tr>
<tr>
<td>Inv. G (-1)</td>
<td>1.59819e-06</td>
<td>1.2654e-06</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inv. G (-2)</td>
<td>1.43643e-05</td>
<td>3.6635e-05*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inv. I</td>
<td>7.43211e-06**</td>
<td>4.1766e-06</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inv. I (-1)</td>
<td>-8.4242e-05*</td>
<td>-8.5546e-05*</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inv. I (-2)</td>
<td>2.66927e-05</td>
<td>8.592e-05***</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ricardo G</td>
<td>0.0595</td>
<td>0.219*</td>
<td>0.369***</td>
<td>0.416***</td>
<td>0.27543**</td>
</tr>
<tr>
<td>Ricardo G (-1)</td>
<td>0.4002***</td>
<td>0.2194***</td>
<td>0.4606***</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ricardo G (2)</td>
<td>-0.0131</td>
<td>-0.06149</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ricardo I</td>
<td>-0.0749*</td>
<td>-0.02688</td>
<td>-0.091*</td>
<td>-0.0896**</td>
<td>-0.184318**</td>
</tr>
<tr>
<td>Ricardo I (-1)</td>
<td>0.0542</td>
<td>0.101***</td>
<td>0.06064</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ricardo I (2)</td>
<td>0.0861**</td>
<td>0.11353***</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>dummy 2007/14</td>
<td>-0.664***</td>
<td>-0.627***</td>
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\( p\)-value < 0.01 ***; \( p\)-value < 0.05 **; \( p\)-value < 0.1 *

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The Economic and Monetary Union: Past and Present Failures and some Future Possibilities

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Abstract

The Economic and Monetary Union was constructed on poor foundations which sought to impose inappropriate macroeconomic policies. This construction did not pay heed to the differences between countries with regard to their economic position and interests nor to the institutional and historical differences. The EMU was faltering before the financial crisis which highlighted and added to the problems of EMU. The neo- and ordo-liberal constraints on policy and policy reform are indicated. The outline of a policy agenda for prosperity in EMU is given.

JEL classification: E5, E62

Keywords: Economic and Monetary Union, fiscal policy, monetary policy, ordoliberalism

Introduction

The formation of the Economic and Monetary Union (EMU) and the adoption of the euro was clearly a highly significant episode in the evolution of the European Union. It took its place in the aim for an ‘ever closer union’, and it could be viewed as a final step along the route of removal of barriers to trade between member countries (after customs union, mobility of labour, capital movement and the ‘single market’), and as a step in the direction of political union in light of the close relationship between monetary union and political union. EMU was constructed to be irreversible which contributes the possible exit of a member country from EMU as being of considerable political significance and difficulties. The European Commission viewed that ‘Although economic in substance, it [EMU] sent a very powerful political signal to European citizens and to the rest of the world that Europe was capable of taking far-reaching decisions to cement a common and prosperous future for a continent that had all too often suffered from wars and economic and political stability’ (European Commission, 2008, p.3).

The argument here runs along three basic lines. First, the EMU and its associated economic policies were ill-conceived, and came with a range of ‘design faults’ (Arestis and Sawyer, 2011). These design faults were for many commentators evident from the start, though others emerged and some became much more apparent with the passage of time (a notable one here would be the relationships between the European Central Bank ECB and national governments – as discussed below). Further, the development of economic policies have exacerbated the faults, notably with the formation of the ‘fiscal compact’ and the Treaty on Stability, Coordination and Governance (European Union, 2012).

Second, the construction and operation of the single currency owes much to neo-liberal thinking. Arestis and Sawyer (2013a) placed that within the framework of the ‘new consensus in macroeconomics’, which is viewed as an expression in the macroeconomics arena of neo-liberal analysis. Others have spoken of a Brussels-Frankfurt-Washington consensus (for example, Mitchell and Muysken, 2006). The relationships of the construction of EMU with Ordoliberalism are particularly significant through the ideological basis and that Ordoliberalism is closely tied with Germany, and reflects much German mainstream economics thinking. The significant elements here are the influence which such thinking had on the construction of EMU and the dominance of such analyses in constraining the construction of an alternative EMU.

Third, an alternative policy agenda for the operation of EMU which would be more conducive to

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1 At its formation known as European Economic Community; we use the present terminology of European Union throughout.
high levels of employment and lowering of inequalities and disparities is considered. It is argued that there
are alternative policies which are based on a post Keynesian analysis, but consider that for political and
institutional reasons making the change to such a policy framework will prove highly unlikely.

The weak foundations of EMU

It is widely recognised (and not just with hindsight) that there were major issues surrounding the formation of
the euro as a single currency\(^2\). One set of issues came from the application of the criteria of ‘optimal
currency area’\(^3\) which were set in terms of price flexibility, capital mobility and labour mobility\(^4\) to the case of
EMU where, at least by comparison with the USA labour mobility was markedly lower. These criteria referred
to the ability of economies to respond to shocks in the absence of the exchange rate adjustment possibility.

Another set of issues came from those emphasising the lack of convergence between economies in
terms of unemployment, business cycle and living standards, the failure to address the ‘one size fits all’
problem of a single monetary policy, the inheritance of current account imbalances without any mechanism
to resolve them nor to cope with the implications of the corresponding cross-border capital flows.
Institutional, political and social differences between countries forming the EMU were not only more difficult
to comprehend and quantify, but also it was difficult to gauge the consequences of those differences for the
operation of a single currency. Little attention appears to have been given to these differences and how they
would impact on the operations of a single currency. There were expressions of hope that there would be
some convergence between member countries as a result of the experience of a single currency (alongside
the single market). This was particularly applied to the ‘optimal currency area’ arguments for the fulfilment of
the OCA criteria after, rather than before, the formation of a single currency, that is the criteria endogenously
fulfilled (Frenkel and Rose, 1998). But there was little by way of policies put in place to encourage
convergence, and faith was placed in some form of market mechanisms to bring about convergence.

The launch of the euro (as a virtual currency in 1999, circulating currency in 2002) was surrounded
by the hype which has become familiar with any EU steps towards integration. The claims for the ‘single
market’ in the early 1990s with a 6 per cent gain in GDP as a result of the single market was a relatively
recent example. After the first decade of the euro, the European Commission (2008) claimed that ‘the euro is
a resounding success’ having ‘secured macroeconomic stability and boosted cross-border trade, financial
integration and investment’. It did recognize though that ‘so far it [euro] has fallen short of some initial
expectations’ with ‘output and particularly productivity growth …below those of other developed economies
and concerns about the fairness of income and wealth distribution’ (p.3). There were also emerging concerns
over the growing current account imbalances and changing relative competitiveness between the EMU
member countries which clearly could not be addressed through a change in a member country’s exchange
rate. The economic performance of founder members of the euro (EU-12) was lack-lustre before the financial
crises of 2007/09, and in growth terms this was particularly pronounced in the larger economies of France,
Germany and Italy. There was no evident ‘euro bounce’ though some economies such as Greece and Spain
did expand at a relatively fast pace. There was little to show that trade within EMU countries was stimulated
by the formation of a single currency, which is perhaps not surprising given the nature of the European single
market\(^5\).

The macroeconomic policy framework of the Stability and Growth Pact (SGP) was not one
designed to encourage employment and growth. One key element of the SGP was the intended limits on
budget deficits (upper limit of 3 per cent of GDP, balanced over the cycle) and limit on public debt of 60 per
cent of GDP. These limits were in the outturn not observed – with budget deficits averaging 2 per cent of
GDP up to 2008 and seven countries (of the original 12) exceeded the 60 per cent limit on government debt.
These intentions were seeking a ‘one size fits all’ approach whatever the economic circumstances of a
country with regard to issues such as its current account position, its needs for public investment etc.

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\(^2\) For some early doubts see, for example, Godley (1992), Feldstein (1997).
\(^3\) The OCA criteria developed from Mundell (1961), McKinnon (1963), Kenen (1969).
\(^4\) It is paradoxical that EMU was found wanting from the OCA perspective through a lack of labour mobility, whereas major political
objections come from there being too much labour mobility (a.k.a. migration).
\(^5\) See Arestis and Sawyer (2013) for evidence.
The difficulties with the macroeconomic policy framework have been intensified with the adoption in 2012 of the ‘fiscal compact’. This included the requirement for a ‘balanced structural budget’. The concept of the structural budget is problematic and involves placing key policy decisions in the hands of those who make estimates of ‘potential output’ and who seek to calculate what the budget would be if the economy concerned were operating at ‘potential output’. Further there is little reason to think that a budget which is in balance when the economy is at ‘potential output’ is feasible (see Sawyer, 2013b for elaboration). The ‘excessive deficit procedure’ which would require substantial budget surpluses for those countries with a debt ratio of over 60 per cent imposes strong deflationary pressures on countries and no-one believes that a substantial surplus is suitable for a depressed economy. The requirements of the ‘fiscal compact’ are for ‘balanced structural budgets’ to be enshrined into national laws and constitutions thereby constraining future governments to pursue sensible fiscal policies. Those countries under the ‘excessive deficit procedure’ can have ‘structural reforms’ imposed on them for which read the neo-liberal agenda for liberalisation, deregulation and wage reduction (as witnessed by the Greek experience with the nature of the impositions placed on Greece by the Troika6).

Another key element was the position and role of the European Central Bank (ECB). The ECB ‘shall be independent in the exercise of its powers and in the management of its finances. Union institutions, bodies, offices and agencies and the governments of the Member States shall respect that independence’ (Article 245, Treaty of Lisbon). It has been given the objective of ‘price stability’ (interpreted as inflation between 0 and 2 per cent per annum) along with ‘support [of] the general economic policies in the Union in order to contribute to the achievement of the latter’s objectives’. As all central banks do, the ECB faces the ‘one size fits all problem’ of setting a single policy interest rate covering diverse economic regions of a currency union here exacerbated by the size and extent of the diversity of the currency union. More significantly has been the lack of a central fiscal authority which is not required to balance its budget with national fiscal authorities whose budget positions are constrained by the Stability and Growth Pact and now the ‘fiscal compact’.

The operations and decisions of the ECB can be scrutinized, and specific decisions critically examined – for example, the speed of response to the financial crisis, delays in the adoption of quantitative easing. But, of course, all policy decisions by central banks and others can be critically examined, and that is not the central purpose here which is focusing on the general mode of operation of the ECB. In terms of the price stability objective, interpreted as eurozone inflation of less than 2 per cent per annum, the target of was consistently missed in the pre-financial crisis period, albeit by a relatively small margin. A more notable feature of inflation was the degree to which the national inflation rates differed and the consequences of those differences for the evolution of the real exchange rate between the member countries of EMU and changing competitiveness. However, these failures come more from the inadequacies of the policy framework than from decisions of the ECB. We have argued (Arestis and Sawyer, 2004; 2008) that the use of the interest rate to seek to guide the overall rate of inflation is a rather ineffectual policy tool, as the policy interest rate has a rather small and unpredictable effect on the pace of inflation. Further, the inflationary mechanisms and the ways in which wages and prices are set differ between countries and the ‘one size fits all’ problem kicks in as the effects of a change in the ECB’s policy interest rate differ between countries. A further aspect from the setting of a single nominal policy interest rate is that the real rate of interest is lower in a relatively high inflation rate country, whereas the operation of monetary policy for inflation targeting is supposed to work along the lines that the real rate of interest is higher under conditions of relatively high inflation.

The focus of the ECB (as with many other central banks) on inflation targeting (in effect even though the ECB declined to use that phrase) comes at the expense of ability to focus on other policy objectives. In this context, the particularly significant omission has been that of ‘financial stability’. Whereas central banks such as the Bank of England now have their mandates extended to cover financial stability, the ECB’s mandate has remained that of price stability. Setting interest rates in pursuit of an inflation target may have fed into asset price instability – there is no reason to think that the interest rate deemed suitable for

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6 See, for example, Memorandum of Understanding (2015).
inflation target would be that suitable for asset price stability – sometimes it would, sometimes it would not. The ECB lacks the instruments for the pursuit of a financial stability objective.

There had also been (up to the financial crisis) growing current account imbalances between EMU member countries and hence growing capital account imbalances and greater capital flows between member countries on a net as well as gross flow basis. Current account deficits have fallen in many EMU countries in the past five years, but this should be seen more as the effects of internal deflation reducing the imports than a resolution of the deficit situation.

The other side of current account imbalances is, of course, capital account imbalances and corresponding capital flows. In a number of EMU member countries (Ireland and Spain being the notable examples) credit booms associated with housing and construction burst followed by major difficulties in their banking sectors. Credit booms in some countries but not in others could not be addressed by the ECB through any general policy response and the ECB lacked the tools to address credit booms in individual countries and it could be argued that the focus on price stability precluded attention to financial stability.

The ‘independence’ of the ECB has been a political one in the sense of separation between the ECB and other institutions of the EU, EMU and national governments. The ‘independence’ has not been an ideological one. Outside of its direct remit, the ECB has continually promoted fiscal consolidation (i.e. austerity), labour and product market deregulation often under the term ‘structural reform’. The ‘independence’ of the ECB limits the possibilities of the co-ordination of macroeconomic policies and of subjecting those policies to democratic inputs.

The ECB does not have an explicit ‘lender of last resort’ obligation in relationship with the banking system. It is also prohibited from the direct monetisation of public debt. This prohibition of the direct monetisation of public debt is to a large extent in line with central bank practice.

The critique to be made here of the ECB and its role within the EMU is not that it got this or that decision wrong (and particularly not to undertake that with the benefit of hindsight). It is rather, as others have argued, to point to weaknesses in the structures of the ECB with regard to the effective operation of a single currency. These weaknesses can be summarised in terms, firstly of the effects of the ‘one size fits all problem’ particularly in respect of price stability and financial stability with a lack of structures and policies which deal with that problem. Secondly, there is a lack of democratic input into the decision making of the ECB, and the limitations on co-ordination of macroeconomic policies. Thirdly, the ECB does not and cannot give the type of support to member governments which would be provided by a national central bank to a national government. And fourthly, there is a general commitment to a neo-liberal ideological agenda rather than to support for the broader economic policies of the EU.

In recent years, after the financial crises, there has been widespread talk of a euro crisis (or similar phrase). It is more a series of interlinked crises. There has been an existential crisis where many called into doubt the continued existence of the Eurozone with its present membership, a crisis which appears to have been averted for the time being. There have been banking crises where the position of the ECB and the lack of a banking union meant the absence of a single mode of bank resolution and bank supervision, some of which should be rectified by the banking union proposals. The removal of capital controls and the role of a single currency is facilitating capital flows were factors in the widening capital account imbalances and growing debt issues. The current account imbalances have been diminished through a vicious deflation but the underlying problems remain and constitute a constraint on the growth of demand and the diminution of unemployment. It was the sovereign debt crisis which attracted most attention, and the impacts on the banking system where much of the sovereign debt was held. The sovereign debt crisis clearly illustrated the errors of constructing a monetary union where the central bank did not have obligations to support the fiscal policies of the member states. The debt crisis was, of course, met with the impositions on Greece of conditions of continuing austerity and quite unreasonable demands on its budget positions. The question which inevitably has to be raised are what are the prospects for any return of prosperity and decline of unemployment within the Eurozone when it has imposed austerity policies on itself in the form of the fiscal compact.

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7 For illustration of this see Sawyer (2014).
8 See, for example, Arestis (2014), Bibow (2015) for evaluations of monetary policy decisions by the ECB.
Ordoliberalism and neo-liberalism and the policy framework

In Arestis and Sawyer (2013) we argued that the framework of macroeconomic policies of the EMU were essentially neo-liberal and could be understood by reference to the ‘new consensus in macroeconomics’ (NCM). It was neo-liberal in the sense that there was an underlying assumption of the efficiency of markets and their ability to secure macroeconomic stability and high levels of employment. Markets are viewed as inherent stable around a supply-side determined levels of output and employment which in the NCM are represented by potential output and the non-accelerating inflation rate of unemployment (NAIRU). Monetary policy is assigned the task of targeting inflation (through the use of policy interest rate) through a (politically) independent central bank, thereby elevating bankers’ decision making above democratic decision making. Fiscal policy is viewed as impotent though its role as something of an automatic stabiliser is recognized. Although it does not feature prominently in the NCM, employment (and hence unemployment) and output are much dependent on the structures of labour and product markets with the belief that liberalised and unregulated markets are conducive for low levels of unemployment and high levels of output.

In the context of the Economic and Monetary Union (EMU), its policy structures can be viewed through the lens of ordoliberalism. Dullien and Guerot (2012) outline some of the essential features of German Ordnungspolitik such as price stability, central bank independence, state-market relationships and regulatory state interference in markets’ (p.2) which is contrasted with the ‘position more predominant in Anglo-Saxon debate and in international institutions’. They continue by saying that ‘ordoliberalism differs from other schools of liberalism (including the neo-liberalism predominant in the Anglo-Saxon world) in that it places a greater emphasis on preventing cartels and monopolies. At the same time, like neo-liberalism, ordoliberalism opposes intervention into the normal course of the economy. For example, it rejects the use of expansionary fiscal and monetary policies to stabilise the business cycle in a recession and is, in that sense, anti-Keynesian’ (p.2). As Aziz (2015) notes ‘ordoliberalism distinguishes itself … in its focus upon rules and order, and defining the government’s role in terms of establishing a strict order around which the market can exist and flourish’ which leads into ‘notions of rigid monetary policy focused exclusively on price stability’ (and much more besides). Young (2014) argues that ‘the conservative German Bundesbank and many traditional economists adhere to a rule-based legalistic ordoliberal doctrine to prevent a more Keynesian alternative that would challenge the austerity discourse’. Further, ‘measures such as the strict adherence to fiscal discipline through a fiscal compact which stipulates a constitutionally mandated debt brake to limit the fiscal debt of all EU-countries, its defense of the independence of the Central European Bank (sic), its strict adherence to price stability, and its support for recapitalizing banks through the European Stability Mechanism (ESM) (only on condition that the ESM would control banks which gain access to bail-out funds), reflects the ideas of Ordnungspolitik’ (Young, 2014, p.278).

The particular significances of looking through the lens of ordoliberalism are perhaps self-evident. Ordoliberalism is a doctrine closely related with Germany and its macroeconomic policies with many aspects of that doctrine having wide political acceptance in Germany (Young, 2014).

The policies which are closely associated with ordoliberalism in the field of macroeconomic policies are anti-Keynesian. With regard to fiscal policy, the German constitution required that the current budget be in balance allowing for borrowing for public investment purposes. These requirements broadly speaking applied at both the Federal level and the Lander level. This led to a German budget position which was generally in deficit with significant levels of public investment, and a debt ratio of around 60 per cent. As many pointed out at the time of the Maastricht Treaty, the figures in the convergence criteria of 3 per cent budget deficit to GDP ratio and 60 per cent debt to GDP ratio were rather close the German experience. However, the ‘debt brake’ introduced as a change to the German constitution in 2009 with full implementation over the period 2016 to 2020 switched to the overall budget being in balance or surplus, and again applicable at the Federal and the Lander level. The rationale for such a switch is difficult to find though it did reflect the interpretation of the Stability and Growth Pact (under the Treaty of Amsterdam) that the budget should be balanced over the cycle.

In respect of monetary policy, the notion of a politically independent central bank and the focus of monetary policy on inflation and price stability have been important ingredients. In this regard the
Bundesbank had long operated as in effect an independent inflation targetter, ahead to the general switch to independent central banks which characterised the 1990s.

With ordoliberalism, economic policies are embedded into law, and even more into a constitution which limits the ability to change those policies. The major examples relevant for this paper come from placing fiscal and monetary policy into a constitutional framework which thereby shifts policy from discretionary to rules. This is rather more than the ‘rules’ verses ‘discretion’ debates which ran through much macroeconomic policy debates. In that context, the ‘rule’ (e.g. say Taylor’s rule for monetary policy) was not embedded into law, and it was recognized that ‘rules’ vs. complete ‘discretion’ were two ends of the spectrum, and in practice there were always strong elements of discretion, not least related to the assessment of the economic situation (e.g. in Taylor’s rule, what was the output gap, what is the expected rate of inflation?). The placing of rules into a constitution (or equivalent) makes them difficult to change. If the chosen rule is believed to have universal validity then this may not constitute a problem. But in the context of macroeconomic policies, the rules reflect specific forms of economic and political analysis (consider for example the rule of independent central bank), and the general acceptability of the underpinning analysis changes over time. Whilst the general notion of an independent central bank was accepted in Germany in the form of the Bundesbank, it did not come into wider use until the mid-1990s. Even then, governments often have reserve powers to give instructions to the Central Bank (e.g. in UK), and the objectives given to the central bank have changed: using the UK example from inflation targeting to also include ‘financial stability’. It also can place the interpretation of economic policies into the courts, as was seen by the challenge to ‘quantitative easing’ operated by the ECB where the German Federal Court challenged its legality in the European Constitutional Court of Justice, arguing the ECB was acting beyond its mandate, effectively financing government deficits9. As we argued before (Arestis, Fontana and Sawyer, 2014) the ‘rules’ based approach adopted within the EMU suffers from the inflexibilities for policy change when those rules take on the force of law and that the rules which have been adopted are the wrong ones (in our view based on our broadly post Keynesian analysis).

It is not our purpose here to evaluate the claims which relate the ideas of ordoliberalism with the actual policies pursued in Germany or with the perceived success of the German economy. Young (2014) argues that ‘little work has been done to question the ordoliberal assumptions and whether these ideas were in fact important for the German economic growth, first during the period of the 1950s and then as the ideational foundation for the Rhenish model as the present German leadership seems to imply.

- that ordoliberal ideas alone had ushered in the Wirtschaftswunder of the 1950s?
- that ordoliberal ideas are the ideational foundation of the Soziale Marktwirtschaft, which in turn is used to explain the success of the Rhenish model of capitalism, or whether it is a myth due to a ‘repressed history of origin’ …?
- that Germany’s turnaround for the ‘sick man’ of Europe in the 1900s to the present power engine of economic growth is the result of implementing ordoliberal ideas?
- that the much hailed ‘ordoliberal success story’ of Germany can be a model for southern Eurozone countries in order to become more competitive?’ (Young, 2014, p. 282).

Germany has a relatively good record on the unemployment front (between 5 and 6 per cent after the financial crisis) (with discretionary fiscal policy playing its role in limiting the rise in unemployment in 2009 and 2010). Its growth performance has been far from outstanding with a growth rate averaging just over 1 per cent per annum from 2001 through to 2014, much below that which it had in earlier decades. The outstanding features of the recent German economic performance have been its growing export surplus and its declining wage share. These may have some interconnections (along with the likely effects of euro membership and relatively low inflation for Germany’s real exchange rate) of the shift against wages and the growing trade surplus with the implementation of the Hartz labour market reforms. In turn the perceived success of those labour market reforms which would come under the heading of ‘structural reforms’ feed into

the further promotion of such ‘structural reforms’ within the ‘fiscal compact’.

Varieties of Capitalism

The Optimal Currency Area (OCA) debates focused on features of the constituent member countries which would facilitate adjustments to asymmetric shocks in the absence of the exchange rate adjustment possibility. Other concerns were expressed over the extent of convergence and of disparities between the national economies – over issues such as convergence of business cycles. There were notable failures to consider disparities over major issues such current account positions and mechanisms to enable the resolution of the disparities in such positions, failures which came to undermine the functioning of the EMU. Whilst there were requirements for the convergence of inflation prior to acceptance of a country into membership there was no concern expressed over what could be termed inflationary conditions in a country which would be influenced by institutional arrangements for wage and price determination, experiences of inflation, political attitudes to inflation and any trade-offs between inflation and economic performance. This is an illustration of some of the issues in the operation of a currency union which arise from diversity of economic and institutional structure, legal frameworks, policy attitudes, etc. between the members of the currency union. There are always elements of such diversities within a currency union even when the currency union is the nation state. There will be differences between the constituent regions in terms of, for example, industrial structures, and in a Federal system differences in legal structures, industrial relations legislation.

The varieties of capitalism literature should be a strong reminder that there are institutional etc. differences between forms of capitalism and hence between what may be called national economies. This is not to accept the duality of the liberal vs coordinated economies, and indeed any relatively simple classification of different forms of capitalism. Authors have sought classifications of different varieties of capitalism. Van Veen (2006), for example, with regard to labour market models uses a four way classification of Nordic or social democratic model, Continental European or conservative corporatist model, Mediterranean model or traditional rudimentary model, Anglo-Saxon model or liberalist-individualistic model. The key questions here are not whether these are complete representations or how different countries should be groups. They are rather here mentioned in the context of labour markets (and more generally employment and social provision) that countries differ in their institutional histories and the ways in which their labour markets and employment operate and perform. As mentioned above, these differences can have significant macroeconomic implications – for example how prices and wages respond to a single monetary policy and whether inflation rates and unemployment experiences converge across countries. Further, the question has to be raised over the compatibility between a single currency and the differences, in this case, in labour market institutions etc.

In the context of the EMU particularly with its insistence on common budget obligations the configuration of sectoral balances is significant. One representation of this is the identification of ‘three types of regimes under the conditions of financialisation, namely a debt-led private demand boom, an export-led mercantilist and a domestic demand-led regime’ (Dodig, Hein and Detzer, 2015). These authors relate these different regimes with different forms of instability and the generation of financial crisis. Of particular significance here is that each of the regimes can be unsustainable in different ways, reflect different policy outlooks and have implications for the appropriate budget position. Germany has been viewed as the key player in the pursuit of a neo-mercantalist export surplus approach (Sawyer, 2014), though it would not be along among EMU members in that. One clear aspect of the widening current account imbalances amongst EMU countries prior to the financial crisis was the ballooning export surpluses of some Northern European countries.

These brief remarks on country differences are made to raise the following issues, and to indicate some of the difficulties which the construction of policy alternatives face. The first is how close in institutional structures, economic policy outlooks and industrial structures do countries need to be in order for a currency union to operate effectively. It can be argued that countries need to be close enough such that, for example, there are similar generating processes for inflation and that the use of policy instruments to constrain
inflation have similar effects. Drawing on the OCA criteria, it could be said that the institutional arrangements are conducive to support price flexibility and factor mobility. The second is the difficulties which differing institutional arrangements pose for the construction of union-wide policies. The ‘one size fits all’ problems of monetary policy have been well-rehearsed. The SGP and the ‘fiscal compact’ have sought to impose a single budget policy on economies with different structures. The construction of a banking union has to cope with the different banking structures.

**Alternative Policy Agenda**

The present policy structures of EMU have severe design faults (Arestis and Sawyer, 2011) and represent a pessimum set of arrangements in the sense that a more integrated (along the lines sketched below) and a less integrated (e.g. return to national currencies) monetary system could operate more successfully (as judged by the prosperity and employment of European citizens). The present arrangements combine a lack of attention to historical, institutional and policy outlook differences between the member countries and the imposition of a deflationary policies (e.g. in the form of the fiscal compact). The alternative policy agenda which is now sketched is one which moves in the further integration direction. In effect there are strong elements of de facto political union involved, e.g. the development of a Federal level fiscal policy, which echoes the point often made that monetary union without political union does not have a happy history (Arestis and Sawyer 2013b). And that presents one of the major reasons for thinking that the type of policy agenda outlined here will not be implemented.

The policy agenda which is now outlined draws on Arestis, McCauley and Sawyer (2001) where an alternative Stability and Growth Pact was proposed, Sawyer (2013b), and influenced by papers such as by Hein and Detzer (2015) 10.

The type of proposals outlined below are far from being politically feasible given the present balance of political forces. Insofar as the proposals would require amendments to The Treaty of Lisbon changes have to be agreed on a unanimous basis which can form one major obstacle, though the Treaty on Stability, Coordination and Governance indicated some possibilities to avoid amendment to the Treaty of Lisbon. However, the obstacles to change from an institutional/political perspective are formidable. More major obstacles come from a recognition of the degree to which the present arrangements reflect neo-liberal and ordo-liberal agenda and that the alternative proposals come from the pursuit of a quite different (more post Keynesian) analysis. The neo-liberal agenda is firmly embedded into the European institutions and the thinking of a number of major players. Any policy adopted may conform to the interests and approaches of some countries but not to the interests and policy approaches of others. The fiscal compact is a clear example of this where the interests and analyses of some major players (notably Germany and the European institutions) were imposed to the detriment of others: a budget surplus conforms to the requirements of the German constitution and appears possible in Germany through its large export surplus but does not meet the interests of many other countries. It could also involve considerable fiscal transfers between regions and countries provoking obvious points of resistance.

In the context of the Economic and Monetary Union, the development and implementation of an alternative policy agenda faces three major, and close to insurmountable obstacles. The first comes from the rather obvious statement that policy alternatives are located in an understanding of how economies work and what problems art to be addressed. A neo-liberal (say dynamic stochastic general equilibrium) analysis which portrays market economies as being close to full employment has no need of demand management or supply side policies in order for full employment to be achieved. Our policy alternatives are firmly based on a heterodox post Keynesian analysis. What makes any policy transformation particularly difficult is that the neo-liberal agenda is so firmly implanted into the fabric of the EMU and in the mind-set and operations of the policy making institutions of the European Central Bank and EcoFin.

The second comes from the economic, historical and institutional diversity of the EMU. In economic terms the GDP per head at the NUTS regional level within EMU varies by the order of richest region having

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10 The annual publication of the Euromemo by the Euromemorandum Group contains alternative progressive policy agendas (available at [http://www.euromemo.eu/euromemorandum/index.html](http://www.euromemo.eu/euromemorandum/index.html)).
GDP per head over six times that of the poorest region. Unemployment rates vary from 3 per cent to over 30 percent. EMU has often operated ignoring these differences and thereby creating ‘one size fits all’ problems. This is close to inevitable with monetary policy, but it is also extended to fiscal policy. The suitability of a particular budget position target depends on the current account position, the investment and savings behaviour as well as the requirements for public infrastructure investment.

The third, and related to the second, is that almost all currency unions being coincident with the nation state operate as a fiscal union with fiscal transfers. It is well-known that national governments have a major role in the re-distribution through fiscal transfers between regions of a country. It is inevitable that a tax regime, whether by design and whether in ways which may be deemed beneficial, re-distributes between individuals and thereby between regions. A tobacco tax redistributes from smokers to non-smokers and from regions with high level of smokers to regions with low level of smokers. In addition, there are specified patterns of expenditure which re-distribute between regions and communities. In a Federal system (USA, Canada, Australia for example) these are generally conducted through negotiations between the Federal and the States/provinces. Some examples of the degree of fiscal transfer.

The policy agenda for the reconstruction of EMU could be viewed in two (complimentary) dimensions. First, what are the policy measures required to aid the effective functioning of a currency union? Second, how should the policies be designed?

Under the first question, we may consider the range of policy structures which exist within a nation state and which go alongside and complement the functions of the currency union. Those policy structures are in effect taken for granted and rarely considered in terms of a currency union, though the effectiveness or otherwise of the policies pursued will be much debated. Some of those policy structures make an appearance in the optimal currency area (OCA) literature. The most notably example in this context would be labour mobility. There are, of course, no legal constraints on the movement of people within and between countries in the broader European Union and in term in the form of migration has generated political resistance often taking the form of the rise of right wing anti-immigrant political movements and parties. While there have been the removal formal barriers to labour movement, and encouragement through, for example, interchangability of qualifications, there have not been serious attempts to create what could be viewed as a European labour market. What has not been addressed within the EU (and hence within the EMU) to any real extent is the development of an EU-wide social security system and income support, or even much on developing some degree of compatibility between the national social security systems.

A step in the direction of a Federal social security system and one which would also aid stabilisation would be the adoption of a European level unemployment insurance scheme.11 A basic European unemployment insurance scheme would provide a limited and predictable short-term fiscal stimulus to economies undergoing a downturn in the economic cycle – something that every country is going to experience sooner or later. With its automatic and countercyclical character, a basic European unemployment insurance scheme could boost market confidence in the EMU and thus help to avoid repeating vicious circles of downgrades, austerity and internal devaluation in the eurozone. It would help to uphold domestic demand and therefore economic growth in Europe as a whole’ (former European Commissioner for Employment and Social Affairs, László Andor)12.

Fiscal policy can play a significant role in the stabilisation and achievement of high levels of economic activity. There should be two basic principles underlying the approach to fiscal policy within EMU. First, the fiscal stance should be set to enhance the levels of output and employment, and not set in order to achieve some arbitrary budget target when that target may not be achievable. There must not be any attempt to impose a ‘one size fits all’ fiscal policy on national government in the sense of imposing the same numerical limits on the scale of budget deficits (where a zero limit or any other). The fiscal policy and resulting budget position should be tailored to the requirements of the country concerned: some countries will require budget deficits whereas others may be able to operate successfully with budget surpluses. The

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11 See, for example, a forum on ‘Designing a European unemployment insurance scheme’ Intereconomics July 2014, Volume 49, Issue 4, pp. 184-203, with contributions by László Andor, Sebastian Dullien, H. Xavier Jara, Holly Sutherland and Daniel Gros; also Davis, Konstantinidis and Tripodis (2015).

12 At p. 185 of the forum referred to in fn. 1
current account positions vary substantially across countries and allowance must be made for that.

Many have long recognized the role of Federal fiscal policy in monetary unions such as the United States, and seen the need for the substantial EMU (or EU) budget much larger than the current EU budget (of just over 1 per cent of EU GDP, and with a requirement to be balanced). What would be a significant step in the direction of political union, there would be important features of tax raising powers, undertaking public expenditure and ability to run budget deficits (or surpluses) as required for stabilisation purposes. Further it would require the support of the ECB in the operation of fiscal policy and willingness to buy where the bonds issued by that Federal authority. It is well-known that a progressive tax system applied across EMU would help as an automatic stabiliser. It would, of course, serve to transfer resources from low income to high income countries, and therein lies one of the major political obstacles to a Federal fiscal policy.

Significant changes would be required in the operations and objectives of the European Central Bank. Its policy objectives should be broadened beyond the price stability objective to include level of economic activity including a high and sustainable level of employment. In saying that it would be recognized that the policy instruments at the disposal of the ECB, namely the policy interest rate (supplemented by quantitative easing) are not particularly effective, and specifically suffer from ‘one size fits all’ problems. The policy objectives should also be broadened to include financial stability (as has been undertaken for the Bank of England). A further step is to redesign the constitution of the ECB such that its policy measures are coordinated with those of the Economic and Monetary Union and its member governments, which would involve ending the ‘political independence’ of the ECB. Specifically, the ECB must act to support rather than undermine the fiscal policies of the member countries (and in due course that of the Federal EMU budget). In effect, the ECB must come to act relative to the national government in the manner in which a national central bank generally in respect of support of their government’s fiscal policy through the required supply of central bank money and purchase of government bonds. The ECB should on all occasions stand ready to operate as ‘lender of last resort’. It should always accept the bonds and bills issued by national governments (within EMU) as part of open market operations in the way in which a national central bank would always accept the bonds of its government. It should also stand ready to directly lend to national governments (in exchange for bonds in euros of that government) if required. The general proposition is that the ECB should support the fiscal policies determined by EMU national governments, whether or not those policies involve deficits of which the ECB disapproves.

There is no current policy to address inflation differentials, and the current monetary policy makes it worse (by there being low if not negative (high) real rates of interest in countries with high (low) inflation rate. There is a need for a co-ordinated approach and common inflation target to be addressed by national policies. This would not be ‘inflation targeting’ if that term is understood to mean an inflation objective pursued by an independent central bank through interest rates, but rather a co-ordinated attempt by the member states of EMU to use their own national policies to achieve a common rate of inflation to avoid the inflation differences. This could take form of using fiscal policy to vary demand – not to be recommended but possible. This could take form of national agreements on incomes etc. What has to be avoided is competitive devaluation of real exchange rate (between EMU member countries) achieved through hyper-low inflation.

The return to prosperity within the EMU in a way which includes all countries and regions requires that the current account imbalances be resolved. The move towards a sustainable pattern of current account positions would involve some form of effective devaluation and revaluation within the EMU, even if there is scepticism over the effectiveness of devaluation in addressing a current account deficit, not to mention the costs and difficulties in securing such devaluation through internal deflation. Since in the context of EMU having an overall current account position close to balance one country’s surplus is another country’s deficit a further requirement would be a degree of agreement on the pattern of current account positions.

A significant feature of the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union is the role given to ‘structural reforms’ (for which read de-regulation, liberalisation and privatisation) and the associated view that there is ‘best practice’ and the suitability of a single set of policy measures on labour and product markets. The starting point for alternative policy framework would be the removal the general presumption of the superiority of neo-liberal policies.

The single currency obviously imposes the ultimate in a fixed exchange rate regime, and the
supply-side policies have to take cognisance of that. In the area of labour market policies, this would suggest (as above) a degree of co-ordination across countries with regard to wage and price increases. The major differences between nations in the institutional arrangements and historical experience suggest that attempts to impose a common set of policies is inappropriate and liable to fail, but that it cannot be left to ‘market forces’ to iron out inflation and competitiveness differentials.

The current account imbalances within the EMU have been the major source of economic difficulties, and have to be addressed through co-ordinated approach to supply-side issues. First, there should be a requirement to co-ordinate prices and wages policies between countries to seek to address the differential developments in competitiveness which have been evident. This could also enable the development of more general counter-inflationary policies in light of the relative failures to achieve inflation targets, and (as argued above) the re-assignment of the objectives of the ECB to financial stability rather than inflation. Second, there should also be developed what may be termed regional and industrial policies at the EMU level to address the differences in competitiveness between countries and to enable a resolution of the current account imbalances through capacity construction in deficit countries.

Concluding comments

The Economic and Monetary Union exhibits high levels of unemployment, particularly youth unemployment, with wide disparities in unemployment rates between regions. It appears to have entered a period of lower growth than experienced hitherto. It has become locked into a deflationary ‘fiscal compact’ which imposes a ‘one size fits all’ policy regime without regard to the circumstances of countries and one in the form of balanced budgets which are not generally attainable. An alternative policy regime is required, but the possibilities for the adoption of an alternative regime are bleak. An alternative policy regime would require not only Treaty changes but also a massive shift away from the neo-liberal frameworks which currently dominate economic thinking. It would also likely require moves towards elements of a de facto political union and fiscal transfers between member states. A bleak future beckons the Eurozone!

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Solidarity, Grassroots Initiatives and Power Relations

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Abstract

Although solidarity is not a recent phenomenon, the emergence of new or re-invented forms of production and sharing that are based on that principle, has raised again several burning questions of what solidarity is and how far it can go, particularly under circumstances that may prove devastating for individuals, households and communities. The present paper is a result of both theoretical and empirical research regarding several types of grassroots initiatives which have functioned in Greece during the last six years. It investigates solidarity-related economic structures in order to clarify related questions, shows the complexity of practiced solidarity, identifies the main lines where solidarity might collide with power at the expense of the disadvantaged, and explores possible means of preventing power from invading those structures and thereby interfering with the survival of people and their communities.

Keywords: solidarity, power, collective, Greece, grassroots

1. Introduction

This paper discusses issues concerning the idea and practice of solidarity in grassroots initiatives which self-identify and/or try to function as non- or anti-capitalist structures. My main question refers to how solidarity might be expressed when everything originates in a society where hierarchies and power relations are already defined, embedded and continuously reproduced; and how, under conditions which enhance individuality and competition to the extent of social dissolution, solidarity can create at least small starting points for a more human economy and society. Though clearly relevant to recent struggles in Greece and elsewhere in the European Union, this study is not limited to those instances. These are much broader questions.

A variety of initiatives and groups have been organised in Greece over the last six years into structures which claim solidarity as their main principle. In this paper, structures like cooperatives, which function already within some specific legal framework, are not analysed nor examined. The focus is on grassroots schemes, i.e. collective organised efforts, most of which have not acquired the status of legal entity, nor have they received any essential support by public authorities. Moreover, the focus is on schemes which attempt to function quite far away from the mainstream economic institutions, usually by refusing to use official currency and/or having sharing practices as the, or one of the, main modes of transaction.

The broad definition of “grassroots schemes” has been made without defining them as necessarily alternative and it is intentional in this paper. Defining them with their actual connection or non-connection to authorities is more accurate and does not label them with features that the groups themselves or their members might not be using either. Moreover, I am personally very reluctant to celebrate all of them as non-capitalist or alternative because this is something first to be decided by the schemes themselves, and second, to be judged in a long-term framework of analysis that is not available to researchers when the activity studied is still developing.

One more clarification for the term “scheme” I use in this paper. Although it has this “plotting” meaning, it is very widely used in parallel currency literature. Given that I have not many words to replace it
apart from “initiative”, “group”, or “structure”, I keep “scheme” as a term too for the organised grassroots initiatives.

The following section refers to the definition of the term of solidarity, the general theoretical background, and the methodology of my study. Then case studies are described in section three. Questions and practices of solidarity are made specific in section four. Section five contrasts reproduction, reciprocity and solidarity and, the last section comprises, apart from conclusions, questions for further in-depth analysis and research.

2. Solidarity: Definition, Theory and Methods

2.1. What is Solidarity?

In this paper, the term “solidarity” is not related to mainstream approaches where it is perceived as constituted, inter-personal assistance based on similarities, mostly economic ones (Silver, 1994). The focus on class solidarity, for example, although it is important and illuminates several aspects of solidarity is not enough to explain the activity I am examining in this paper. Therefore, such approaches are quite static and western-European centred and do not really challenge the capitalist economy.

Solidarity, therefore, in this paper is not a static, much less a vintage or picturesque, social attribute. Instead, it is a transformative process which affects directly or indirectly multiple sights of power. Solidarity as a practice can initially have limited scope and aims, like sharing food or cultivating a plot of land collectively. However, in the medium and long term, it has the potential, within a broader context where egalitarian and emancipatory aims are pursued, to prioritise the needs and resistances of the people who receive the harshest attacks by capitalist aggressiveness (Raman, 2010). Therefore, working class solidarity is just one aspect of the practices where the subaltern individuals and groups are opposing forces which exploit and/or suppress them, and are forming or joining forces or groups which might give them more chances of individual and collective autonomy in both the economic and non-economic realms. If one wanted to approach solidarity in more generic terms, then it seems that the main aim can be what Raman (2010) calls a “historical agency in resistance”. That is the effort, whether conscious or unconscious, of certain people or groups to create a new political economic agenda beyond capitalism.

Emerging agencies of individuals and groups through solidarity are an element which is crucial in understanding solidarity as a collective emancipatory project and economic practice that goes beyond moral notions of goodness and kindness. Within the political economic context of a (collapsing) capitalist economy, working classes – but also many other social groups – are deprived of both their means of survival or means of production and any decision-making powers they might have had within a bourgeois democracy. Solidarity might be a route of reclaiming lost and creating new collective agencies which are crucial for material and social reproduction. For this reason, those same collective agencies are expressed as economic organising or economic bottom-up structures. In other words, the effort to find resources, whether those are material like foodstuff, or immaterial, like transaction arrangements, is aiming to enable more choices which the mainstream economy does not permit. Or, the solidarity structures are new spaces for collectively challenging the mainstream economy which devalues both humans and their skills and work (Eduards, 1994; Kabeer, 1999). Contrary to the construction of the “economic man” who is independent from other people and has no social connections nor influences by historical socio-economic contexts, I share the view that people have conscious (not only unconscious) motives that are bigger than them and that they are also capable of undertaking strategies to achieve their aims.

That solidarity practices can be conflictual or antagonistic with the capitalist, particularly neoliberal, policies deployed the last years in Europe and elsewhere is not a characteristic to be chastised, much less to be blamed as the reason of failure (Laclau & Mouffe, 1985: 19-28, 36-46, 75-92, 122-133, 176-177) in case a struggle does not end up with the results one would have expected. Because we need to recognise the violence, direct or systemic, used by late capitalism to achieve more shares out of nature and labour and the

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2 Based on a comment and idea by Professor John Harvey (Texas Christian University).
conflictual aspects which are inevitable within such context of violence.

Although the notion of agency is a perception that belongs to the modern Western European (and capitalist) construction of self and individual autonomy, it seemed that the analysis would be lacking without exploring the collective aspects of agency which emerge from grassroots efforts because those are not easily observable, particularly when a social activity is at the phase of becoming visible or of expanding. On the other hand, there might be other perceptions of collective agency or “shared we” that belong to other cultural and historical contexts, even if we do not know much about them nor even have appropriate words to describe them. The reason is that human agency or “shared we” can constitute a multi-aspect social struggle which does not only react to socio-economic conditions, but it also operates generatively and proactively. In collective terms, this brings solidarity to cover a variety of practices that militantly renegotiate socioeconomic conditions in the past, present and the future, through creative and inventive ways where critical judgement and imaginative recomposition redeem social groups from past patterns of interaction and reframe their abilities within existing constraints (Bandura, 2000; Jepperson & Meyer, 2000; Emirbayer & Mische, 1998).

Nevertheless, writing in Greece about groups who practice solidarity in 2015 is an attempt to discuss the practice and not the terminology as such. Terminology might be useful for opening a discussion and raising issues that need to be addressed but it might not be enough to express the full historical context of the subject matter of this paper. That “solidarity” became a popular, even worn-out, political motto in Greek politics the last years, it means neither that the term has one meaning or connotation only, nor that mainstream political discourses about solidarity are necessarily reflecting what the practice of solidarity is struggling to preserve or to bring into that same word.

The historical retrospective study is beyond the scope of the present paper, and the only remark one could make at this point refers to the approach that collective structures and solidarity practices never ceased to exist in capitalist societies, either as resistance/non-capitalist choices or as survival practices that the capitalist system achieved to embed and exploit for its own purposes (Sotiropoulou, 2012a). The study in this case refers, thus, to the recent grassroots structures which in their majority, emerged during the last years in Greece, particularly since 2009 onwards. Those new or re-invented forms of production and sharing have adopted the principle of solidarity as essential in their ideology and practice. With this I intend to make clear that my analysis does not belong to the usual approach of linear causality between the emergence of grassroots initiatives and the “crisis” in Greece, because the actual and historical context is much more complicated than that which would sustain such a causal argument.

2.2. General Theoretical Background

Traditionally, reciprocity and solidarity are defined as follows: the former is regarded as the practice of rewarding, possibly with equal value, the offer made by a person to another; while solidarity is defined as the offer which is given without any expectation of reward, much less one of value equal to the first offer. While this approach is very common, it perceives both terms in a very static and instantaneous way, as if they have no long-term expression in an economy.

Economics has contributed to this distinction by viewing reciprocity as an instantaneous or well defined contract with separate time-points where everything is pre-arranged to be given and received. Economists think of solidarity as reciprocity extended through time, or, in the best case, as reciprocity arranged in the context of the life cycles of a community. Then, even in very interesting and actually communal-life oriented models, the members of a community are still perceived to be practicing solidarity and reciprocity as isolated agents, which seek profit or utility as their primary reason for engaging, not only in transactions, but mostly in collective arrangements and solidarity schemes. Not even the household level of communal life is taken into account, which makes the analyses stand very far from real life conditions, where most people and households are linked between each other with several bilateral and multi-lateral bonds (Fafchamps, 1992; Platteau. 1997; Collet et al., 2007; Lindenberg, 1988).

At the same time, in the initiatives and groups described in the next section, it seems that both reciprocity and solidarity are mixed in their discourse, with solidarity to prevail and reciprocity to be pictured as a practice always possible to be performed by everyone involved in the schemes, as all people’s
contributions are to be valued. At the end, all people are considered as able to contribute and offer something and the schemes are trying to assist people to think of what they can offer – that they had not thought of as a possibility in the mainstream economy. Moreover, receiving is portrayed also as a form of solidarity and reciprocity, i.e. people who receive should accept the offers, so that they do not become the only ones to give and supersede the equality of the collective effort; and everyone who has given in the past needs to reciprocate in receiving from the one who have received before.

In other words, solidarity and reciprocity do not only have blurred boundaries between them – in several cases, the schemes have an explicit policy to encourage their members to perform reciprocity as solidary practice. Time Banks are very aware of people being reluctant to ask for what they need, so they hold discussions or workshops for people to express their needs, apart from saying what they want to offer. Parallel currency groups which have an accounting unit other than the time hours, support their members to find or create production skills through training workshops that might be very low cost or free of charge and they also teach their members to accept reward. Receiving as solidarity does not only help people to cover their needs without appearing “needy”, but it also assists the scheme itself to have more balanced accounts.

If this real-life approach blurs the distinction between solidarity and reciprocity, what about political economic implications of solidarity structures? What if people, apart from individual aims (like economic security, survival, ensuring their shares in the community’s wealth), have specific and general collective aims to attain too? What if they have broader political economic targets concerning their community and the natural and human environment they live in? What if collective arrangements and solidarity are perhaps the only methods to make those aims achievable?

Annette Weiner’s theory (Weiner, 1992) of why people get involved in transactions can shed light on these questions. People participate in several types of transactions, like exchange, gift-giving, giving-away things, potlatch, etc. not with the primary intention to participate in the transactions but aiming to get out of the transactions what they consider most valuable to them. That is, people have a political economic and not only economic relationship to the perception of value, which means that they understand very well the political implications of disposing of or not disposing of something that is in their possession or management. Weiner links this prioritisation of what can be exchanged, with the construction, re-construction, questioning and re-negotiation, even struggle, around social hierarchies that are defined via possessions (of material or non-material nature) and the ability of humans to decide about disposition or preservation of those possessions.

People want to gain from a transaction at the second phase, i.e. after deciding which item can be transacted. For example, when people say “water is not for sale” they are keeping it out of transaction not to gain money but exactly to gain access to water which is valuable and more important than money. By denying the monetisation and privatisation of water, they sustain its value and discard superficial monetary gains do not correspond to the value of water and the political independence this value entails for people who have access to water resources. Therefore, the argument is that through solidarity activity people are trying to keep out of negotiation not only their survival but also their political target not to succumb to an economic and political structure which intensifies social hierarchies and exploitation.

To achieve this, effort, work and thinking are needed, which entails not only labour in its limited meaning, but also all forms of human action in a wider context. So, production and reproduction of ideas and perceptions are also considered action creating and contributing to the value of some things in comparison to others (Graeber, 2006). In other words, solidarity and its political economic effects are created and reinforced through people’s participation in grassroots structures. The more the collective effort develops and evolves, the more specific and practical solidarity itself becomes and it touches and tackles issues which might be quite away from established theory and political discourse. Because, it seems that solidarity might provide people and groups with “…the freedom to choose what sort of obligations one wishes to enter into, and with whom” (Graeber, 2001, p. 221). Solidarity structures are clear attempts of people to undertake obligations according to their principles, agendas and intentions which usually do not usually coincide with those of the capitalist economy. Thus, people are the ones to work hard in order to produce not only the material means for their lives, but also the ideas and collective meanings needed for them to live in their communities as both individuals and social beings while avoiding injustices and inequalities.
Another source of theory is the work by Platteau (1997; 2006), by Baland and François (2005) and by Fafchamps (1992) concerning communities where informal solidarity arrangements are very common, as those communities have not been integrated into the capitalist system. Solidarity arrangements and collective agreements might not always be really assisting the poorest among a community. Whether solidarity is a really strong political economic principle and whether it is effectively practiced when and for those who need it most, depends on several factors, the essentials of which are income inequality and/or power inequality. These authors warn that an initially solidary collective arrangement without addressing inequalities and other social issues within the community, might lead not only to exploitation, hierarchy and injustice, but also to a quick dissolution of the community’s practices in favour of capitalist structures and at the expense of nature, the commons and the poor and weak members of that same community.

Finally, the notion of “reproduction” that Weiner (1980) proposes is a term to assist us in thinking beyond reciprocity. Reciprocity and its narrow limits do not help when we need to explore new, more egalitarian and nature-friendly structures in our economies. In those instances, solidarity needs to be based on plurality of human experiences, encompassing their multiple identities and the political challenges those identities imply, i.e. we cannot deny that people are assigned identities whether they like it or not, and this might have several effects on their power to resist injustice (Allen, 1999). Reproducing injustices, particularly those based on gender, class or ethnicity (without precluding of course all injustices hidden behind other social discriminations) cannot be part of truthful solidarity (Federici, 2013; Tellis-Nayak, 1983; Talpade Mohanty, 2002). Instead, the term of reproduction is used so that we become aware of issues, problems and possibilities which grassroots schemes raise for us.

2.3. Methodology

In terms of methodology, this study is merely a theoretical exploration of terms and economic approaches. However, the case studies and the specific information referring to everyday practices in this paper are drawn from author’s field research during the last six years with reference to grassroots, non-mainstream structures in Greece. Observation and observation by participation, free discussions with participants, attendance of meetings, assemblies, gatherings and fairs, and semi-structured interviews have been the methods of data gathering. Moreover, leaflets, posters and online sources like scheme websites, social media pages and discussion fora have also been sources of texts and information concerning practices and issues emerging from those same schemes.

All this research is conducted in the open, i.e. all participants know the author’s researcher role and cooperation with a group or scheme never starts without them knowing in advance who the researcher is, what she is searching for, and how they can access the results of the research. In the event that the participants have a collective procedure for accepting a researcher to work with them, this procedure is followed as well. Confidentiality and community protection is also one of the main axes of research, and any special concern of the participants is respected and handled so that no individual or community is harmed by research.

3. The Solidarity Structures

In order to explore the above theoretical issues in relation to solidarity practices within the framework of the contradictions existing in a capitalist patriarchal society, I use the example of schemes which have been established currently in Greece. We can divide, for analytical purposes, the structures into two main categories: schemes whose main focus is on facilitating the performance of transactions over goods and services; and schemes whose main focus is on production and provision/sharing of goods and services. The first category can be distinguished by parallel currencies, exchange networks, free bazaars and networks, and sui generis schemes (Sotiropoulou, 2012d, pp. 81-126). The second category includes collective cultivations (either in urban or rural areas), kitchen collectives, social kitchens and social clinics, social education centres and conservatories.

“Parallel currencies” are the currencies created by the users themselves, in virtual or even in
material form, which are used as units of account by the scheme members to perform their transactions within the schemes. An “exchange network” is a scheme where transactions are taking place without the use of any accounting unit. Given that the research showed that barter may have several forms and there might be several arrangements which can be similar to barter, to name the schemes as barter networks or name their activity as barter only, would not be accurate.

The term free-exchange bazaar (χαριστικό-ανταλλακτικό παζάρι) is the term used for bazaars where people can bring things (clothes, shoes, toys, books, etc.) to exchange them or just give them away and they can take anything they believe might be useful to them. Free-exchange bazaars are distinguished into a) permanent, i.e. those which have a stable place where stuff for free provision and exchange is stored and displayed for any visitor or bazaar user: b) regular, i.e. those which are repeated by the same organisers, not necessarily at the same place and c) occasional bazaars, i.e. bazaars that are organised once by their organisers and they have not been repeated by the same organisers within the last two years. Free networks are online networks, the members of which notify when they want to give something away for free or when they need anything that might be available, but not yet announced online.

The sui generis schemes are those which cannot be categorised into any of the previous categories and one cannot discern any categories or any pattern of transaction which would create a new category yet out of the variety of schemes within this same category.

“Collective cultivation” (either in urban or rural areas) are projects where people cultivate together public or private land and they share the produce among them. Kitchen collectives are the initiatives where people bring food materials and cook together and then they share the meal they cooked. Social kitchens, social clinics, social education centres and social conservatories are the initiatives where the scheme members provide for free meals, medical care, tutoring and artistic education to people (adults and/or children) who cannot afford to cover those basic needs with their own incomes.

Many details about those types of grassroots structures, particularly those which are constructed on sharing principles and on non-remunerated provision of goods and services are included in the next section of this paper. I do not include them in this section in order to avoid unnecessary repetitions. What is important to note here, is that women participate vastly in all those initiatives and their participation covers both the everyday work needed for the schemes to function, but also the decision-making and coordination activities (Sotiropoulou, 2014). Another important point is that people who participate have various backgrounds, economic wealth, political experiences and social skills (Sotiropoulou, 2012d, pp. 169-244), which makes the entire activity very interesting in many aspects.

4. Charity vs Solidarity vs Reciprocity

4.1. Charity vs Solidarity

A major theme concerning all those structures is that they deny the practice of charity, i.e. the provision of things and services to other people on the mere basis that people are inevitably unequal and the wealthy with sensitive hearts should sooth the suffering of the poor. All schemes, even those who provide goods and services to people who are currently in distress, declare that they do not do this for charity but as a practice to deny the neoliberal policies which foster social and economic inequality leading to life danger for thousands of people.

Charity or philanthropy is a term that exists in Greek and is used when the people who offer assistance are not interested in changing the conditions which create the inequalities that, in turn, make charity necessary. Moreover, charity is when people do this to reaffirm their superior status and the inferior destitute status of the receivers. The grassroots groups in Greece explicitly deny this stance, both practically and discursively. Although they recognise the need for immediate, non-reciprocated assistance, they perceive and construct this assistance as a broader class and human resistance to injustice rather than affirmation of the existing inequalities. Many of the people who participate in the schemes are also active in social movements. Many other people might not adopt the leftist-marxist discourse but prefer to donate and work for grassroots groups than for the church or other charities. They also avoid anything that would link
them to the neo-nazi party of Golden Dawn and prefer to support grassroots groups which are explicitly open to all people irrespective of origin.

My intention is not to say that charity is better – quite the opposite. However, social movements who have marxist origins and their theorists need to see solidarity in a broader sense. They need to examine critically this disdain of movements against immediate non-reciprocated assistance as class resistance which is crucial for any anti-capitalist struggle. The disdain for actions of solidarity which entails provision of goods and services stems apparently from:

a) sexism and patriarchal mentalities, because patriarchy disdains all activities that are reproductive and promotes only what is seen as manly-violent enough; and

b) class bias, because the denial of assistance to a homeless person “because this is charity” is based on the fact that the theorist or activist who denies is already member of a higher class than the person who needs assistance.

An example can better illustrate the argument. Two years ago, after one of the anti-racist festivals which take place in Greek cities in early summer, the question was raised against the resistance character of the local social kitchen. The main argument was that the kitchen provides food to people who cannot acquire their daily meal otherwise, and that this is more of a charity, rather than a resistance, practice. The people of the social kitchen had to argue and defend their work and practice as deeply political, as having resistance nature and as being far from any charitable intention.

The entire discussion took place within a context of gendered and class perceptions on what is political and what is not, given that “simple” reproduction work, like cooking and meal sharing are widely considered to be low-politics and women’s work, contrary to big street demonstrations and clashes with the police, which is considered to be high-politics and “manly” behaviour. Reality however defies the stereotypes, at least over the last six years in Greece. Women participate vastly in solidarity structures, but men are also involved in all tasks without avoiding tasks which inside households are considered to be women’s work. Moreover, in street demonstrations women are also numerous and at the front line.

Of course, if one of the main aims of the anti-capitalist movement is to ensure survival of people apart from their political awareness and mobilisation, one would question even this distinction between charity and solidarity. Formally, charity reinforces the unequal social and political relations – and practically, charitable organisations and public services usually treat people in ways which make people in distress in a way that actually can make them want to avoid the charity spaces and offers – sometimes at the expense of their own survival. In many cases, people who receive food or clothes from solidarity structures explicitly refuse religious or state-run charities and they do this on the basis of the treatment they receive there. In winter 2012-2013 many homeless people in Athens chose not to receive emergency housing from public authorities despite the bad weather forecast. However, when social provision services are cutting their expenses while needs are increasing, and the Ministry of Health issues an order to prevent unofficial authorities being able to share food legally to people who are in distress, this means something in terms of whether sharing food is for or against neoliberal policies. Particularly when people from grassroots groups get detained for sharing food (DOCTV 2012), it seems that the act of food sharing itself might be quite anti-capitalist in its very sense.

4.2. Solidarity as Practice for Redefining Economic Deprivation in Political Terms

This is not an apology for charity, but for questioning the political and not the practical aspects of it. If people who do not wish to join a social kitchen or feel afraid of any political connotation joining might have and still want to share food with others, they add to the effort of fighting back an acute capitalisation of the economy, which leads directly to hunger for vast parts of the population. What would not add to the effort in any case, is a food sharing based on racist rules, for example, a food sharing excluding immigrants, people who have dark skin, or people who are not Greeks or who are in any way “different” from what the givers want them to be.

However, if the main aim of all those schemes and groups is to maintain equal relationships and avoid the establishment, the reproduction of hierarchies and detrimental power relations, charity is excluded
from the agenda. Solidarity is what we are left with, if we perceive the actual neoliberal policies as an attack to specific parts of the society, particularly those who produce everyday what is needed for the society to be reproduced and usually are called producers, labourers or workers. Women workers, whether they work paid or unpaid, male workers, small farmers, and self-employed people, all are pushed into precariousness where, under the severe privatisation of public goods and services, they are not likely to escape. To this, one should add immigrants and people who have immigrant origin in Greece, but the official policies prevent them from acquiring legal and any practical rights concerning their living and work conditions. Immigrants and immigrant-originating Greek people are one of the most vulnerable groups, given that they have to face permanent exclusion and discrimination, and unprecedented criminalisation and detention just for being without Greek citizenship.

The challenge is therefore, to cover material needs and support communal bonds while entire neighbourhoods, cities and regions are devastated by neoliberal policies and while the people involved have different backgrounds, sometimes deteriorating backgrounds. Thus, solidarity offers the chance to discuss economic deprivation in political terms instead of perceiving economic hardship as quite distinct from political discourse. Most important: solidarity permits discussion of solutions to economic deprivation in political terms, picturing economic activity within the grassroots schemes as having political importance in terms of social struggle.

The term “class” here is not used because in this case it seems too narrow. It does not mean that we have no class features in all this activity. To the contrary, there are signs of class struggle in all those schemes, although they do not perceive their activity as such. However, participation in those initiatives is not for the poor only, and many middle class or even wealthy people participate and contribute with materials, knowledge, land and personal work, just like anybody else participates according to their abilities. Then, if we have at the same scheme people of all economic and social classes, then we have not the typical class struggle case one would read in books.

Actually, what is happening is a very interesting effort to redefine solidarity in terms of not only class, but also of political economic aims which might be common for greater strata of society. In other words, the schemes we are discussing can be direct efforts for redistribution of wealth from those who have excess to those who have not. This redistribution is not taking place within a charity context, then the idea is that at some point, those needs and inequalities will not exist. But for the moment, it is not possible to discuss anti-capitalist or anti-exploitation movements without first ensuring that people can really perform this struggle in terms of materials and mere survival.

Moreover, as Platteau (2006) showed in his study, really working solidarity and community spirit cannot develop if big income discrepancies exist among the members of a community. The concession by some land owners to collective cultivation groups to cultivate their lands is a direct redistribution, particularly because the cultivators have not only access to their produce but they also decide collectively how to share it. Then, classes exist and people are aware of their existence, otherwise, performing redistribution in such a way would not be possible.

One would assume that the wealthy people who participate, are aware that social dissolution might not be in their long-term interests, given that privatisation of commons and public goods, and given the aggressiveness of the corporate sector which will attack the wealthy middle class just after the poor are exhausted. Then, instead of doing what other wealthy people do, i.e. to adopt an individualist stance and wait until the social unequal redistribution is over, they join the schemes to work for redistribution the other way round, i.e. from the wealthy to the poor.

This might not be enough, particularly because access to commons and public goods is not under the middle class’s control but under the State’s and high middle class’s, i.e. banking and corporate control. Platteau states (2007), however, that income gap reduction also helps in the commons being protected from privatisation and in the better management of public goods. Then, solidarity seems to be an effective choice if the decision of the community is to keep the commons and their communal character intact, while ensuring that the attacks to the working class will not be received passively.
4.3. Solidarity in Practice

Nevertheless, solidarity is not a simple term, much less when it comes to its practical implementation. The first question raised concerns how we are sure that solidarity is practiced in a truly egalitarian way, when there exists already deprivation and economic and social inequality among the people involved in the solidary practice. This is a crucial issue, given that all the schemes described above are established on this principle. But how easy is it to practice solidarity? And how easy is it for the people in distress to negotiate their own solidarity practice, i.e. to define their needs, ask for the needs to be met and define their own personal role in the community as full members and not permanent full receivers? Examining the schemes type-by-type we might discern possible points needing exploration and addressing.

Formally, one would exclude parallel currencies and exchange networks where the norm of remuneration exists one way or another, as those schemes seem to exclude solidarity in practice. However, not only do all those schemes concern solidarity and how it can be introduced in reciprocal exchanges, but issues of pricing and solidarity in valuing are also considered, perhaps in a very intense way. The problem, of course, that exists particularly for parallel currencies is that given their nominal parity (1:1) with the euro currency, the mainstream valuations are transferred within a parallel currency scheme, thus reproducing injustices which already exist in the capitalist economy (Sotiropoulou, 2015). In terms of solidarity, the replication of mainstream valuations puts the entire effort under question and perhaps this is one of the most hard-to-solve issues when accounting units are used in grassroots initiatives. In addition, the discussion on raising just the prices of some producers is quite limited in scope, as the quest for a fair and just price cannot be resolved by discussing prices only. Valuations may be abstract and pricing is just one part of valuations’ expression and realisation within the economy.

Actually, the idea behind parallel currencies is that being in solidarity, scheme members can trust each other so that they can perform transactions without having a hard currency, backed by the sovereign guarantee of a state or transnational organisation. Then, people who have run out of official currency are able to buy things they need or sell their goods and services irrespective of whether the other members have official currency in their purse or not. Then, solidarity is placed in the trust of members to each other.

However, other economic relationships, like the educational background, or the property rights each scheme member has, are not challenged. Moreover, given that an unemployed person is already short of cash and of several goods and services and the variety and prices concerning those same goods and services is limited within the scheme, that person might incur debt to the scheme which will not be repaid unless he/she finds a job. If that person has not managed to sell services or goods for some time, he/she might reach the limit of debit within the system, then he/she might not be able to perform transactions or she/he is forced to receive very low payments for goods and services he/she provides. In other words, the wealthiest people in the mainstream economy are also able in a parallel currency scheme to wait for a good deal and negotiate better prices for themselves, while the poorest people in the mainstream economy, have still much less negotiation power within the parallel currency system, no matter how alternative the currency they use might be (Sotiropoulou, 2012b; 2012c).

In that respect, things might be slightly better in an exchange network, where there is no stable and common accounting unit for the goods and services exchanged. The author has witnessed a case in such a network bazaar, where a woman needed some kitchenware and she was in real in hardship, then people were telling her that there was no need to reciprocate. She kept thanking the people telling them that she would go home to bring something in return. The author has still not decided what is better in terms of solidarity practice: should people have insisted not to receive something in return? Or would it be better for everyone, particularly because that woman wanted to, to agree with her to bring something to the network after six months, or whenever she was able to?

In that same network, the author met a lady who was selling handmade jewellery and asked her what she would expect in return, she replied “nothing, I do not need anything”. That was alright for the researcher, but what about the network and the network members? If you are in a collective effort where people try to acquire goods and services they need and you do not need anything, how are other people able to have some of the things you offer? Was that “I do not need anything” just ignorance or an attempt to
acquire a better deal than the one she would achieve in a case where she would need something?

Talking about solidarity then, and permitting people to access goods and services in the way they want, it seems that free bazaars and networks are quite close to find some balance concerning this question. In free bazaars and networks, it is not required to reciprocate immediately, much less to reciprocate at the level of value or volume of the things you receive. However, people who are always receiving things without ever giving anything back, are considered to be abusing the scheme. Then, non-reciprocation and non-measurement might also create imbalances in favour of “free-riders”, and scheme users who take advantage of the loose rules, might acquire stuff at the expense of the members who abide with the rules and give without instant and obligatory reward. In certain cases, even in bazaars and free networks, people under specific conditions (for example, people who have recently relocated, newcomers to the city, or people who are known to be in distress), might really have access to as many things as they need. Most active members of those schemes are performing those gratuitous transactions within a long-term context, i.e. they might take things today and bring other things into the scheme at the next bazaar of their neighbourhood or after they check out their closet.

Concerning the kitchen collectives and the collective cultivations, they have similar structure, although in terms of effort and long-term cooperation the latter have much more extended requirements. Collective work means that people need not only work together or manage to contribute as possible the materials needed for the project; but also that people might have different skills and abilities, which might entail an arrangement of the tasks to be done according to the needs and wants of each person involved.

Particularly regarding the collective cultivation, shifts in the everyday tasks, like watering, are arranged regularly so that work to be done is shared in a more efficient way among the cultivators. Moreover, this arrangement might be quite spontaneous, i.e. the ones who can go on one particular day, undertake the work that was about to be done by other members. Solidarity takes also the meaning of abiding with important rules, like the total avoidance of agricultural chemicals. This is very important in collective cultivations where each member has its own plot apart from the common plot where people cultivate what the collective has decided. Collective cultivations, therefore, can have under certain conditions, particular parts for each member household, apart from the common lot cultivated by all members. Of course, this has nothing to do with property rights. In several cases, the cultivation takes place in deserted open spaces, or urban lands, where the cultivators have no ownership or any intention to acquire ownership at all. In other cases, even in big urban centres like Athens, private land plots are given to collective cultivation projects without of course any conveyancing of property rights taking place or being intended. What is important in all those cases, is that use of the land is made accessible to everyone who wants to participate in the project. The produce therefore is shared among the collective.

In schemes like social kitchens things are even more complicated. Needs are imminent and they have to be covered every day, not just when there is an excess in goods, when the community members have spare time or when the needs of two people coincide so that they transact with each other. Materials need to be acquired in big quantities, stored and managed so that everyday hundreds of households can be provided with meals. Moreover, space to cook and space for people to eat their food is needed, given that many of them might not have access to housing, or to electricity and water or even to simple kitchenware at the places they live.

On the other hand, the work needed to be done in the case of schemes which provide directly goods and services to people is huge, in terms of processing materials, sharing, management and provision of the final service. Even if a scheme is run by an assembly, this might of course give the chance for everyone involved to raise an issue, but in the end, running assemblies is also a type of work, and requires time, effort and negotiation skills to be effective. Then, it is probable and rather normal that contradictions or even conflicts arise all the time, whether they are hidden or not, whether they are resolved immediately or postponed for the next assembly.

Additionally, in several cases the participation in a solidary scheme does not imply that everyone, both the givers and the receivers, have resolved all internal quests concerning social stereotypes, perceptions, privileges and hierarchies. This exists in all schemes and all movements, and no-one would expect perfection on both individual and collective levels, particularly when all this activity takes place under
emergency conditions. However, especially in the schemes whose scope is the provision of services and goods, this might have detrimental effects to the scheme, to the people who are involved, to the aims of the scheme and ultimately to the entire community.

First, the people who are receiving food or other services, are already very vulnerable in all terms, particularly in social terms. Any inconsiderate behaviour addressed to them is something they cannot address as they would be able to under other circumstances. The people who receive assistance cannot resist bad behaviour by their assistants or other receivers because they need the food and other services given by the groups, and they need to be there and deal with all the individuals involved in the provision setting. Second, it seems reasonable that schemes established to fight back hardship, bring people together from completely different backgrounds, and some of them might not even be confident using the Greek language or a language that is also spoken by the other people around. This “difference” can create misunderstanding even among the best-intentioned people – when it is acknowledged, problems are resolved in an easier way. Much less is there time to always explore collectively the misunderstandings that might come up just from the very fact that people have not yet established a common communication mode (Tannen, 1990).

Here, the term “difference” is used because “privilege” is quite a limited notion and sometimes, the giver might not be in a much better economic condition or social position than the receiver. In other words, many people who are unemployed and lack basic things to make a living opt to participate and work in such a scheme, which means that they offer to the scheme not because they are in a better position than the people who receive goods or services, but exactly because they have personal experience about how it feels to be in hardship.

4.4. Solidarity workers

Finally, another important issue refers to the solidarity the scheme and the receivers, but mostly the entire community, does or does not show to the givers themselves, i.e. to the solidarity workers. They might be coordinators, cooks, people who bring their excess food or other useful stuff, health workers or administrative assistants. Given the stereotype of the middle class wealthy charity giver, most people do not recognise the work done within the schemes as real work, i.e. effort which needs bodily strength, education and mind-focus, special skills and specific materials to be performed. To this, one should add the emotional effort and affective labour, without which no such collective provision would be possible, let alone that without such emotional work even minor issues would erupt into major conflicts (Weeks, 2007). In general, this is social work on a massive scale and action which requires time and coordination of the efforts and schedules of many people to be done in an effective way.

The case concerning the disdain towards social kitchens as non-resistance practices is mentioned previously in this paper. At this point, one should underline the pressure – both communal and political – imposed on the people who offer their work in the schemes. Particularly political pressure: as solidarity has entered the political agenda during the last years, then it becomes difficult to refuse to work in a scheme, as this would portray one as non-solidary. Pressure is “objective” in the sense that the needs of people are real and no-one wants to turn away from them; and it is “subjective”, because the main motto concerning the limits and the abilities of each one to offer is very liberal “well, everyone should offer what she/he can and set his/her own limits”.

However, transferring the responsibility of setting limits to individuals while the individual is involved in a collective effort does not seem very solidary and sets a paradigm of collective non-responsibility in relation to any abuses that might take place within a grassroots initiative. Moreover, even if we can resolve the issues concerning the relationships between givers and receivers, we cannot solve the problem of sustainability within collective grassroots structures by making overwork and excessive human effort an issue of individual responsibility. In many cases, the “psychological need” of the giver is mentioned as an argument for the overwork she/he does, let alone that many consider the “psychological need” enough an argument for all those people to remain without any recognition, reward and respect for their work.

Recalling individual reciprocity “I give you the chance to cover your psychological need – you give
me your effort, skills and work” is a non-solidary (probably hideous) attitude that stems from the old-type bourgeois notion of volunteering, which was covered well enough under the middle-class incomes which were thought to be “common” some years ago. Not only this: it is the argument often used by employers while trying to “hire” employees who are desperate to find employment, even without adequate or with no salary at all. What has solidarity to do with the idea that a worker can be treated like this, even if her work is offered within a non- or anti-capitalist setting like a grassroots scheme?

Nevertheless, it seems that individual reciprocity would not be enough of a solution even for this case, because the solidarity workers are primarily covering communal needs and not just the individual needs of some community members. Moreover, if we take into account the gendered nature of solidarity structures, one can anticipate where this lack of consideration concerning the solidarity workers would lead us. There is the risk that no matter how solidary an initiative is, if this issue is not tackled it could become gendered, or “feminised” non-remunerated, obligatory work for the sake of a community which is happy enough to transfer the costs of neoliberal policies to those who work for the entire community to survive the policies (Sotiropoulou, 2013).

With respect to “feminized”, the term is not used here within the context of thinking that all this reproduction work is naturally done by women. Quite the opposite: in a patriarchal society all hierarchies are based on the archetypal axis masculine-feminine, where the masculine is considered superior and able enough to decide that the work done by the feminine needs not to be recognised as work or remunerated in any way. Then, many men are also in danger of having their work “forgotten” and made “invisible” within the schemes. I can share here the finding that it is men, rather than women, in solidary initiatives that find it harder to recognise their own contribution as labour and the entire activity as resistance and hard work than women – which creates even more questions about how people are socially educated not to recognise their very own effort as work and social offering. At the end, gendering the schemes reveals injustices that the masculinist perception of solidarity in the mainstream political discourse hides behind the general enthusiasm that once we start being solidary we have no injustice nor inequality by definition.

5. Reciprocity, Solidarity and Reproduction

It seems that solidarity and reciprocity are intertwined as far as it concerns grassroots structures with horizontal decision-making. Moreover, it seems that reciprocity is a notion too narrow for collective arrangements, particularly those extending the features of the arrangement in the long term. Solidarity gives many good directions which can prove not only community-oriented but also very efficient in terms of reducing income inequalities and power imbalances. However, solidarity, given its free and flexible character, can also create passages for abusers and power-seeking people who will reverse the entire structure in favour of the few powerful and at the expense of the many which do not seek power and finally, at the expense of the entire community.

Reciprocity could be a rule of thumb but it cannot resolve individual issues only. In the previous section, it has been shown that it is not possible to resolve individually a problem which emerges within a collective arrangement. Actually, forwarding collective problems to individual solutions tends to enhance inequalities and exploitation instead of reducing them. Particularly when the needs of community are pressing, and the abusers find the situation open to their own ambitions, then questions on how to continue having both the collective arrangements and the political economic principles working effectively arise in the most imminent manner.

At this point, the idea of reproduction might be of great assistance to this discussion, the theory for which has been presented in section two of this paper. If the community has decided to make sure that its members not only survive but they can reproduce themselves as free and social beings, then this might give important directions on achieving the solidarity so much quested for. In other words, if people enter a collective economic arrangement and a transaction with the intention of keeping outside of the transaction their most valuable belongings, then, we know that to reproduce people within a community, this community needs to consider those belongings as really valuable to all.

Reproduction of a hierarchy then does not take place like a natural disaster, and the people who
attempt to take advantage of a situation so that a hierarchy is (re)produced, should know that people will not
do the reproduction work needed for this hierarchy to be established. Actually, even if the people accept, for
reasons of emergency to continue offering their effort and contributions, an initiative will start to be non-
sustainable and highly unstable in terms of community provision. In terms of a scheme, people need to be
aware – all the time – that without their own work, effort and creativity, no injustice will be possible to be
established in a scheme where horizontal decision-making is established from the beginning.

Second, reproduction means that all those "low-profile" political economic tasks, like food
production, child care, medical care, are really what every community needs most. We have seen that most
of this work is provided without remuneration, i.e. without reciprocity, and the people who donate materials
and/or their work are doing this within their effort to be solidary to other people. However, what about
reproduction of this work and of course, of the people who provide it? How can those people recreate
themselves in both biological and social terms to be able to offer their solidarity labour the very next day or
week? And if we value so much cooking, urban gardening, and medical care, how are we going to reproduce
this work without exhausting the carers? In brief, isn't solidarity to make sure that all people doing that same
work, no matter whether they do this in a household or in a collective kitchen, are receiving what they need
to reproduce themselves as biological and social beings?

As we already know, reproduction work can be imbalanced in terms of rewards, particularly when it
refers to children, elderly, or sick people. This is another reason why reciprocity cannot work in terms of
individual relations. But, what about reciprocating socially the work done for example, in a social kitchen?

One would bring of course, the argument of reproduction taking place within a capitalist system,
finally ending up providing that same system with services of population survival and working force
improvement. This is exactly the question, because to reproduce capitalism or any other exploitative and
unjust system, we would use the same means, processes and effort as we would do for reproducing our
communities without capitalism. However, are those processes really the same? It seems that reproduction
of injustices and inequalities is a key criterion not to be put at the margin of the discussion.

6. Instead of Conclusions: Now What?

While I am revising this paper the grassroots initiatives in Greece are facing their biggest challenge so far.
While the central government officially delays or is unable to cover the limited social provisions that are
supposed to be offered, dozens of thousands of refugees arrive to Greece trying to reach central Europe.
People in Greece are using the already existing grassroots solidarity structures or form new ones to organise
gathering and dissemination of much needed food, hygiene and clothing items and provision of medical
support or shelter, because central government and big international organisations curiously do not provide
the means nor the organisation and administration know-how to assist the refugees as international law
requires (Daley 2015, Mackey 2015).

However, the challenge is huge, not only because the grassroots schemes have to support so
many people either local or refugees; but also because neoliberal policies ravage social services from
funding, materials and personnel and reduce incomes of the citizens. Solidarity does not mean that we
create a society where it is normal to have hundreds of thousands of destitute people and small volunteering
groups trying to alleviate their hunger or winter cold. Quite the opposite: Solidarity means that we solve the
problems so that there is no need for anyone to rely on donations and private assistance for basic needs like
shelter, food and healthcare and if there is such need, this should be exceptional and rare. In that sense, all
solidarity expressed to the people who are under attack by neoliberal policies, whether they live in Greece or
pass through the country to save their lives, has a lot of resistance potential.

Nevertheless, to make sure our grassroots structures are really solidary, we need to think very
much about what we are really reproducing. As already mentioned, transferring survival means to people
while the mainstream economy is trying to starve them, or just abandon them, is the first step of resisting that
mainstream economy. Using, for example, people's (most of whom are women) unpaid work to provide
cooked food to people, because this is something we consider normal work in a patriarchal society, is
actually reproduction of patriarchy and of unpaid invisible work, under the justification of fighting poverty. A
scheme which is solidary and not just charitable, would reflect on who is working, for whom, under which conditions, and what hierarchies are established or enhanced while the scheme is functioning.

Moreover, the people who today receive food or medical assistance, are those same people who the mainstream economy deprived of necessities in order to make their own solidarity impossible to the rest of community members. It is right and absolutely necessary to provide immediately the necessity which is missing, i.e. to perform immediate wealth redistribution at small scale. But, those same people might need a more permanently equitable distribution of assets and materials so that they become more able to reproduce themselves and interact with others, not only as receivers but also as producers and contributors. Briefly speaking, to be solidary means that we also recognise the grassroots structures as the first step to devising more demands and solutions which would solve income and asset disparities in a more permanent manner.

In other words, if the aim is to reproduce free social humans within their communities, the expansion of solidarity structures might not only take the direction of covering small everyday needs, but also of covering long-term needs which might require public spaces, common facilities, more materials and more involvement of the communities affected. Silencing the people currently in hardship does not help, let alone that this is a completely colonial attitude, whether we talk about internal or external colonialism. Because, those same people are meant to be members of the communities we want to construct in the future where such distress will be unthinkable. Silencing the carers is also unhelpful, plus it creates a retrograde movement towards stereotypes that we fought too hard to highlight and eliminate.

Then perhaps, the notion of reproduction and of people being always aware of what they are reproducing and within which collective settings this reproduction takes place, might be a useful rule of thumb. Combined with that, it seems that solidarity might be a good starting point for opening the discussion of non-capitalist economic structures and how they might practically function here and now.

References


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Mediterranean Death Trip – The *Mare Internum* as the Graveyard of International Obligations

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**Abstract**

This article examines the situation of the boat people of Europe. Given that this issue affects some politically sensitive and legally delicate notions, including for example the sovereignty and jurisdiction of States, provisions and scopes of norms, nature and control of borders, rights and protection of migrants, and imputability and responsibility of acts, it is important to exercise care and rigor. In light of this, the article questions them all via the international obligations the States have to respect. The legal regimes that are to be applied to the boat people of Europe are scrutinized, examining the uncertain spaces at the margins of law and rights that the boat people of Europe have entered.

**Keywords** immigration; mediterranean; right to life; right to asylum; international human rights law; EU law.

**English Summary**

Let us be clear. The European Union (EU) and its Member States are not currently facing a migrant or refugee crisis, *per se*: more fundamentally, the dynamics of the European integration process is in great trouble and the imperative of the international protection obligations is in jeopardy. From shipwreck to shipwreck, the Mediterranean appears to have become the cemetery of the migrants’ corpses and hopes, as well as the necropolis of the European Union values and principles. Europe’s 80,000 maritime borders explain, of course, the importance of the migration flows of third country nationals (TCN) coming from the Middle East and Africa. They risk their lives on the Mediterranean and drift toward Cypriot, Maltese, Italian and, above all, Greek shores. Their arrivals decreased significantly between 2008 and 2012, as the control of the European western Mediterranean borders were greatly intensified. Thereafter, the political upheavals in North Africa (the so-called “Arab Spring”) and the profound commotions in the Middle East (the expansion of Daech; the Libyan, Iraqi and Syrian crises) have led to an upsurge in the number of migrants who embark upon the Mediterranean death trip to flee violence and persecution. Most of them face harsh difficulties even to escape their national State, let alone reach another which will duly consider their application for asylum. At the same time, however, the legal routes to reach Europe (labour migration, family reunification, international protection) have narrowed as a consequence of the adoption of European norms on migration and asylum and their application by the Member States. This has left the TCNs with little choice: they have to follow dangerous and uncertain migration pathways, accepting irregular modes to enter the European territory, employing the “services” of smugglers, and thereby risking falling in the hands of human traffickers.

In order to “securitise” the European space, the EU and its Member States have established mechanisms that hinder migrants’ arrivals. The control of European external borders have been distanced and extra-territorialised, operated far away from the geographical borders of the EU Member States territories. Procedures have been created to regulate visa matters and migration flow management has been outsourced. The EU and its Member States adopted these security measures in the aftermath of the shipwreck that occurred in October 2013, allegedly to prevent more migrants’ deaths in the Mediterranean. The solution highlighted the perceived need to reinforce the fight against irregular migration by increasing the skills and the means of Frontex, the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union. Similar orientations were reaffirmed in the European Agenda on Migration, which was published some weeks after the shipwreck that happened in

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1 This paper is also published in the *Revue des Droits de l’Homme*, whose editor kindly agreed to allow the author to place it here as well. Circumstances prevented us from translating the original into English but a summary is offered.
April 2015 and which remains the most deadly in Mediterranean history. But this was not all. The EU and its Member States, motivated by their obsessive and irrational concern for tackling irregular migration and dismantling the business model of the migrants’ smugglers that supposedly feed migration flows, decided on military intervention (EUNAVFOR-MED, recalled SOPHIA on October the 7th, 2015). The self-defeating nature of this policy should be obvious as, rather than inhibiting the arrival of migrants, it creates even higher levels of the very calamities the boat people hope to escape. Against the backdrop of the true complexity of this problem, bombing campaigns of the boats the migrants use to venture through the Mediterranean appear desperately simplistic.

This article examines the situation of the boat people of Europe from a precise and cautious legal perspective. Given that this issue affects some politically sensitive and legally delicate notions, including for example: the sovereignty and jurisdiction of States, provisions and scopes of norms, nature and control of borders, rights and protection of migrants, and imputability and responsibility of acts, it is important to exercise care and rigor. In light of this, the article questions them all via the international obligations the States have to respect. The legal regimes that are to be applied to the boat people of Europe are scrutinized, examining the uncertain spaces at the margins of law and rights that the boat people of Europe have entered. What are the limits to State-exercise of authority, even in the name of their sovereignty? Given their obligation to secure and protect leads to an understanding of why their extraterritorial application is necessary in order to ensure the effectivity of the rights they affirm, (as explained in the first part of the article). Nevertheless, the manner in which States fulfill these obligations to secure and protect has permitted them to ignore other aspects of responsibility and solidarity. The consequence has been the awful fate of all the vulnerable migrants who die in the obscure waters of the Mediterranean. Indeed, the Mare Internum appears to have become the graveyard not only of desperate populations and real humans, but also of international obligations and fundamental values. Examining the issue of the boat people of Europe leads therefore to scrutinise a Mediterranean Death Trip.

Résumé

La question des boat people de l'Europe touche à des notions politiquement sensibles et juridiquement délicates qui s’opposent et s’entremêlent : souveraineté et juridiction des États, contenu et portée des normes, nature et contrôle des frontières, droits et protection des migrants, imputabilité et responsabilité des actes. Une manière d’aborder les relations complexes et confuses qui se jouent entre ses différentes notions, dans le cas des migrants traversant la Méditerranée, est de les approcher par le biais des obligations juridiques qui s’imposent alors aux États. L’analyse de la situation des boat people de l’Europe conduit ainsi à examiner les régimes juridiques applicables à des espaces incertains aux contours indistincts qui se situent aux confins du droit et des droits.

Mots clefs immigration ; méditerranée ; droit à la vie ; droit d'asile ; obligations internationales ; union européenne.

“Notre mer qui n’es pas aux cieux et qui de ton sel embrasses les limites de ton île et du monde, que ton sel soit béné, que ton fond soit béné, accueille les embarcations bondées sans route sur tes vagues, les pêcheurs sortis de la nuit, et leurs filets parmi les créatures, qui retournent au matin avec leur pêche de naufragés sauvés.

Notre mer qui n’es pas aux cieux, à l’aube tu es couleur de blé au crépuscule du raisin des vendanges, nous t’avons semée de noyés plus que n’importe quel âge des tempêtes.

Notre mer qui n’es pas aux cieux, tu es plus juste que la terre ferme même à soulever des murs de vagues que tu abatis en tapis. Garde les vies, les visites tombées comme des feuilles sur une allée, sois-leur un automne, une caresse, des bras, un baiser sur le front, de père et mère avant de partir.” Poème récité par Erri de Luca à la télévision italienne 19 avril 2015
Introduction

De naufrages en naufrages, la mer Méditerranée en est venue à apparaître comme l’immense et indistinct cimetière des corps et des espoirs des migrants, comme la nécropole des valeurs de l’Union européenne et de ses États membres. À l’automne 2013, l’embarcation qui avait sombré au large de Lampedusa avait marqué les esprits à raison des quelque 360 migrants qui étaient alors disparus en mer. Au printemps 2015, le naufrage survenu le 19 avril a défrayé la chronique, parce que le plus tragique de l’histoire contemporaine de la Grande Bleue, avec plus de 800 migrants décédés. Le bilan est sinistre qui doit interpeller : 22 000 migrants tentant d’atteindre l’Europe sont morts en Méditerranée entre 1990 et 2010 ; 2 000 environ pour chacune des années 2013 et 2014 ; 3 719 migrants en 2014 ; 3 406 durant les neuf premiers mois de l’année 2015. La route migratoire qui traverse la Grande Bleue est en fait la plus dangereuse du monde : depuis 1990, ce sont quelque 6 000 migrants qui sont morts en cherchant à passer la frontière entre le Mexique et les USA, 1 790 en traversant le Sahara, 1 500 en tentant de rejoindre l’Australie, tandis que plus de 30 000 décès et disparitions de migrants en Méditerranée ont été répertoriés. Les images abondent de ces ressortissants de pays tiers qui tentent de parvenir aux côtes de l’eldorado européen, entassés dans des embarcations de fortune, livrés aux incertitudes de la navigation en Méditerranée, abandonnés dans des conditions d’hygiène déplorables. Pourtant, ces images, aussi déchirantes soient elles, ne permettent pas de rendre compte de la gravité d’une crise que les chercheurs annoncent et dénoncent depuis fort longtemps.

Que l’Europe compte plus de 80 000 kilomètres de frontières maritimes explique sans mal qu’elle soit confrontée à d’importants flux de migrants qui s’adèrent sur les eaux méditerranéennes en provenance d’Afrique, à destination principalement de Chypre, de Malte, de l’Espagne, de l’Italie, et de la Grèce. Si les arrivées par la mer ont significativement baissé entre 2008 et 2012 du fait de l’intensification des contrôles aux frontières de l’Europe, les bouleversements politiques en Afrique du Nord (le printemps arabe) et au Moyen Orient (les attaques terroristes perpétrées par l’organisation armée Daesch induisant de graves déstabilisations politiques, de même que les crises libyenne, irakienne et surtout syrienne) ont conduit à une nouvelle et importante augmentation du nombre de ressortissants de pays tiers qui entreprennent ce périple. Ainsi, selon les données publiées par le UNHCR, quelque 207 000 ressortissants de pays tiers sont parvenus en Europe par la Méditerranée en 2014, alors que leur nombre s’élèverait à plus 760 000 durant les seuls neuf premiers mois de l’année 2015, 140 000 étant arrivés sur les côtes italiennes et 619 000 sur les côtes grecques. De telles données doivent être mises en perspective, relativisant l’importance des entrées et balayant de fait l’argumentaire de l’invasion. D’abord, il convient de souligner que les données publiées varient sensiblement d’une instance à l’autre, voire d’un document à l’autre publié par une même instance : les migrants entrés dans l’Union européenne entre janvier et septembre 2015 sont estimés à 588 247 par le UNHCR, à 590 425 par l’OIM, à 710 000 par Frontex. Se questionnant sur de tels écarts, Nando Sigona a mis en évidence sur son blog que l’agence européenne prenait en compte non pas le nombre de migrants entrés sur le territoire européen, mais le nombre de franchissements des frontières extérieures de l’Union, de telle sorte qu’un migrant parvenu en Grèce...
passant par la Hongrie est comptabilisé deux fois.12 Ensuite, il convient de rappeler d’une part que quelque 100 000 migrants sont estimés avoir fait la traversée de la Méditerranée chaque année entre 2000 et 2010, d’autre part que plus de 440 000 ressortissants de pays tiers se retrouvent chaque année en situation irrégulière sur le territoire d’un des États membres de l’Union européenne du fait du dépassement du terme établi dans leur visa.

Certes, l’une des caractéristiques essentielles de ces flux migratoires maritimes tient à leur mixité : se risquent à la dangereuse traversée de la Méditerranée des ressortissants de pays tiers qui fuient le chômage, la faim, l’exploitation, la traite, les persécutions. Toutefois, si se mêlent bien dans les mêmes flux des migrations de travail et des migrations de protection, les origines nationales des ressortissants de pays tiers parvenus en Europe par la Méditerranée montrent que la plupart d’entre eux fuient les guerres et les conflits, les répressions et les persécutions.13 Dès lors que les migrants viennent de Syrie, d’Irak, d’Erythrée, du Soudan, entre autres, il convient de considérer qu’ils ont été contraints de fuir leur pays et qu’ils peuvent légitimement prétendre au bénéfice de la protection internationale : ils sont à regarder comme des réfugiés, au sens de l’article 1 A (1) de la Convention de Genève de 1951, qui cherchent asile en vertu d’un droit que Hugo Grotius affirmait déjà comme essentiel en 1625 dans son De iure bellii ac pacis.14 Or, pour beaucoup d’entre eux, il est difficile non seulement de sortir de leur pays d’origine, mais encore de parvenir à un pays susceptible de leur accorder une protection. Parce que les voies légales d’immigration vers l’Europe (immigration économique, regroupement familial, protection internationale) se sont resserrées au fil de l’adoption des normes européennes d’immigration et d’asile et de leur application par les États nationaux, les ressortissants de pays tiers concernés se trouvent forcés d’emprunter des parcours migratoires toujours plus périlleux et incertains.15 Confrontés aux innombrables difficultés qui leur sont opposées, les migrants n’ont d’autre choix que de tenter une immigration illégale en recourant aux services de passeurs et en risquant de tomber aux mains de trafiquants.16


13 Philippe FARGUES & Sara BONFANTI, « When the Best Option is a Leaky Boat : Why Migrants Risk their Lives Crossing the Mediterranean and What Europe is Doing about it », Migration Policy Centre - Policy Briefs, 2014/05, 16 p.
14 Hugo GROTIUS, Du droit de la guerre et de la paix, 1625, liv. II, chap. XII, XVI.
23 Est concerné ici le visa de long séjour (appelé visa de type D) qui relève de la compétence des États.
nationaux d’États qui se voient imposer l’obligation de détention d’un tel sésame pour se rendre dans un des États membres de l’Union, les exigences posées en termes de documents apportant la preuve de l’identité du demandeur, de l’objet du voyage envisagé, des ressources disponibles pour subvenir aux besoins afférents, rendent réellement ardue l’obtention des visas qui pourtant seuls peuvent ouvrir les voies légales d’accès à l’Europe. En outre, la distanciation se traduit par la sous-traitance aux États voisins des contrôles des frontières extérieures de l’Union, au gré de la conclusion d’accords comportant des clauses migratoires, d’accords de réadmission, de partenariats pour la mobilité. Les États européens se déchargent ainsi à peu de frais sur leurs voisins et partenaires de leurs missions nationales de souveraineté. De surcroît, une telle politique, qu’il est coutume de nommer l’« approche globale des migrations », emporte une modification des normes et des pratiques des administrations de ces derniers : celles-ci en viennent à instituer la violation des droits fondamentaux des migrants, notamment de leur droit à quitter le territoire de tout pays, à incarner les « mains sales de l’Europe ».

Cette expression est d’ailleurs celle employée par Amnesty International pour désigner Frontex, l’Agence européenne pour la gestion de la coopération opérationnelle aux frontières extérieures de l’Union européenne. Non seulement cette dernière coordonne des opérations qui sont menées en dehors du territoire des États membres participant ainsi du mécanisme de distanciation, mais encore elle recourt aux nouvelles technologies qui contribuent à la digitalisation ou virtualisation des migrants. Ces derniers voient leurs données personnelles collectées, consultées, exploitées, tout au long de leur parcours, depuis leur pays d’origine jusqu’à leur pays d’arrivée sur le territoire d’un État membre de l’espace Schengen ou de l’Espace de Liberté, de Sécurité et de Justice, en passant par leurs pays de transit. Les informations sont ainsi recueillies pour être mises à disposition de toutes les autorités nationales et européennes de police qui peuvent les consulter et les utiliser à tout moment : dans les consulats quand un ressortissant de pays tiers dépose une demande de visa ; dans les zones d’intervention des opérations coordonnées par Frontex à la faveur du déploiement des Rapid Borders Intervention Teams (RABIT) et des European Border Guard Teams (EBGT), parfois en collaboration avec d’autres agences européennes (Europol, Eurojust, EASO) et avec les autorités d’États tiers dans le cadre des accords de travail passés ; dans les postes frontières qui se situent aux points de passage entre les territoires des États tiers où se trouvent des officiers européens de liaison ; dans les postes frontières qui sont aux points de passage Schengen, dans tout point du territoire de l’État national au titre des contrôles d’identité. Or toutes ces données sont enregistrées dans diverses bases de données qui sont interopérables et interconnectées.

34 Les bases de données considérées sont le Système d’Information Schengen SIS, le Système VIS Visa Information System, le Système ESTA European Electronic System of Travel Authorisation, Système Eurodac d’enregistrement des empreintes digitales des demandeurs d’asile. Doivent s’y ajouter prochainement le Système EES Entry /Exit System et le Système RTP Register Traveller Programme.
L’Union européenne et ses États membres tiennent ainsi une toile digitale qui couvre le territoire virtuel qu’ils souhaitent soumettre à leur surveillance, un maillage dématérialisé qui modifie profondément la nature même des frontières à contrôler, que la Commission en vient d’ailleurs à qualifier d’intelligentes. Or c’est bien dans une telle perspective de sécurisation de l’espace européen et de contrôle des frontières extérieures que ce sont positionnés les États au lendemain du naufrage d’octobre 2013, pour prétendument prévenir les naufrages et les morts en Méditerranée : la solution dégagée a consisté à affirmer le renforcement de la lutte contre l’immigration clandestine, notamment en augmentant les pouvoirs et les moyens de l’agence Frontex en matière de surveillance aux frontières extérieures. Tel est l’axe qui est repris dans l’Agenda européen pour les migrations, publié quelques semaines après le naufrage d’avril 2015, quand bien même est également prévu un mécanisme de relocalisation des réfugiés tendant à organiser une répartition plus équitable de la charge de leur accueil entre les États membres de l’Union. Dans leur souci non seulement obsessionnel mais plus encore irrationnel de lutter contre l’immigration clandestine et de s’attaquer aux réseaux de passeurs qui sont censés l’alimenter, l’Union européenne et les États membres ont même décidé de recourir à la solution militaire : au titre des articles 42 et 43 du Traité sur l’Union Européenne (TUE), le Conseil a envisagé le 18 mai 2015 le lancement d’une opération militaire en Méditerranée (EUNAVFOR-MED) dans le cadre de la Politique Commune de Sécurité et de Défense, qui a été renommée Sophia lors du passage à sa seconde phase le 7 octobre 2015. On ne peut manquer d’abord de relever que le modèle suivi est celui offert par l’opération EUNAVFOR-ATALANTA déployée depuis le 8 décembre 2008 au large des côtes somaliennes contre la piraterie maritime : cette dernière poursuit des objectifs bien différents de la lutte contre les passeurs, et emploie des moyens dont on imagine qu’ils ne sont guère adaptés à la réalisation d’une telle finalité. Ensuite, cette proposition, qui a été élaborée en particulier par le Royaume Uni, la France, l’Espagne et le Lituanie, soulève des interrogations et suscite des perplexités, juridiques et politiques, techniques et pratiques, logiques et éthiques.

Que l’Union européenne et ses États membres puissent procéder à la destruction des bateaux utilisés par les passeurs pour permettre aux migrants de traverser la Méditerranée suppose l’adoption par le Conseil de sécurité des Nations Unies d’une résolution avalisant une telle opération. Certes, la résolution 2240 (2015) présentée par le Royaume-Uni a été adoptée le 9 octobre 2015 par quatorze voix pour et une abstention : elle autorise pour un an à dater de son adoption les États Membres à inspecter et à saisir en haute mer les navires dont ils ont la confirmation qu’ils sont utilisés à des fins de trafic de migrants ou de traite d’êtres humains en provenance de Libye, et ce en garantissant le strict respect du droit international et des droits de l’homme et en assurant en priorité absolue la sécurité des personnes à bord. Cependant, les interventions dans les eaux territoriales libyennes ne se trouvant donc pas autorisées par la résolution 2040 (2015), il faudrait alors à l’Union et à ses membres obtenir l’accord de l’État concerné ce qui ne semble guère aisé, dans la mesure où le pays est en proie à une guerre civile et à une véritable anarchie depuis la

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30 Décision (PESC) 2015/778 du Conseil relative à une opération militaire de l’Union européenne dans la partie sud de la Méditerranée centrale (EUNAVFOR MED), 18 mai 2015.
31 L’absention est celle du Venezuela. Il est à souligner ici que la Russie n’a pas accepté sans réserve ni contrepartie la demande européenne, puisqu’elle a exprimé son opposition à l’envoi d’avions et d’hélicoptères en soutien aux interventions maritimes envisagées, et puisqu’elle a obtenu au même l’autorisation d’intervenir en Syrie en soutien au régime de Bachar el-Assad.
chute du régime de Mouammar Kadhafi qui oppose deux gouvernements tous deux hostiles à une intervention européenne sur le territoire national. Bien plus, nombreuses sont les incertitudes qui apparaissent en creux, à la lecture des avis et recommandations dont la proposition a fait l’objet. Outre que la participation à l’opération placée sous commandement italien est laissée au bon-vouloir des États qui ne se montrent guère nombreux à désirer y prendre part, la conduite de l’opération soulevée mout interrogations. Comment la destruction des bateaux de passeurs pourrait-elle être réalisée sans l’envoi de forces spéciales dans les ports libyens et donc sur le sol libyen ? Comment seraient différenciés les bateaux des pêcheurs des bateaux des passeurs alors qu’une même embarcation peut avoir ces deux usages ? Comment les équipes impliquées répondraient-elles aux éventuels assauts des troupes des gouvernements libyens et aux possibles ripostes armées des passeurs ? Comment seraient traitées les problématiques induites par les victimes civiles et les obligations afférentes aux migrants impliqués ?

Plus globalement, on ne peut que rester circonspect devant une telle opération de sécurisation qui emporte de nombreux risques, non seulement pour les individus, mais également pour les États qui verraient sans nul doute se détériorer leur image dans une région tout à la fois stratégique et instable. Le paradoxe réside encore dans le fait qu’une telle opération militaire consiste à employer les moyens de la guerre pour se prémunir de l’arrivée de populations qui fuient justement les exactions et les persécutions. Il y a certainement peur de l’étranger de la part des Européens ; mais il n’y a certainement pas d’intention belliqueuse de la part des migrants. Comme le souligne à juste titre avec véhémence Henri Labayle, l’Union européenne et ses États membres n’ont pas de guerre à mener ; ils n’ont pas de crise migratoire à affronter : ils ont une crise humanitaire à gérer. Loin d’adopter une éthique de l’hospitalité qui suppose réciprocité et responsabilité, les États européens développent des dynamiques de défaîte et d’indifférence à l’égard de ces migrants considérés d’autant plus indésirables qu’ils sont plus vulnérables. La question des boat people en Méditerranée est si complexe que la solution consistant à détruire les bateaux qu’ils empruntent apparaît désespérément simpliste : parce que les situations à considérer sont appréhendées par des opérations qui peuvent être successivement voire simultanément de contrôle des frontières extérieures maritimes de l’Union, d’assistance et de sauvetage en mer, de protection internationale ; parce que ces opérations font intervenir non seulement des autorités publiques (gardes-frontières, marines militaires, équipes Frontex) mais également des personnes privées (navires de pêche, de commerce, de plaisance) ; parce que les opérations menées et les acteurs impliqués relèvent de différents droits (droits de la mer, de la lutte contre la criminalité organisée, des migrations, des réfugiés, droits international, européen, national).

C’est bien pourquoi il convient d’étudier la question des boat people de l’Europe avec d’autant plus de rigueur qu’elle touche à des notions politiquement sensibles et juridiquement délicates qui s’opposent et s’entremêlent ; souveraineté et juridiction des États, contenu et portée des normes, nature et contrôle des 42 Les deux gouvernements représentent des partis, des organisations et des courants idéologiques opposés. D’une part, il y a les autorités de Tchad qui sont reconnues par la communauté internationale parce qu’elles sont issues des élections du 1er juin 2014, bien qu’invalidées par la Cour suprême libyenne ; le gouvernement composé de différents membres de partis politiques de tendance nationaliste. Il est soutenu par l’armée nationale dirigée par le général Haftar. D’autre part, il y a les autorités de Tripoli qui représentent les Frères musulmans et les milices se définissant comme authentiques parce qu’elles ont participé au renversement du régime de Kadhafi ; elles ont été installées au pouvoir par l’organisation armée « Fajr Libya », structure milicienne originaire de la ville de Misrata qui dispose d’une influence sur une grande partie du territoire.


frontières, droits et protection des migrants, imputabilité et responsabilité des actes17. Une manière d’aborder les relations complexes et confuses qui se jouent entre ses différentes notions, dans le cas des migrants traversant la Méditerranée, est de les approcher par le biais des obligations juridiques qui s’imposent alors aux États. L’analyse de la situation des boat people de l’Europe conduit ainsi à examiner les régimes juridiques applicables à des espaces incertains aux contours indistincts qui se situent aux confins du droit et des droits. Tant les limites opposées à l’exercice par les États de leur autorité que les marges laissées aux États quant à l’appréciation de leur pouvoir sont à saisir. Si l’étude des obligations juridiques que les États ont à l’égard des migrants naufragés en Méditerranée permet de bien comprendre qu’ils ont été affirmé le principe de leur nécessaire extraterritorialité (I), l’observation de leur mise en œuvre donne à voir la tendance des États à s’en défausser. La réalité problématique de leur événement se manifeste dans le destin tragique de trop nombreux ressortissants de pays tiers, à jamais disparus dans les eaux bien obscures de la Grande Bleue (II).

I – Le principe nécessaire de l’extraterritorialité des obligations étiqutes

Certaines de migrants ont été secourus en Méditerranée : 150 000 du 1er novembre 2013 au 31 octobre 2014 à la faveur de l’opération Mare Nostrum menée par la marine italienne, 4 200 le 31 mai 2015, 6 000 les 7 et 8 juin suivants. Pourtant, le nombre sans cesse grandissant de ceux qui ne l’ont pas été et ne le sont pas manifeste l’incapacité de l’Union européenne et de ses États membres à préserver le droit à la vie, illustre la nécessité qu’il y a à préserver le caractère absolu du régime de la recherche et du sauvetage en mer des migrants en détresse46, qui sont de surcroît pour leur grande majorité des réfugiés cherchant à bénéficier de la protection internationale. Si les migrants et les réfugiés peuvent se prévaloir de leur droit à la vie et de leur droit à l’asile qui sont tous deux à la fois fondamentaux et indérogeables, c’est que les États ont en parallèle des devoirs, ceux de secourir et de protéger. Cependant, l’obligation de porter secours aux personnes en détresse en mer en principe absolue se révèle en réalité relative en Méditerranée. En effet, les autorités nationales s’adonnent à des querelles d’interprétation, qui les conduisent à se renvoyer réciproquement la responsabilité de secourir des embarcations en perdition (que l’on pense aux atermoiements des autorités italiennes et maltaises dans l’affaire du « Left-to-die boat » survenue en mars 201148). En outre, les autorités nationales peuvent dissuader les capitaines de navires privés de mettre en œuvre leur obligation de prêter assistance aux migrants en détresse en mer, soit qu’elles refusent de leur autoriser le débarquement des personnes secourues en mer, soit qu’elles les sanctionnent au titre du transport de personnes en situation irrégulière50, de la lutte contre l’aide à l’entrée, au transit et au séjour

irrégulier\footnote{51}, de la lutte contre le trafic et la traite des êtres humains\footnote{52}, ou encore de l’emploi de personnes en situation irrégulière\footnote{53}. L’affaire du Cap Anamur illustre bien les entraves opposées au respect de l’obligation de porter secours et en conséquence de l’obligation d’accorder refuge\footnote{54}. Or, il convient de le rappeler, le devoir de secourir (A) et le devoir de protéger (B) sont des obligations absolues dont la portée supposée par essence d’être extraterritoriale.

\textbf{A – Le devoir de secourir : l’urgence de sauver les migrants en Méditerranée}

Certes, la Convention européenne de sauvegarde des droits de l’homme et des libertés fondamentales (CEDH) ne reconnaît pas explicitement le devoir des États de porter secours aux personnes en détresse en mer. Toutefois, en affirmant en son article 2 § 1 que « Le droit de toute personne à la vie est protégé par la loi », elle consacre explicitement le droit à la vie\footnote{55}. Or l’interprétation que la Cour de Strasbourg donne de cette disposition est constructive, qui impose aux États des obligations non seulement négatives mais également positives. En effet, la Cour a eu l’occasion de rappeler à diverses reprises que « la première phrase de l’article 2 § 1 astreint l’État non seulement à s’abstenir de provoquer la mort de manière volontaire et irrégulière mais aussi à prendre les mesures nécessaires à la protection de la vie des personnes relevant de sa juridiction »\footnote{56}. C’est pourquoi « l’obligation de l’État à cet égard va au-delà du devoir primordial d’assurer le droit à la vie en mettant en place une législation pénale concrète dissuadant de commettre des atteintes contre la personne et s’appuyant sur un mécanisme d’application conçu pour en prévenir, réprimer et sanctionner les violations »\footnote{57}. C’est donc de manière indirecte que la Convention vient reconnaître le devoir de porter secours aux personnes en détresse en mer, que le droit international général classique affirme, et que le droit international de la mer précise depuis la Convention pour l’Unification de Certaines Règles en matière d’Assistance et de Sauvetage Maritimes entrée en vigueur le 1 er mars 1913 et depuis 1948 dans le cadre de l’Organisation Maritime Internationale (OMI). Or, cette obligation s’applique dans les différents espaces maritimes à considérer\footnote{58} : la mer territoriale ; les eaux archipélagiques ; la zone contiguë, qui s’étend de la limite de la mer territoriale jusqu’au 12 milles nautiques ; la haute mer, qui se situe au-delà de la zone contiguë du territoire national maritime d’un État et en-deçà de celle d’un État tiers ; la zone contiguë et le territoire national maritime d’un État tiers.

L’obligation de prêter assistance est une règle coutumière du droit de la mer, que transcrit l’article 12 de la Convention de Genève de 1958 sur la Haute mer. Cette dernière disposition est reprise en termes quasiment identiques à l’article 98 de la de la Convention des Nations Unies sur le Droit de la Mer de 1982,

\begin{itemize}
  \item La Charte des droits fondamentaux de l’UE dispose en son article 2 que « toute personne a droit à la vie ».
\end{itemize}

transporteurs de communiquer les données relatives aux passagers.
\footnote{51} Directive 2002/90/CE du 28 novembre 2002 définissant l’aide à l’entrée, au transit et au séjour irréguliers ; décision-cadre du Conseil n°2002/949/ JAI, du 28 novembre 2002 visant à renforcer le cadre pénal pour la répression de l’aide à la conduite au cadre de l’Organisation Maritime Internationale (OMI). Or, cette obligation s’applique dans les différents espaces maritimes à considérer\footnote{58} : la mer territoriale ; les eaux archipélagiques ; la zone contiguë, qui s’étend de la limite de la mer territoriale jusqu’au 12 milles nautiques ; la haute mer, qui se situe au-delà de la zone contiguë du territoire national maritime d’un État et en-deçà de celle d’un État tiers ; la zone contiguë et le territoire national maritime d’un État tiers.

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dite Convention de Montego Bay, selon lequel différents devoirs s'imposent en la matière « : 1. Tout État exige du capitaine d'un navire battant son pavillon que, pour autant que cela lui est possible sans faire courir de risques graves au navire, à l'équipage ou aux passagers : a) il prête assistance à quiconque est trouvé en péril en mer ; b) il se porte aussi vite que possible au secours des personnes en détresse s'il est informé qu'elles ont besoin d'assistance, dans la mesure où l'on peut raisonnablement s'attendre qu'il agisse de la sorte ; c) en cas d'abordage, il prête assistance à l'autre navire, à son équipage et à ses passagers, et, dans la mesure du possible, indique à l'autre navire le nom et le port d'enregistrement de son propre navire et le port le plus proche qu'il touchera. 2. Tous les États côtiers facilitent la création et le fonctionnement d'un service permanent de recherche et de sauvetage adéquat et efficace pour assurer la sécurité maritime et aérienne et, s'il y a lieu, collaborer à cette fin avec leurs voisins dans le cadre d'arrangements régionaux ». Quant à la Convention Internationale pour la Sauvegarde de la Vie Humaine en Mer de 1960, qui a été maintes fois modifiée, et qui a été refundée en 1974 (*International Convention for the Safety of Life at Sea SOLAS* entrée en vigueur en 1980), elle approfondit la reconnaissance de l'obligation de prêter assistance, en consacrant son chapitre III au sauvetage en mer et son chapitre V à la sécurité de la navigation. Or ce dernier chapitre comporte deux règles essentielles pour notre propos, à savoir les règles 1059 et 1560 qui traitent des obligations de secourir qui s'imposent respectivement aux opérateurs privés et aux autorités nationales.

La Convention Internationale de 1979 sur la Recherche et le Sauvetage Maritimes entrée en vigueur en 1985 (*International Convention on Search and Rescue SAR*) est venue conforter et consolider la substance d'un tel devoir de secourir en définissant les champs temporels et personnels de son application à l'article 2.1.10 de ses annexes : « Les Parties s'assurent qu'une assistance est fournie à toute personne en détresse en mer. Elles le font sans tenir compte de la nationalité ou du statut de cette personne, ni des circonstances dans lesquelles celle-ci a été trouvée ». Aucun doute n'est donc possible quant à l'application de cette obligation de prêter assistance aux migrants, comme n'ont pas manqué de le souligner tant le HCR que l'OMI61. En revanche, des incertitudes demeurent concernant les États qui ont à supporter une telle obligation, à raison de l'appréhension principalement territoriale de la notion de juridiction en droit international général. En effet, cette notion renvoie à l'exercice autorisé du pouvoir étatique, qui est intimement lié à la souveraineté de l'État, c'est-à-dire à la capacité de ce dernier de réguler pleinement son ordre public interne d'un point de vue normatif, exécutif, et juridictionnel. Or les principes de non-ingérence et d'égalité souveraine conduisent à considérer que les États ne peuvent exercer une pleine juridiction que sur leur territoire. Il ne faudrait cependant pas négliger les situations singulières où la juridiction de l'État s'étend au-delà des frontières de ce dernier, où elle revêt une dimension extra territoriale. Il en est ainsi en droit de la mer, en vertu du principe énoncé à l'article 92 de la Convention de Montego Bay, selon lequel est compétent l'État dont le navire porte le pavillon. Il en est ainsi encore en droit international des droits de l'homme, qui développe une conception sensiblement différente de la notion de juridiction étatique.

Cette dernière est dans un tel domaine juridique appréhendée comme une question de fait, qui dépend du contrôle réel dont dispose un État sur un espace ou une personne, qu'il soit exercé de manière licite ou non, sur son territoire ou non. La juridiction, qui est une précondition essentielle à l'application des obligations tirées du droit international et à l'engagement de la responsabilité internationale d'un État en cas d'agissement illicite, peut revêtir, au moins à titre exceptionnel, une portée extraterritoriale. C'est ainsi que le Comité des Droits de l'Homme des Nations Unies considère que « les États parties sont tenus de respecter et garantir à tous les individus se trouvant sur leur territoire et à tous ceux relevant de leur compétence les droits énoncés dans le Pacte », ce qui « signifie qu'un État partie doit respecter et garantir à quiconque se trouve sous son pouvoir ou son contrôle effectif les droits reconnus dans le Pacte même s'il ne se trouve pas 59 Règle 10 sous a) de la Convention SOLAS : « Le capitaine d'un navire en mer qui est en mesure de prêter assistance et qui reçoit, de quelque source que ce soit, une information indiquant que des personnes se trouvent en détresse en mer, est tenu de se porter à toute vitesse à leur secours ». 60 Règle 15 sous a) de la Convention SOLAS : « Tout Gouvernement contractant s’engage à prendre toutes les dispositions nécessaires pour la veille sur côtes et pour le sauvetage des personnes en détresse en mer auprès des côtes. Ces dispositions doivent comprendre la mise en place, l’utilisation et l’entretien des installations de sécurité maritime jugées réalisables et nécessaires, eu égard à l’intensité du trafic en mer et aux dangers de la navigation, et doivent, autant que possible, fournir des moyens adéquats pour repérer et sauver les personnes en détresse ».
sur son territoire».

Une telle position est affirmée de longue date par le Comité tant dans ses conclusions que dans ses décisions : l’interprétation de l’article 2 du Pacte ne peut conduire à permettre qu’un État puisse perpétrer, sur le territoire d’un autre État, des violations des dispositions du Pacte qu’il ne saurait commettre sur son propre territoire. Bien plus, le Comité estime qu’un État doit être reconnu responsable des atteintes aux droits énoncés dans le Pacte qui ont été réalisées en dehors de son territoire, y compris lorsqu’il les a simplement influencées, lorsqu’elles ne lui sont pas directement imputables. Quant à la Cour internationale de justice, elle reconnaît la possibilité d’une juridiction extraterritoriale, car les instruments internationaux relatifs aux droits de l’homme sont applicables aux actes d’un État agissant dans l’exercice de sa compétence en dehors de son propre territoire.

Au niveau régional, les conclusions sont les mêmes. Ainsi, la Commission intermédiaire des Droits de l’Homme reconnaît que l’exercice de la juridiction sur des actes extraterritoriaux est non seulement cohérent, mais également requis par les normes énoncées par la Déclaration Interaméricaine des Droits de l’Homme, dans les cas où une personne, qui n’est pas présente sur le territoire d’un État, se trouve sous l’autorité et le contrôle de cet État par le biais des actes de ses agents à l’étranger. La Cour de Strasbourg estime, de manière similaire, que « selon sa jurisprudence constante, la notion de “juridiction” ne se circonscrit pas au territoire national des Hautes Parties contractantes ». En particulier, cela induit que les membres d’équipage d’un bateau battant pavillon d’un État membre du Conseil de l’Europe sont soumis au respect des règles énoncées par la Convention Européenne des Droits de l’Homme à l’égard de toute personne, y compris à l’égard des migrants dérivant dans les eaux internationales, ou bien embarqués sur un navire sans pavillon ou battant pavillon d’un État non signataire de la Convention. Une telle affirmation relève de la pure logique. D’abord, il serait pour le moins incohérent que les membres d’équipage soient supposés respecter la CEDH à titre de la Convention de Montego Bay, tandis que les personnes affectées par leurs actes ne puissent pour leur part se prévaloir des droits énoncés par celle-ci en application de celle-ci. Ensuite, il serait inhérent de ne pas admettre que les actes d’expulsion et de déportation, d’éloignement et de réorientation, prennent leur point de départ, d’origine, si ce n’est dans le territoire, à tout le moins dans la juridiction de l’État qui décide que de tels actes soient menés à bien.

La Cour de Strasbourg constate bien que « l’article 1 fixe une limite, notamment territoriale, au domaine de la Convention », que « l’engagement des États contractants se borne à reconnaître (en anglais “to secure”) les droits et libertés énumérés ». Néanmoins, elle estime que la responsabilité d’une Haute Partie Contractante peut « entrer en jeu à raison d’actes ou

64 Décisions du Comité des droits de l’homme, López Burgos c. Uruguay, UN Doc. CCPR/C/13/D/56/1979, § 10.3 (« it would be unconscionable to so interpret the responsibility under article 2 of the Covenant as to permit a State party to perpetrate violations of the Covenant on the territory of another State, which violations it could not perpetrate on its own territory »).
65 Comité des droits de l’homme, Mohammed Munaâl c. Roumanie, 30 juillet 2009, UN Doc CCPR/C/96/D/1539/2006, § 14.2 (« a State party may be responsible for extra-territorial violations of the Covenant, if it is a link in the causal chain that would make possible violations in another jurisdiction »).
69 Cour EDH, GC, Medvedev c. France, 29 mars 2010, Req. n° 3394/03, § 63.
d’omissions émanant de leurs organes et déployant leurs effets en dehors de leur territoire »70, dès lors que « par suite d’une action militaire - légale ou non - elle exerce en pratique le contrôle sur une zone située en dehors de son territoire national »71. Elle tempère de la sorte la limitation territoriale de la juridiction des États et par là-même de l’application de la Convention. Reste à savoir comment la Cour apprécie alors l’existence de la juridiction d’un État au sens de l’article 1 de la Convention. Avant de conclure à « l’existence d’un contrôle absolu et exclusif exercé par la France, au moins de facto […] de manière continue et ininterrompue » sur le cargo nommé Le Winner immatriculé au Cambodge dès son interception au large des îles du Cap-Vert72, la Cour relève dans sa décision Medvedev que les autorités maritimes françaises ont spécialement chargé un navire de guerre de l’intercepter, ce qui a conduit l’équipage d’un tel navire à appareiller de Brest avec à son bord une équipe de forces spéciales, à effectuer des sommations et des tirs d’avertissement pour en venir à des tirs au but sur ordre du préfet maritime de l’Atlantique, à maintenir les membres d’équipage du Winner sous leur contrôle exclusif, imposant notamment la consignation dans les cabines durant le voyage jusqu’en France, à faire remorquer le cargo par un navire français en le déroutant vers la France sous escorte d’un navire de guerre supplémentaire sur ordre du préfet maritime de l’Atlantique et à la demande du procureur de la République de Brest73.

Certes, les actes d’un État partie accomplis ou produisant des effets en dehors de son territoire ne peuvent être regardés comme l’exercice de sa juridiction que de manière exceptionnelle, comme le souligne la Cour elle-même74. Toutefois, deux remarques au regard de l’emploi du terme « exception » s’imposent ici, qui impliquent la nature extraterritoriale de la juridiction des États européens concernant les opérations maritimes relatives aux migrants en Méditerranée. D’une part, on ne saurait douter du caractère exceptionnel de la crise humanitaire qui sévit aux frontières méridionales de l’Europe. D’autre part, si l’article 15 de la CEDH permet bien aux États parties « en cas de guerre ou en cas d’autre danger public menaçant la vie de la nation » - somme toute, en cas de circonstances exceptionnelles - de « prendre des mesures dérogant aux obligations prévues par la présente Convention, dans la stricte mesure où la situation l’exige », il oppose une exception à cette possibilité reconnue aux États concernant les obligations énoncées aux articles 2, 3, 4 §1, et 7 : outre l’interdiction de la torture, la prohibition de l’esclavage, le principe de la légalité des peines, c’est encore le respect du droit à la vie qui doit être assuré, y compris dans les circonstances exceptionnelles, pour tout individu quelle que soit sa nationalité.

Parce que « les États parties doivent répondre de toute violation des droits et libertés protégés par la Convention commise à l’endroit d’individus placés sous leur juridiction »75, ils doivent assumer toute violation du droit à la vie qui résulterait de leur défaut de satisfaire à leur devoir de secourir les migrants qui se trouvent en détresse en mer Méditerranée76. Ils doivent donc se plier aux obligations procédurales qui exigent d’eux qu’ils mènent des enquêtes, afin de déterminer les contextes et les causes des naufrages, d’identifier les personnes décédées ou disparues, de reconnaître si besoin les atteintes aux droits et libertés, et de prévenir l’occurrence de telles violations du droit à la vie. Or, il ne s’agit pas seulement pour les États européens de prêter assistance aux migrants pour les sauver de la mort ; il s’agit encore pour eux de sauver leur vie en ne les mettant pas en danger, c’est-à-dire en tirant toutes les conséquences du droit d’asile et du principe de non-refoulement qui exigent des États qu’ils remplissent leur devoir de protéger77.

B – Le devoir de protéger : l’exigence d’examiner les situations individuelles des réfugiés

La Convention de Genève du 28 juillet 1951 sur le Statut des Réfugiés ne consacre pas explicitement le

72 Cour EDH, GC, Medvedev c. France, 29 mars 2010, Req. n° 3394/03, § 67.
73 Ibid., § 66. 
74 Cour EDH, Bancovic & ali c/ Belgique et 16 autres États, 19 décembre 2001, Req. n° 52207/99, § 71 ; GC, Medvedev c. France, 29 mars 2010, Req. n° 3394/03, § 64.
77 Nabil HAJJAMI, La responsabilité de protéger, Bruylant, 2013, 558 p.
droit d'asile comme les constitutions nationales peuvent le faire, à l'instar de l'alinéa 4 du Préambule de la constitution française du 27 octobre 194678, de l'article 10 § 3 de la constitution italienne du 22 décembre 1947, de l'article 16 sous a) de la loi fondamentale allemande du 23 mai 1949, de l'article 33 § 8 de la constitution portugaise du 2 avril 1976, de l'article 13 § 4 de la constitution espagnole du 27 décembre 1978. C'est en réalité d'une manière indirecte que la Convention pose le droit d'asile comme un élément fondamental du droit international à la faveur de dispositions qui ont une portée contraignante en application de l'article 1 § 1 du Protocole de 1967. D'une part, elle donne, en son article 1 § sous A) 2°, une définition du réfugié : « toute personne craignant avec raison d'être persécutée du fait de sa race, de sa religion, de sa nationalité, de son appartenance à un certain groupe social ou de ses opinions politiques, qui se trouve hors du pays dont elle a la nationalité et qui ne peut ou, du fait de cette crainte, ne veut se réclamer de la protection de ce pays ». D'autre part, elle affirme, en son article 33 § 1, le principe de non refoulement, autrement dit l'interdiction d'expulser ou de refouler toute personne « sur les frontières des territoires où sa vie ou sa liberté serait menacée en raison de sa race, de sa religion, de sa nationalité, de son appartenance à un certain groupe social ou de ses opinions politiques » 79. Si cette reconnaissance internationale du droit d'asile est évidemment majeure qui induit logiquement un examen individuel de la situation particulière de chaque réfugié, elle trouble cependant par les exceptions qu'elle prévoit et les incertitudes qu'elle génère.

En effet, l'article 33 § 2 peut inquiéter : il permet aux États de ne pas avoir à respecter le principe de non-refoulement concernant « un réfugié qu'il y aura des raisons sérieuses de considérer comme un danger pour la sécurité du pays où il se trouve ou qui, ayant été l'objet d'une condamnation définitive pour un crime ou délit particulièrement grave, constitue une menace pour la communauté dudit pays » 80. Néanmoins, il convient de souligner d'une part que cette exception, de par sa nature même, doit être entendue et appliquée de manière circonscrite et restrictive, d'autre part qu'elle n'est pas reprise par les instruments internationaux ou régionaux affirmant par la suite le devoir de protéger. Ces derniers viennent encore apporter des éclaircissements quant à la définition du refoulement et donc quant à la signification de son interdiction. Par ailleurs, la terminologie employée par l'article 33 § 1 de la Convention de Genève ne peut manquer d'interroger : que soit prohibé le renvoi d'un réfugié « sur les frontières des territoires » résonne de manière réductrice, en limitant l'interdiction de façon géographique en considération du lieu de renvoi81. Reste que la version anglaise de la Convention manifeste clairement que cette disposition consacrant le principe de non-refoulement interdit non seulement de renvoyer un réfugié sur le territoire de l'État où sa vie et sa liberté sont menacées, mais également de le réorienter vers les frontières de l'État en cause82. Si l'article 7 du Pacte international des droits civils et politiques de 1966 en vertu duquel « Nul ne sera soumis à la torture ni à des peines ou traitements cruels, inhumains ou dégradants » n'apporte aucun élément venant conforter une telle compréhension du principe de non refoulement, le Comité des droits de l'homme des Nations Unies, dans son observation générale 20 de 1992 au point 9, vient ôter quelque doute que soit sur la portée du principe de non-refoulement : « le Pacte entraîne l'obligation de ne pas extrader, déplacer, expulser quelqu'un ou le transférer par d'autres moyens de leur territoire s'il existe des motifs sérieux de croire qu'il y a un risque réel de préjudice irréparable dans le pays vers lequel doit être effectué le renvoi ou dans tout pays vers lequel la personne concernée peut être renvoyée par la suite » 83. C'est dans cette double ligneée que se positionne la reconnaissance européenne du droit d'asile. Adoptant une logique similaire à celle de la Convention de Genève de 1951, la CEDH opère une

78 « Tout homme persécuté en raison de son action en faveur de la liberté a droit d'asile sur les territoires de la République ».
79 On peut remarquer ici que la version anglaise emploie le terme return ce qui éclaire d'un certain jour le choix des mots employés par la directive 2008/115/CE du 16 décembre 2008 relative aux normes et procédures communes applicables dans les États membres au retour des ressortissants de pays tiers en séjour irrégulier.
80 Il convient de noter ici que le Comité consultatif juridique afro-asiatique, lors de sa huitième session tenue à Bangkok en du 8 au 17 août 1986, a adopté des principes régissant le traitement des réfugiés, qui introduisent des exceptions au principe de non refoulement fondés non sur des considérations personnelles tenant au refugié, mais sur des considérations générales liées à la protection de la sécurité nationale ou de la population (article 3 § 2 de la Déclaration sur l'asile territorial).
82 « No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion ».
83 Comité des droits de l'homme, Charles Chitat Ng c. Canada, 5 novembre 1993, UN Doc. A/49/40, § 14.2. Il convient de relever ici que la Convention contre la torture et autres peines et traitements inhumains et dégradants de 1984 adopte une même perspective en disposant en son article 3 § 1 : « Aucun État partie n'expulsera, ne refoulera, ni n'extradera une personne vers un autre État où il y a des motifs sérieux de croire qu'elle risque d'être soumise à la torture ». 
consécration indirecte du devoir de protéger, via l’admission en réalité implicite en son article 3 de la prohibition du refoulement 84, et via l’interdiction quant à elle explicite des expulsions collectives posée à l’article 4 du Protocole n° 4 additionnel à la CEDH dans la mesure où elles ne permettent pas de déterminer la situation particulière de chacun des individus concernés 85. Développant une approche nourrie des observations du Comité des droits de l’homme des Nations Unies, la Cour de Strasbourg en affirme la portée absolue qu’aucune exception ne saurait venir entamer 86. Tout comme celui-là pour qui aucune circonstance y compris exceptionnelle ne permet de déroger à l’article 7 du Pacte international des droits civils et politiques de 1966 (point 2 de l’observation générale 20), celle-ci souligne que l’article 15 de la CEDH n’autorise aucune limitation ou suspension de l’article 3. La Cour de Strasbourg tient une position des plus claires : le droit à la vie « astreint les États non seulement à s’abstenir de provoquer la mort de manière volontaire et irrégulière, mais aussi à prendre les mesures nécessaires à la protection de la vie des personnes relevant de leur juridiction », ce qui revient à lier l’obligation de secourir à l’obligation de protéger 87. Par conséquent, les États du Conseil de l’Europe, quand bien même ils agiraient en vertu de la Convention internationale de coopération dans la lutte contre l’immigration clandestine, ne sauraient, sans violer la Convention, reconduire des migrants interceptés ou secourus en mer vers un État où ils risquent des traitements contraires à l’article 3 de la Convention 88.

Quant à la Charte des Droits Fondamentaux de l’Union Européenne (CFDUE), c’est une consécration directe et explicite du droit d’asile qu’elle énonce : son article 18 dispose que « le droit d’asile est garanti dans le respect des règles de la Convention de Genève du 28 juillet 1951 et du protocole du 31 janvier 1967 relatif au statut des réfugiés et conformément au traité instituant la Communauté européenne » 89 ; son article 19 interdit tout éloignement, expulsion, extradition vers un État où il existe un risque sérieux qu’il soit soumis à la peine de mort, à la torture ou à d’autres peines ou traitements inhumains ou dégradants (§ 1) de même que les expulsions collectives (§ 2). Reste que l’affirmation claire d’un droit et d’un principe ne résout pas la problématique de son champ d’application. En effet, afin de pouvoir se décharger de leur responsabilité pour les atteintes au droit d’asile et du devoir de protéger lors des actions menées en dehors de leurs frontières, les États cherchent à faire prévaloir une application territoriale de leurs obligations, en s’appuyant sur l’article 29 de la Convention de Vienne sur le droit des traités de 1969 qui stipule la territorialité de l’application des conventions internationales « à moins qu’une intention différente ne ressorte du traité ou ne soit par ailleurs établie » 90. Ainsi des États-Unis qui ont estimé ne pas être liés par le principe de non-refoulement, lorsque leurs garde-côtes ont intercepté en haute mer des migrants haïtiens pour les réorienter vers Haïti sans avoir procédé à une détermination adéquate de leur statut ni les avoir entendus afin de vérifier s’ils pouvaient prétendre au statut de réfugié 91. Cela a été

84 « Nul ne peut être soumis à la torture ni à des peines ou traitements inhumains ou dégradants ». Cour EDH, Hiri Jamaa & Others v. Italy, 23 février 2012, Req. n° 27765/09.
85 Olivier Didier, Le principe de non-refoulement dans la jurisprudence internationale des droits de l’homme : de la consécration à la contestation, Bruxelles, Bruylant, collection mondialisation et droit international, 2011, 448 p.
87 Cour EDH, Soering c. Royaume Uni, 7 juillet 1989, Req. n° 14038/88, § 93.
90 Sur le fondement de l’accord passé le 23 septembre 1981 avec Haïti autorisant les USA à intercepter les navires transportant illégalement des étrangers sans papiers vers les côtes américaines, et de l’Executive Order 12324 émis par le président Reagan le 19 septembre 1981 autorisant les garde-côtes américains à retourner tout navire et passager vers le pays de provenance s’il y a des raisons de croire que ceux-ci sont en contravention des lois américaines relatives à l’immigration, les autorités américaines ont généré de nombreux cas qui ont renversé le gouvernement de Jean-Bertrand AristIDE : les migrants haïtiens sont interceptés en mer et renvoyés vers l’île sans pouvoir déposer de demande d’asile. La Cour Suprême a

Pourtant, le principe de non-refoulement ne fait sens que s’il s’applique en tout lieu où un réfugié se trouve dès lors qu’il n’est plus dans son pays d’origine. Son application extraterritoriale est nécessaire, sans quoi les États n’auraient qu’à extra-territorialiser les opérations violant leurs obligations internationales pour se défausser de leur responsabilité. Se référant à l’article 2 § 1 du Pacte de 1966, le Comité des droits de l’homme des Nations Unies affirme dès le début des années 1980 que les droits reconnus aux individus et portant les obligations imposées aux États s’appliquent sans égard du lieu où un État agit, dès lors que des droits sont en jeu du fait de la relation établie entre un État et un individu, parce que celui-ci se trouve sous la juridiction de celui-là. Comme le pose très simplement le UNHCR, le principe de non-refoulement s’applique « partout où l’État exerce son autorité y compris ... en haute mer ... ». Telle est bien la position défendue par la Cour européenne des droits de l’homme dans sa décision Hiri & Jamaa, dans laquelle elle prononce la condemnation de l’Italie pour avoir violé l’article 3 de la Convention, en procédant à l’interception d’embarcations dérivant au large de l’île de Lampedusa et au refoulement immédiat vers la Libye des migrants - essentiellement somaliens et érythréens - qui s’y trouvaient. Se refusant à autoriser « un État ... à commettre, en dehors de son territoire, des actes qui ne seraient jamais acceptés à l’intérieur de celui-ci » (§ 69), la Cour s’inscrit dans la droite ligne de ses jurisprudences Al-Skeini et Medvedev pour reconnaître l’exercice par l’État italien de sa juridiction, et pour en conclure à l’application de la Convention induisant une application extraterritoriale non seulement de l’article 3 mais encore de l’article 4 du Protocole n° 4.

Pour la Cour, il s’agit « d’éviter que les États puissent éloigner un certain nombre d’étrangers sans examiner leur situation personnelle et, par conséquent, sans leur permettre d’exposer leurs arguments validé les textes considérés et les pratiques afférentes, considérant que « Those seeking admission and trying to avoid “exclusion” were already within our territory (or at its border), but the law treated them as though they had never entered the United States at all; they were within United States territory, but not “within the United States” » (Cour suprême des États-Unis, Chris Sale, Acting Commissioner, Immigration and Naturalization Service & ali v. Haitian Centres Council, 21 juin 1993, 1993 509 U.S. 155, Req. n° 92-344). Ce n’est qu’avec sa décision de 2004 dans l’affaire Rusal c. Bush que la Cour Suprême a admis l’existence d’une dimension extraterritoriale de la juridiction, en reconnaissant que le gouvernement exerçait sur le camp de Guantánamo un contrôle exclusif qui ne correspondait cependant pas à l’exercice de pouvoirs souverains, ce qui lui a permis « d’éloigner un certain nombre d’étrangers sans quoi les États n’auraient qu’à extra-territorialiser les opérations violant leurs obligations internationales pour se défausser de leur responsabilité ». Se référant à l’article 2 § 1 du Pacte de 1966, le Comité des droits de l’homme des Nations Unies affirme dès le début des années 1980 que les droits reconnus aux individus et portant les obligations imposées aux États s’appliquent sans égard du lieu où un État agit, dès lors que des droits sont en jeu du fait de la relation établie entre un État et un individu, parce que celui-ci se trouve sous la juridiction de celui-là. Comme le pose très simplement le UNHCR, le principe de non-refoulement s’applique « partout où l’État exerce son autorité y compris ... en haute mer ... ». Telle est bien la position défendue par la Cour européenne des droits de l’homme dans sa décision Hiri & Jamaa, dans laquelle elle prononce la condemnation de l’Italie pour avoir violé l’article 3 de la Convention, en procédant à l’interception d’embarcations dérivant au large de l’île de Lampedusa et au refoulement immédiat vers la Libye des migrants - essentiellement somaliens et érythréens - qui s’y trouvaient. Se refusant à autoriser « un État ... à commettre, en dehors de son territoire, des actes qui ne seraient jamais acceptés à l’intérieur de celui-ci » (§ 69), la Cour s’inscrit dans la droite ligne de ses jurisprudences Al-Skeini et Medvedev pour reconnaître l’exercice par l’État italien de sa juridiction, et pour en conclure à l’application de la Convention induisant une application extraterritoriale non seulement de l’article 3 mais encore de l’article 4 du Protocole n° 4.

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s’opposant à la mesure prise ». L’effet utile des dispositions de la Convention, en l’espèce de l’interdiction des tortures et traitements inhumains et dégradants et de la prohibition du refoulement, qui est indispensable à garantir l’effectivité du droit d’asile et du devoir de protéger, suppose leur application extraterritoriale, comme le démontre le juge de Strasbourg par un raisonnement par l’absurde : « Si l’article 4 du Protocole n° 4 devait s’appliquer seulement aux expulsions collectives effectuées à partir du territoire national des États parties à la Convention, c’est une partie importante des phénomènes migratoires contemporains qui se trouverait soustraite à l’empire de cette disposition, nonobstant le fait que les agissements qu’elle entend interdire peuvent se produire en dehors du territoire national et notamment, comme en l’espèce, en haute mer » ; « cela aurait pour conséquence que des migrants ayant emprunté la voie maritime, souvent au péril leur vie, et qui ne sont pas parvenus à atteindre les frontières d’un État, n’auraient pas droit à un examen de leur situation personnelle avant d’être expulsés, contrairement à ceux qui ont emprunté la voie terrestre ».

Et la Cour de conclure : « les éloignements d’étrangers effectués dans le cadre d’interceptions en haute mer par les autorités d’un État dans l’exercice de leurs prérogatives de puissance publique, et qui ont pour effet d’empêcher les migrants de rejoindre les frontières de l’État, voire de les refouler vers un autre État, constituent un exercice de leur juridiction au sens de l’article 1 de la Convention, qui engage la responsabilité de l’État en question sur le terrain de l’article 4 du Protocole n° 4 ».

La Charte des droits fondamentaux de l’UE paraît quant à elle d’emblée plus limpide, puisque son champ d’application est posé en son article 51, et se trouve alors défini en lien non pas avec le territoire des États membres mais bien avec l’exercice de leurs compétences et donc avec leur juridiction. Reste que certains textes de droit dérivé viennent obscurcir les choses : ils renvoient pour déterminer leur champ d’application au territoire des États membres, à l’instar de la directive procédures en son article 3 § 1. A n’en pas douter, les droits fondamentaux à la vie et à l’asile reconnus aux migrants, les impératifs juridiques de secourir et de protéger imposés aux États, s’appliquent en tout lieu y compris en dehors de leur territoire national, dès lors que lesdits États exercent leur juridiction sur les migrants concernés. En conséquence, les contrôles aux frontières extérieures de l’Union, y compris quand ils sont réalisés dans les zones contiguës des territoires maritimes des États ou dans les eaux internationales ou encore dans les eaux territoriales des États tiers, parce qu’ils manifestent l’autorité des États qui les opèrent et emportent la juridiction des États considérés, se trouvent soumis aux normes internationales et régionales de protection des droits de migrants. Les États membres ne sauraient se défausser de leurs obligations de secourir et de protéger, en organisant leurs interventions de contrôle hors de leurs frontières, voire en sous-traitant à des États tiers la charge de les mener à bien. Mais étudier la pratique des opérations maritimes pratiquées à l’adresse des migrants en Méditerranée conduit à constater les difficultés d’une garantie effective du droit à la vie et du droit d’asile. Des questions se posent. L’obligation de secourir peut-elle permettre d’éviter l’obligation de protéger ? L’obligation de protéger peut-elle permettre de se décharger de la responsabilité de l’accueil sur des États tiers estimés sûrs ? Le fait même que de telles interrogations soient soullevées révèle que la manière dont les instruments juridiques sont interprétés et appliqués voire instrumentalisés par les États est problématique.

II – La réalité problématique de l’évitement des obligations étatiques

Si les migrants peuvent se prévaloir du droit à la vie, les États ont l’obligation de moyen et non de résultat de les secourir. Toutefois, comment envisager un tel devoir sans mettre en place des programmes de sauvetage des personnes en détresse en mer, ainsi que des dispositifs de patrouille pour s’assurer de la situation des embarcations naviguant en Méditerranée ? Bien plus, vient à se poser la question de la nature...
des opérations qui sont alors menées en mer. Le sauvetage constitue-t-il une opération maritime per se ? Comment se distingue-t-il de l’interception, de la patrouille, du contrôle des frontières, des opérations de police pour la lutte contre le trafic de migrants ? Une opération en mer peut-elle changer d’objectif en cours de réalisation ? Quel est le droit applicable et à partir de quel moment l’est-il ? Quant aux réfugiés, s’ils ont le droit d’être protégés, les États n’ont pas l’obligation de les accueillir, mais simplement de leur accorder l’accès aux procédures permettant de vérifier leur identité, d’examiner leur situation, de contester les positions prises par les autorités nationales, autrement dit de déposer une demande d’asile et de bénéficier du droit au recours. Et l’on imagine mal comment toutes ces implications du devoir de protéger, qui ne peuvent être correctement satisfaites sur un bateau ou dans un centre de transit 106, n’emportent pas logiquement quoique implicitement un accès temporaire au territoire de l’État considéré afin de procéder aux identifications et entretiens nécessaires 109. Or, de nombreuses difficultés sont à constater dans la gestion des migrations par voie maritime 110 : remises en question par les États de la nature et de l’étendue de leurs responsabilités, en jouant sur les interprétations à donner du contenu et de la portée des instruments internationaux et régionaux applicables ; désaccords retardant voire empêchant les sauvetages, ce qui met en péril la vie de migrants en détresse ; absence de définition claire et partagée de la notion de lieu sûr où les migrants secourus peuvent être débarqués ; déséquilibres des charges afférentes au secours, à l’accueil et au traitement des demandes d’asile, qui pèsent essentiellement sur les États situés aux frontières méridionales de l’Europe. Toute la nature des opérations menées (A) que les suites qui leur sont données (B) posent problème, alors que les États tendent à prioriser la préoccupation de sécurisation des frontières sur le souci de protection des migrants, allant ainsi à l’encontre de la recommandation faite en 2012 par le Groupe de travail sur le trafic illicite de migrants : « les États parties devraient accorder une attention particulière à la vie et à la sécurité des migrants objet d’un trafic par mer, et accorder la priorité à la protection de leur vie et de leur sécurité en cas de détention d’un navire utilisé à de pareilles fins » 111.

A – La nature des opérations menées : de la frontière entre surveillance et sauvetage

Il revient aux États de mener des opérations de recherche et de sauvetage, en vertu de leur devoir de prêter assistance à tout navire ou à toute personne en détresse en mer, que pose le paragraphe 2.1.1 du chapitre 2 de la Convention SAR, et que rappelle l’article 9 du règlement 656/2014 établissant des règles pour la surveillance des frontières maritimes extérieures dans le cadre de la coopération opérationnelle coordonnée par Frontex 112. Reste que ledit règlement concerne les mesures de contrôle des frontières et les

106 Une telle évocation des centres de transit demande de rappeler ici l’établissement de hotspots, énoncé par la Commission dans son Agenda européen pour la migration publié le 13 mai 2015 afin d’apporter un soutien aux États de première ligne (à savoir l’Italie et la Grèce auxquels pourrait venir s’ajouter la Hongrie qui pour l’heure refuse d’être considérée comme un État de première ligne), et prévu pour être mené à bien avant la fin du mois de novembre 2015 (quatre hotspots doivent être installés en Italie avec un état-major situé à Catane et cinq en Grèce avec un état-major positionné au Pirée). Or ces hotspots sont présentés comme des centres destinés à accueillir quelque 1500 réfugiés chacun, afin qu’il soit procédé aux opérations d’identification, d’enregistrement des témoignages, de prise d’empreintes des arrivants, à la faveur de l’intervention des personnels des autorités nationales soutenues par EASO, Frontex et Europol. Bien des interrogations et surtout des inquiétudes se trouvent dans son Agenda européen pour la migration publié le 13 mai 2015 afin d’apporter un soutien aux États de première ligne.


112 Rapport de la réunion du Groupe de travail sur le trafic illicite de migrants, tenue à Vienne le 30 mai au 1er juin 2012, CT2O/COP/WG.7/2012/6.

113 Règlement (UE) n° 2014/2014 du Parlement européen et du Conseil du 15 mai 2014 établissant des règles pour la surveillance des frontières maritimes extérieures dans le cadre de la coopération opérationnelle coordonnée par l’Agence européenne pour la gestion de la coopération opérationnelle aux frontières extérieures des États membres de l’Union européenne. Ce règlement a dû être adopté suite à l’annulation par la Cour de Justice de l’Union Européenne de la décision du Conseil 2010/252/UE visant à compléter le Code Frontières Schengen, en ce qui concerne la surveillance des frontières extérieures maritimes dans le cadre de
interventions de secours des migrants, en vertu d’un ordre de présentation qui manifeste l’ordre des priorités affiché et affirmé par les États membres. Or la qualification à donner aux opérations maritimes menées ne relève pas de l’évidence : il n’est pas aisé de savoir s’il s’agit de détectations des tentatives de franchissement illégal des frontières ou d’interventions de recherche et de sauvetage de migrants en danger, même si les opérations de contrôle peuvent conduire à prêter assistance à des migrants en détresse, et inversement que les opérations de sauvetage peuvent donner lieu à des contrôles des franchissements des frontières. Si la notion de sauvetage paraît aisée à cerner, il n’en est pas de même de celle d’interception, d’autant qu’aucune définition n’en est fournie par le règlement 656/2014. Il convient donc de se reporter au droit international de la mer dont l’étude met en évidence des zones d’ombre, cette notion se révélant indéterminée d’un point de vue tout à la fois territorial, matériel et personnel.

D’abord, la différenciation se révèle floue entre migrants en situation irrégulière et personnes en détresse, ce qui permet aux États de prioriser la première qualification sur la seconde. Or, les migrants interceptés qui sont conduits sur le territoire d’un État membre de l’Union européenne ont tendance à voir s’appliquer tout d’abord et avant tout le statut de migrant en situation irrégulière, et partant les règles nationales de nature administrative voire pénale qui y sont associées. Au demeurant, les migrants interceptés en haute mer, dans la ZEE, ou dans la mer territoriale d’un État tiers, ne devraient pas pouvoir être considérés ni encore moins appréhendés comme migrants en situation irrégulière, puisqu’ils se trouvent alors en dehors du champ d’application des normes nationales déterminant un tel statut, à moins de les considérer comme de potentiels migrants en situation irrégulière au titre de mesures de prévention qui seraient en soi hautement problématique. A cette incertitude personnelle, vient s’ajouter une indétermination matérielle. Se référant au protocole de Palerme, les États rappellent la nécessité de mener une coopération en vue non seulement de supprimer mais aussi de prévenir le trafic de migrants, par conséquent la possibilité de prendre des mesures pour anticiper les franchissements irréguliers des frontières par des passeurs. Or, c’est sur un tel fondement que se basent l’Union via Frontex et ses États pour concrétiser et conduire des opérations de coopération bilatérale ou multilatérale (à l’instar du réseau méditerranéen Seahorse approuvé le 19 septembre 2013 pour appuyer la coopération entre l’Espagne, la Mauritanie, le Maroc et le Cap-Vert). La détermination de l’objectif des opérations s’avère dès lors délicat entre surveillance et sauvetage.

Les incertitudes ne sont pas moindres d’un point de vue territorial. En effet, l’État côté peut empêcher le passage dans sa mer territoriale d’un navire transportant des passagers clandestins. Selon l’article 19 de la Convention de Montego Bay, le passage n’est plus inoffensif quand un navire se livre à une activité d’embarquement ou de débarquement d’une personne en contravention aux règles d’immigration de l’État côté. Celui-ci, au titre de l’article 27 § 2 de la Convention, peut prendre toutes les mesures en vue de procéder à des arrestations à bord d’un navire quittant ses eaux intérieures, ce qui laisse d’ailleurs sans


réponse la question du traitement des navires transportant des migrants clandestins qui ont seulement l'intention de traverser la mer territoriale sans entrer dans les eaux intérieures. L'article 33 de la Convention de Montego Bay (auquel se rapporte l’article 19 (2) sous g)), dans la lignée de l’article 24 de la Convention sur la mer territoriale et la zone contiguë de 1958, est clair : dans la zone contiguë à sa mer territoriale, « l’État côteïr peut exercer le contrôle nécessaire en vue de : a) prévenir les infractions à ses lois et règlements […] d’immigration sur son territoire ou dans sa mer territoriale ; b) réprimer les infractions à ces mêmes lois et règlements commises sur son territoire ou dans sa mer territoriale ». L’interception renvoie donc aux prérogatives de l’État souverain, qui peut intervenir sur son territoire terrestre et maritime donc jusqu’à la limite de la zone contiguë. Mais qu’en est-il au-delà ? Certes, la règle coutumière de l’exclusivité de la juridiction de l’État du pavillon du navire en haute mer pourrait laisser penser que l’État souhaitant intervenir devrait solliciter, au cas par cas, l’accord exprès de l’État du pavillon. En réalité, l’État peut exercer des droits de police au-delà de la limite de la zone contiguë.

D’abord, en application de l’article 110 § 1 sous d) de la Convention de Montego Bay, tous les États conservent en haute mer un droit d’intervention sur des navires sans pavillon. Cette règle classique du droit de la mer découle de l’affirmation ancienne selon laquelle un navire ne battant le pavillon d’aucun État ne bénéficie d’aucune protection. Ceci est confirmé par le Protocole de Palerme : tout État peut arraisonner et visiter un navire soupçonné de participer au crime organisé, de telle sorte que, si les autorités trouvent des preuves d’une activité illicite, il peut prendre les mesures appropriées conformément au droit interne et au droit international pertinent. Ensuite, tout État peut exercer son droit de poursuite jusqu’en haute mer d’un navire étranger soupçonné d’avoir contrevenu à ses lois et règlements. De la sorte, les États peuvent mener des interceptions au-delà de la limite de leur zone contiguë, ce qui leur permet de procéder au contrôle des franchissements potentiellement irréguliers de leurs frontières, rendant par là même incertaine la nature des interventions dans leur zone économique exclusive, en haute mer, voire dans les eaux territoriales d’un État tiers. Or, comme le relève Rafael Casado Raigón, les États disposent encore, au titre des articles 99 et 100 de la Convention de Montego Bay, de pouvoirs de police conférés sans limite territoriale, à savoir ceux attachés à la poursuite ou à la prévention des crimes contre l’humanité dont les crimes d’esclavage ; or on peut s’interroger sur le point de savoir si le trafic et la traite des êtres humains, qui mettent les migrants dans des positions de servitude à des fins d’esclavage domestique ou sexuel de manière indirecte pour le premier et de manière directe pour la seconde, ne pourraient justifier les interventions en mer des autorités nationales et européennes ; reste que ce dernières ne semblent guère enclines à vouloir assumer la charge qui leur reviendrait alors d’assurer la protection de ces victimes.

Une telle incertitude quant à la nature des opérations menées, et donc quant à l’objectif par elles poursuivi, apparaît à l’étude de l’opération Triton. Alors que se terminait le 31 octobre 2014 l’opération Mare Nostrum qui a permis aux autorités italiennes de secourir plus de 150 000 migrants en un an, était lancée le 1er novembre 2014 l’opération Triton. Cette dernière, coordonnée par Frontex, n’a pas pour objet de remplacer l’opération Mare Nostrum : cela ressort des moyens mobilisés qui s’avèrent limités, et des prélèvements de pouvoirs de police conférés sans limite territoriale, à savoir ceux attachés à la poursuite ou à la prévention des crimes contre l’humanité dont les crimes d’esclavage ; or on peut s’interroger sur le point de savoir si le trafic et la traite des êtres humains, qui mettent les migrants dans des positions de servitude à des fins d’esclavage domestique ou sexuel de manière indirecte pour le premier et de manière directe pour la seconde, ne pourraient justifier les interventions en mer des autorités nationales et européennes ; reste que ce dernières ne semblent guère enclines à vouloir assumer la charge qui leur reviendrait alors d’assurer la protection de ces victimes.

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119 Rafael CASADO RAIGÓN, « Trafic illicite des personnes et criminalité organisée », in José Manuel Sobrino Heredia (dir), Sûreté maritime et violence en mer / Maritime Security and Violence at Sea, Bruxelles, Bruylant, pp. 3-18.


123 L’opération Triton disposait au départ de 21 navires, 4 avions, 1 hélicoptère et 65 officiers détachés par les États pour des rotations à durée variable avec un budget annuel de 2,9 millions d’euros. Cela n’est pas comparable aux 900 soldats et 32 navires soutenus par des avions et hélicoptères employés par l’Italie pour l’opération Mare Nostrum pour un coût mensuel de plus de
positions affichées qui s’inscrivent dans la lignée de celles exposées le 7 octobre 2014 par Cécilia Malmström, alors qu’elle était encore commissaire européenne aux affaires intérieures 124. Si Mare Nostrum remplissait une mission de sauvetage, Triton vise d’abord à surveiller les frontières extérieures de l’Union. Et le directeur exécutif de Frontex, Fabrice Leggeri, de déclarer en avril 2015 : « Triton ne peut pas être une opération de recherche et sauvetage […] Ce n’est pas dans le mandat de Frontex et, à mon sens, ce n’est pas non plus le mandat de l’Union européenne » 125. Frontex entend donc bien assumer essentiellement le rôle de surveillance des frontières maritimes extérieures que le règlement 656/2014 lui confie 126. En vertu de ce texte, les équipes de Frontex déployées dans des opérations en mer peuvent en effet procéder à des interceptions dans les eaux territoriales d’un État membre (article 6), en haute mer (article 7), et dans la zone contiguë (article 8) ; arrêter et arraissonner tout navire qui est soupçonné de transporter des personnes cherchant à se soustraire aux vérifications à des points de passage frontalières (articles 6, 7 et 8) ; interroger et appréhender lesdites personnes pour éventuellement les remettre aux autorités de pays n’appartenant pas à l’Union (articles 6, 7 et 8).

Un tel accent mis sur le contrôle des frontières est illustré par le fait que le règlement 656/2014 ne considère les opérations de sauvetage que via le renvoi aux règles du droit international général. Dans la mesure où Frontex en assure la gestion, le système Eurosur semble devoir être employé davantage pour « prévenir et combattre l’immigration illégale » que pour « assurer la protection de la vie des migrants » 127. Ce système d’information, permettant la transmission et le partage des données sur la situation aux frontières extérieures de l’Union, paraît bien avoir pour fonction de détecter les embarcations transportant des migrants avant qu’elles n’atteignent les eaux territoriales des États membres, afin qu’elles soient réorientées vers les pays d’où elles sont parties et non afin qu’il soit prêté assistance aux personnes exposées au danger. Or, tant la Convention SAR que par le règlement 656/2014 classent les situations d’urgence en mer par degré croissant de gravité en distinguant l’incertitude 128, l’alerte 129 et la détresse 130. De la qualification de la situation dépend le déclenchement des opérations maritimes 131 : seuls les cas avérés de détresse appellent la mise en œuvre d’interventions de recherche et de sauvetage. Dans les

9 millions d’euros. Est à noter que le budget consacré aux opérations Triton et Poséidon a été multiplié par trois suite au naufrage du 19 avril 2015.


125 « EU borders chief says saving migrants’ lives ‘shouldn’t be priority’ for patroles », The Guardian, 22 April 2015.


128 Incertitude il y a : « 1.1. Lorsque le navire n’est pas signalé comme prévu sa position ou son état de sécurité » (Convention SAR, article 5 du chapitre V et article 1 des annexes) ; « notamment lorsque i) une personne est portée disparue ou un navire a du retard ; ou quand une personne ou un navire n’a pas envoyé le compte rendu de position ou le rapport de sécurité attendu » (règlement 656/2014, article 9 § 2 sous d)).

129 Alertes il y a : « 2.1. Lorsqu’à la suite d’une phase d’incertitude, les tentatives visant à établir le contact avec le navire ont échoué ou lorsque les enquêtes effectuées auprès d’autres sources appropriées sont restées sans résultat ; ou 2.2. Lorsque les informations reçues indiquent que l’efficacité du fonctionnement du navire est compromise, sans toutefois que cette situation n’atteigne pas sa destination finale, le nombre de personnes se trouvant à bord par rapport à l’état du navire, l’existence des réserves nécessaires, par exemple en carburant, en eau et en nourriture, pour atteindre une côte ; la présence à bord d’un équipage qualifié et de personnel de direction du navire ; l’existence d’équipements de sécurité, de navigation et de communication et leur état de fonctionnement ; la présence à bord de personnes ayant un besoin urgent d’assistance médicale, la présence à bord de personnes décédées ; la présence à bord de femmes enceintes ou d’enfants, les conditions météorologiques et l’état de la mer, y compris les prévisions en la matière.

L’article 9 § 2 sous f) du règlement 656/2014 présente l’avantage d’énumérer les éléments qui participent de la détermination de la nature de la situation : l’existence d’une demande d’assistance, l’état de navigabilité du navire et la probabilité que le navire n’atteigne pas sa destination finale, le nombre de personnes se trouvant à bord par rapport à l’état du navire, l’existence des réserves nécessaires, par exemple en carburant, en eau et en nourriture, pour atteindre une côte ; la présence à bord d’un équipage qualifié et du personnel de direction du navire ; l’existence d’équipements de sécurité, de navigation et de communication et leur état de fonctionnement ; la présence à bord de personnes ayant un besoin urgent d’assistance médicale, la présence à bord de personnes décédées ; la présence à bord de femmes enceintes ou d’enfants, les conditions météorologiques et l’état de la mer, y compris les prévisions en la matière.

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situations d'incertitude ou d'alerte, les autorités ne sont pas contraintes de lancer des opérations de secours. Deux problèmes sont à relever : d'abord, celui de la qualification de la situation par les autorités nationales, qui disposent ainsi de marges d’appréciation quant à la pertinence de lancer des opérations de recherche et de sauvetage ; ensuite, celui de la hiérarchisation de l’urgence en niveaux de dangerosité, qui incite à n’intervenir que dans les situations de détresse, alors qu’une opération déclenchée dès les phases d’alerte voire d’incertitude permettrait d’agir avant la détérioration des conditions voire la perte de vie des migrants. Par ailleurs, se pose la question de l’état dont les autorités nationales doivent intervenir en cas de détresse d’un navire.

La Convention SAR exige que les opérations de recherche et de sauvetage soient menées par le pays dont dépendent les eaux territoriales où l’embarcation en détresse est repérée, ou qui assure la responsabilité de la région de recherche et de sauvegarde dans laquelle l’assistance doit être prêtée. Si les choses semblent à la lecture des textes relativement claires car précises et détaillées, elles le sont nettement moins dans les faits et les réalités. Même quand les appels de détresse sont clairs, les interventions ne sont pas pour autant mises en œuvre. Ainsi, le 11 octobre 2013, 268 réfugiés syriens, dont plus d’une centaine d’enfants, ont péri en mer entre la Sicile et Malte, les trois appels de détresse envoyés par téléphone satellitaire aux autorités italiennes n’ayant obtenu pour seule réponse que l’injonction de s’adresser aux autorités maltaises. Or Malte n’est pas signataire de l’amendement à la Convention SAR adopté en 2004 et entré en vigueur en 2006, opposée qu’elle était à l’insertion d’un paragraphe 3.1.9. En effet, cette disposition lui aurait imposé non seulement de mettre en œuvre les opérations de recherche et de sauvetage dans la très étendue zone SAR placée sous son contrôle, mais encore de débarquer sur son territoire les personnes secourues dans une telle zone ; cela lui aurait imposé par là même d’assumer l’accueil approprié des migrants et le traitement des demandes d’asile des réfugiés. Les opérations de recherche et de sauvetage s’avèrent donc dépendantes des suites qui leur sont données, l’absence d’une réelle solidarité entre les États membres de l’Union, en ce qui concerne la répartition du coût de la prise en charge des migrants concernés suscitant des tensions entre les États membres côtiers et des refus d’intervenir de leur part. Autrement dit, les opérations maritimes posent problème non seulement quant à leur nature mais également quant à leurs conséquences, ces dernières étant liées au lieu de débarquement des personnes interceptées ou secourues ainsi qu’au problème du respect du principe de non-refoulement.

B – Les suites données aux opérations : de l’épineux problème du débarquement


Nul n’est, en violation du principe de non-refoulement, débarqué, forcé à entrer, conduit dans un pays ou autrement remis aux autorités d’un pays où il existe, entre autres, un risque sérieux qu’il soit soumis à la peine de mort, à la torture, à la persécution ou à d’autres peines ou traitements inhumains ou dégradants, ou dans lequel sa vie ou sa liberté serait menacée en raison de sa race, de sa religion, de sa nationalité, de son orientation sexuelle, de son appartenance à un certain groupe social ou de ses opinions politiques, ou dans lequel il existe un risque sérieux d’expulsion, d’éloignement ou d’extradition vers un autre pays en violation du principe de non-refoulement.«


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10 § 1), alors que l’absence de telles dispositions énonçant les critères de détermination du lieu de débarquement des personnes considérées a pu conduire à des situations d’incertitudes et de tensions entre États membres qui ont mis en danger les vies des migrants. Toutefois, à la lecture du règlement 656/2014, des ambiguïtés demeurent et des silences résonnent, qui renvoient à des situations problématiques dans lesquels le respect des droits fondamentaux des migrants, au premier rang desquels le droit d’être protégé, ne sont pas garantis. Certes, en cas d’interception dans la mer territoriale ou dans la zone contiguë d’un État membre de l’Union, il est prévu de débarquer les migrants secourus dans l’État membre participant dans la mer territoriale ou dans la zone contiguë duquel l’interception a eu lieu ou dans l’État membre d’accueil de l’opération (article 10 § 1 sous a)). Néanmoins, le texte réserve aux États membres la possibilité d’ordonner au navire de modifier sa route et de quitter les eaux territoriales (article 6 § 2 sous b)), et partant de n’offrir aucune garantie en terme de non-refoulement.

Le principe semble plus encore mis à mal concernant les cas d’interception en haute mer, puisque le débarquement des migrants interceptés ou secourus peut être réalisé dans le pays tiers que le navire est présumé avoir quitté (article 10 § 1 sous b)). Certes, le règlement 656/2014, adoptant une approche qui n’est pas sans rappeler celle exposée par la Cour de Strasbourg, exige alors que l’État membre d’accueil de l’opération, les États membres participants, et Frontex envisagent la possibilité de débarquer les personnes interceptées ou secourues dans ce pays tiers, en tenant compte de la situation générale qui y règne : ils doivent prendre en considération les risques de persécution qu’ils savent ou sont censés savoir s’y produire, au regard des informations dispensées par les organisations intergouvernementales ou non gouvernementales. En outre, les unités participant aux opérations maritimes doivent identifier les interceptés, évaluer leur situation personnelle, vérifier leur état de santé, apprécier leur vulnérabilité, déterminer leur besoin de protection internationale, avant de prendre toute décision de débarquement (article 4 § 3) ; et elles doivent informer du lieu de débarquement envisagé les migrants de telle sorte que ceux-ci puissent exprimer les risques de violation du principe de non-refoulement qui pourrait en résulter (article 4 § 4). Toutefois, la présence des interprètes et des conseillers juridiques n’est exigée qu’en « cas de nécessité », ce qui laisse aux agents présents à bord un rôle excessif dans l’appréciation de la situation des intéressés dont on peut légitimement se demander si elle sera réellement appréciée de façon individuelle.

Or, de manière pour le moins étrange, il est en outre précisé que ces interprètes, conseillers juridiques, personnel médical sont disponibles à terre (article 3 § 3), sans que l’on puisse savoir à quel territoire national il est ainsi fait référence.

Quant au cas d’interception dans les eaux territoriales d’un État tiers de migrants qui n’en seraient pas les ressortissants, rien n’en est dit, permettant la poursuite des dispositifs de réorientations dont on ne saurait oublier qu’ils correspondent à des refoulements : les autorités nationales et les équipes Frontex ont en effet menés et continuent de mener des interventions de ce type dans les eaux territoriales de la Mauritanie, du Sénégal, de la Libye notamment. Certes, « dans le cadre d’opérations de sauvetage », les garanties apparaissent rappelées : le règlement exige explicitement que le débarquement soit effectué en

136 Le 4 août 2013, le pétrolier Le Salamis a secouru 102 migrants au large des côtes libyennes, d’où il avait appareillé. Se trouvant près des côtes italiennes, le capitaine du navire a informé les autorités de l’État italien du besoin d’aide des migrants secourus. Connaissant que la Libye était le pays de départ de ces derniers, le centre de coordination de sauvetage maritime italien a demandé au Salamis de repartir vers le port de Khoms pour y débarquer les migrants. Le pétrolier a refusé d’obtempérer pour des raisons commerciales, ne voulant pas se dérouter de son itinéraire en direction de Malte. Le capitaine a alors informé les autorités maltaises de la présence de migrants à son bord, indiquant que certains avaient besoin de soins médicaux. Malte a refusé au Salamis l’entrée dans ses eaux territoriales et a demandé aux membres de l’équipage de débarquer les migrants en Libye, leur présumé pays de départ. Il s’en est suivi un différend diplomatique entre l’Italie et Malte qui, même si la commission européenne aux affaires intérieures, Cecilia Malmström, indiquait que cela constituerait une infraction au droit international, avant de prendre toute décision de débarquement.

137 En vertu de l’article 4 § 4 du règlement 656/2014, les unités participantes sont appelées à répondre en priorité aux besoins des personnes vulnérables, à savoir les enfants, les victimes de la traite des êtres humains, ceux ayant besoin d’une assistance médicale urgente, les personnes handicapées, ceux ayant besoin d’une protection internationale et les autres personnes se trouvant dans une situation particulièrement vulnérable, en faisant appel à des médecins, à des interprètes et à tous spécialistes.

138 Le droit d’asile ne concernant les individus qu’une fois sortis du territoire de leur État national, la question du devoir de protéger et du principe de non refoulement ne se pose pas dans ce qui concerne les interceptions dans les eaux territoriales d’un État de migrants qui en sont les ressortissants.

« lieu sûr » (article 10 § 1 sous c)). Ce dernier suppose non seulement la protection physique des personnes, mais également le respect de leurs droits fondamentaux.142 Le Comité de la sécurité en mer de l'OMI ayant de manière on ne peut plus nette posé le principe qu'un navire ne saurait être considéré comme un lieu sûr, celui-ci renvoie au lieu de débarquement, et plus généralement à l'État territorial du port de débarquement. Dès lors, la notion de lieu sûr ne peut être pensée sans référence à celle de pays sûr (en particulier celle de pays tiers sûr) qu'il soit d'origine et de transit. Or cette notion est problématique.143

D'abord, elle ne respecte ni la Convention de Genève ni la Convention européenne des droits de l'homme, comme l'a rappelé la Cour de Strasbourg.144 ENSuite, elle néglige le fait qu'est réfrangible la présomption en vertu de laquelle les États membres de l'Union sont des pays sûrs (présomption établie par le protocole 24 additionnel au Traité d'Amsterdam dit protocole Aznar).145 Pourtant, le règlement, adoptant la logique de la directive « procédures », laisse aux États le soin de déterminer le caractère sûr des États où le débarquement est prévu : est alors à craindre que les autorités ne se fondent sur les listes de pays sûrs établies au niveau national qui varient selon les États146 et avec le temps,147 sans que l'on puisse savoir comment les unités Frontex pourraient se prononcer sur la qualification de sûr d’un pays en l’absence de toute liste européenne.148

D'autres dispositions du règlement 656/2014 inquiètent. Ainsi de l'article 4 § 5 qui limite au strict nécessaire les transferts à des pays tiers des données à caractère personnel des migrants interceptés et secourus, voire les interdit en cas de risque sérieux de violation du principe de non-refoulement : en creux, cette disposition admet la possibilité en soi problématique de confier aux autorités nationales d’États tiers les données qui sont collectées, exploitées et conservées par les systèmes intervenant en matière de justice intérieures (entre autres le Visa Information System, le System Information Schengen, le système Eurodac), données qui sont de plus en plus envisagées dans un souci de protection contre les migrants. Ce sont encore des silences qui s’avèrent troublants. Le texte ne prévoit pas les possibilités offertes aux migrants interceptés ou secourus de solliciter la protection internationale. On doit donc se rapporter aux règles établies par la directive « procédures » qui impose l’examen des demandes d’asile déposées dans le territoire des États membres, et non de celles déposées singulièrement par les migrants interceptés au-delà


144 Cour EDH, GC, Hirsi Jamaa & ali c. Italie, 23 février 2012, Req. n° 27765/09.


147 Les disparités entre les listes nationales de pays d’origine sûrs doivent être soulignées, qui sont à la fois quantitatives (le Nigéria est sûr pour la France, le Ghana est sûr pour l’Allemagne mais pas pour l’Autriche, l’Arménie n’est sûre que pour la France, etc.).

de la zone contiguë que cela soit dans la ZEE ou en haute mer. Voilà donc la garantie du devoir de protéger renvoyée aux législations nationales des États membres de l'Union qui pour la plupart d’entre eux n’admettent pas la possibilité pour les ressortissants d’États tiers de déposer des demandes d’asile hors de leur territoire, et aux législations nationales d’États tiers qui pour certains ne sont pas signataires de la Convention de Genève. Quelle peut être l’effectivité de la protection des migrants interceptés ou secourus dans un tel contexte? Quant au droit au recours des migrants interceptés qui seraient refoulés, réorientés, aucune mention n’en est faite, alors que le médiateur européen a demandé instamment à Frontex que ses unités mettent à la disposition des migrants considérés des formulaires leur permettant de déposer plainte en cas de violation de leurs droits fondamentaux.

De tels silences mettent en lumière la pierre d’achoppement du sauvetage et du débarquement des boat people de l’Europe : le défaut de solidarité entre les États membres pour la prise en charge des coûts afférents aux opérations de secours des naufragés, aux exigences de l’accueil des migrants, au traitement des demandes d’asile. Certes, le principe de solidarité s’applique aux politiques relatives aux contrôles aux frontières, à l’asile et à l’immigration, comme le pose l’article 80 TFUE et comme le rappelle le considérant 2 du règlement 656/2014. Pourtant, le cadre juridique actuel fait essentiellement peser sur les États membres situés aux frontières méridionales la charge des boat people de l’Europe, alors que nombre d’entre eux (que l’on pense à la Grèce) disposent de moyens matériels et de disponibilités financières limités : ils sont placés en première ligne pour le sauvetage, le débarquement et l’accueil des migrants, qui y sont au demeurant de manière quasi systématique placés en rétention ; ils se voient attribuer la responsabilité du traitement des demandes d’asile en application du règlement Dublin III. C’est pourquoi, face à l’importance de la crise humanitaire qui sévit en Méditerranée, la Commission, soutenue par l’Allemagne, la Suède, l’Autriche, l’Italie et la Grèce, a évoqué la possibilité qu’il soit dérogé au règlement Dublin III. En application de l’article 78 § 3 TFUE, elle a soumis au Conseil une proposition de décision instaurant des mesures provisoires en matière de protection internationale au profit de l’Italie et de la Grèce : considérant que ces deux États se trouvent dans une situation d’urgence du fait de l’importance de l’afflux de migrants interceptés et secourus, la Commission a élaboré un mécanisme de relocalisation obligatoire des réfugiés entre les autres États membres de l’Union sauf à exciper de raison de sécurité nationale ou d’ordre public.

Si le dispositif initialement envisagé concernait la relocalisation de quelque 40 000 demandeurs d’asile, 24 000 venant d’Italie et 16 000 de Grèce, l’ampleur accrue des arrivées de migrants sur les côtes de ces deux États au fil de l’été 2015 a conduit à revoir à la hausse le nombre d’arrivants supposés bénéficier d’un tel programme. En dépit des fortes résistances des États d’Europe centrale et orientale ainsi que des réticences de la France et de l’Allemagne, le Conseil a fini par adopter le 14 septembre 2015 la décision qui prévoit la relocalisation de 160 000 demandeurs de protection internationale (15 600 d’Italie, 50 400 de


Cette derogation ne concernerait que les Etats membres de l’Union et n’affecteraient pas les Etats non membres qui sont tenues par les règles du règlement Dublin III (Norvège, Suisse, Islande, Lichtenstein) en l’état de la Grande Bretagne, de l’Irlande et du Danemark qui devraient utiliser leur opt out. Cela créerait par conséquent un régime concernant 25 Etats au sein du régime Dublin qui en implique 32.


156 Position franco-allemande commune sur la proposition de la Commission pour un mécanisme de relocalisation du 1er juin 2015.
Grèce, 54 000 de Hongrie) sur une durée globale de 24 mois, les États devant recevoir 6 000 € du Fonds « Asile, Migration et Intégration » pour chaque demandeur d’asile considéré qu’ils auront accueilli sur leur territoire158. Sont concernés les migrants qui sont arrivés sur le territoire de ces deux pays depuis avril 2015159, qui ont enregistré leurs empreintes digitales dans le fichier Eurodac, qui sont de nationalités enregistrant un taux de réponse positif aux demandes d’asile de 75% en moyenne dans l’Union tel qu’établi selon les données Eurostat160, et qui sont désignés par l’Italie et la Grèce en accordant une priorité aux personnes vulnérables161. La relocalisation des 160 000 réfugiés considérés est conçue selon une clé de répartition qui prend en compte la taille de la population nationale (à hauteur de 40%), le PIB (40%), le nombre moyen de réfugiés réinstallés et de demandes d’asile spontanées par tranche de 1 million d’habitants pour la période 2010-2014 (10%) et le taux de chômage (10%). De la sorte, la France est appelée à accueillir 7 175 demandeurs en provenance d’Italie, 12 794 de Grèce et 10 814 de Hongrie, soit un total de 30 783 sur deux ans, soit l’équivalent de 0,05% de sa population. La portée du dispositif apparaît évidemment limitée, mettant en évidence le caractère pour le moins relatif de ce mécanisme de solidarité.

Le programme de relocalisation, qui s’accompagne d’un programme de réinstallation de 20 000 migrants particulièrement syriens se trouvant hors du territoire européen qui seraient accueillis par les États membres de l’Union sur une base volontaire, est en réalité troublant. Tandis que l’idée même de déroger au règlement Dublin III manifeste l’échec du dispositif et l’artificialité de ses prémisses, les orientations énoncées par la Commission traduisent une persistance de l’attachement à l’idée selon laquelle tous les États de l’Union traitent demandes et demandeurs d’asile de manière similaire. La Commission a en effet assorti sa proposition de l’obligation faite à tout migrant franchissant de manière irrégulière les frontières extérieures de l’Union de faire enregistrer ses empreintes digitales dans le fichier Eurodac162, qui a pour objet de permettre la comparaison des empreintes digitales des demandeurs d’asile aux fins d’une application efficace du règlement Dublin. Il est même prévu que tout migrant qui s’y refuserait devrait être détenu, expulsé et soumis à une interdiction d’entrée163, ce que ne permettent pourtant pas les normes européennes d’immigration et d’asile en vigueur. Le refus de la prise d’empreintes au titre de la mise en œuvre du système Dublin pour la détermination de l’État responsable de la demande d’asile n’est pas un des motifs de rétention prévu et ne justifie pas l’adoption d’une interdiction d’entrée164. La rétention ne peut en effet être employée que pour vérifier l’identité et la nationalité des demandeurs d’asile165, pour organiser le transfert des demandeurs d’asile présentant un risque de fuite166, ou pour procéder aux mesures nécessaires à l’éloignement d’un ressortissant de pays tiers en situation irrégulière167. Par ailleurs, les migrants visés ne semblent pas avoir le droit de consentir ou non à leur relocalisation, ni le droit de se faire entendre au sujet de l’État où il conviendrait le mieux qu’ils soient relocalisés.


159 On ne sait pas si les migrants ayant transité par l’Italie et la Grèce se trouvant hors du territoire européen qui seraient accueillis par les États membres de l’Union sur une base volontaire, est en réalité troublant. Tandis que l’idée même de déroger au règlement Dublin III manifeste l’échec du dispositif et l’artificialité de ses prémisses, les orientations énoncées par la Commission traduisent une persistance de l’attachement à l’idée selon laquelle tous les États de l’Union traitent demandes et demandeurs d’asile de manière similaire. La Commission a en effet assorti sa proposition de l’obligation faite à tout migrant franchissant de manière irrégulière les frontières extérieures de l’Union de faire enregistrer ses empreintes digitales dans le fichier Eurodac162, qui a pour objet de permettre la comparaison des empreintes digitales des demandeurs d’asile aux fins d’une application efficace du règlement Dublin. Il est même prévu que tout migrant qui s’y refuserait devrait être détenu, expulsé et soumis à une interdiction d’entrée163, ce que ne permettent pourtant pas les normes européennes d’immigration et d’asile en vigueur. Le refus de la prise d’empreintes au titre de la mise en œuvre du système Dublin pour la détermination de l’État responsable de la demande d’asile n’est pas un des motifs de rétention prévu et ne justifie pas l’adoption d’une interdiction d’entrée164. La rétention ne peut en effet être employée que pour vérifier l’identité et la nationalité des demandeurs d’asile165, pour organiser le transfert des demandeurs d’asile présentant un risque de fuite166, ou pour procéder aux mesures nécessaires à l’éloignement d’un ressortissant de pays tiers en situation irrégulière167. Par ailleurs, les migrants visés ne semblent pas avoir le droit de consentir ou non à leur relocalisation, ni le droit de se faire entendre au sujet de l’État où il conviendrait le mieux qu’ils soient relocalisés pour des raisons d’ordre familial ou matériel, ce qui ne fait que reproduire les travers qui rendent justement le système Dublin inefficace. Et de s’étonner encore que la Commission n’ait pas proposé la reconnaissance mutuelle du
bénéfice de la protection internationale entre les États membres de l’Union168, d’autant que le statut de réfugié a une dimension internationale per se169, et qu’il existe un traité du Conseil de l’Europe en la matière qui ne demande qu’à être appliqué170.

Conclusion

Le droit de l’Union européenne paraît faire assez peu pour garantir aux migrants naufragés en Méditerranée leurs droits à la vie et à l’asile, pour assurer le respect par les États membres des devoirs de secourir et de protéger que les normes internationales leur imposent. Le droit de l’Union pourrait faire bien plus si les États membres ne cherchaient pas à l’utiliser pour se dégager de leurs obligations, ne tendaient pas à l’exploiter pour développer des politiques de lutte contre l’immigration clandestine qui sont les causes des naufrages et des disparitions dans la Grande Bleue. Les barrières élevées par les États aux frontières extérieures voire intérieures qu’elles soient normatives (i.e. les exigences imposées pour obtenir des visas), matérielles (i.e. les constructions de clôtures barbelées), ou virtuelles (i.e. les détections par des équipements radars, des caméras thermiques, des drones), ne suppriment pas les migrations. Elles provoquent leur déplacement vers des parcours toujours plus dangereux, toujours plus dépendants des réseaux de passeurs et de trafiquants. Elles engendrent malheureusement la diffusion d’une suspicion à l’égard du réfugié, du migrant, de l’étranger, de l’Autre, qui est avant tout regardé comme un passeur, un fraudeur, un délinquant, un criminel, voire un terroriste. Dès lors, l’inconséquence de restreindre le bénéfice de droits universels aux seuls Européens ne choque même plus. L’Autre est considéré comme une menace, comme un ennemi contre lequel il faut lutter au besoin en usant des moyens de la guerre171 : les politiques de lutte contre l’immigration irrégulière menée en Europe qui optent pour la conduite d’opérations militaires illustrent bien cette dérive. Or, une telle tendance est à noter non seulement dans la zone méditerranéenne, mais également dans les régions ultrapériphériques. Les boat people de l’Europe qui s’aventurent en Méditerranée et qui viennent s’imposer à nos yeux ne sont pas les seuls à devoir être secourus et protégés : ceux qui se risquent et se meurent dans le canal du Mozambique entre l’île comorienne d’Anjouan et le département français de Mayotte ont eux aussi des droits fondamentaux indérogables, qui leur sont d’autant moins garantis qu’ils demeurent loin de notre regard et éloignés de nos préoccupations172. Pourtant, les migrants, les réfugiés ne viennent pas prendre mais demander : une aide, une protection. N’oublions pas qu’ils ne sont pas nos ennemis, mais nos alliés dans la lutte contre les extrémismes, les fanatismes, et les terrorismes qui les ont chassés de leur pays.

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169 UNHCR, Extraterritorial Effect of the Determination of Refugee Status, EXCOM Conclusions, 17 octobre 1978, point c) : « several provisions of the 1951 Convention enable a refugee residing in one Contracting State to exercise certain rights as a refugee in another Contracting State and that the exercise of such rights is not subject to a new determination of his refugee status ».


172 Selon un rapport sénatorial de 2012, quelque 10 000 morts auraient eu lieu dans le canal du Mozambique depuis 1995. Selon les autorités comoriennes, au moins 12 000 personnes y auraient péri. Reste que les victimes disparues en mer sont toujours difficiles à dénombrer.
Setting a Principal to Interest Cap on the Issuance of Home Mortgages: a Proposed Change to Mortgage Underwriting Rules Designed to Control Housing Price Inflation

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Abstract

Traditionally most home buyers in the US need a mortgage and the current system of mortgage origination creates an incentive for borrowers to offer bids on homes far higher than would be possible without that system.\(^1\) This has inflated home values, increased financial indebtedness, and has increased banking profits without extensively helping other players in the market. Over the past 50 years it has become easier to get a mortgage and it has become common for people to buy homes with little down and long repayment times. The result has been that for many borrowers almost all of the mortgage payment goes to pay for interest on the loan. In the 1950s, housing accounted for 22% of the household budget; that rose to 33% by 1980 and 43% today. The mortgage industry is supposed to help foster affordable home ownership yet, as currently instituted, it has resulted far greater expense leading to further hardships for those Americans with low incomes. This essay will explore how a rule to cap the principal to interest ratio in mortgage payments would impact the relevant institutions and offer an overview of how such a rule would guide society to a more socially desirable outcome.\(^2\)

I. Introduction

A debt driven business cycle has its foundations within institutional thinking going back to Veblen. Recent work on a debt driven business cycle include both institutional thinkers and more mainstream theorists (Godley and Wray, 2000; Maki and Palumbo, 2001; Guttmann and Philon, 2010; Kaboub et al., 2010 Watkins 2010; Wunder, 2012). Since the 2008 crisis household debt is not only entering into the discussion it is also entering into more mainstream models being used to describe the economy (Beaudry and Lahiri, 2009; De Antoni, 2010; Bhaduri, 2010; Kumhof and Ranciere, 2010).

The biggest part of household debt is mortgage debt and in exploring this topic there seems to be four general areas of analysis within recent literature: 1. some papers explore mortgage issues within a historical background (Green and Wachter 2005; Wheelok 2008). 2. A second group of papers explores who issued bad mortgage debt recently and explores some of the issues involved (Ben-David 2011; Nesiba, Sorenson, and Sturm 2012). 3. Another group of researchers offer insights into potential ways to deal with bad mortgages (Chang Et Al 2011; Zalewski 2011; Marshall and Choncha 2012; Zalewski 2012). 4. The last grouping of papers strives to explore the mechanics of how mortgage debt has impacted personal finances (Weller and Sabatini, 2008; Fisher and Gervais 2011; Holstein et al 2013). This paper will pull together strands from groups 2, 3, and 4 to suggest a new type of policy that could deal with the underlying issue of inflating home prices over time.

II. A Prisoner’s Dilemma in Housing

At first glance the US mortgage system appears to help buyers by increasing borrowing flexibility but on

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\(^1\) Recently there has been a remarkable increase in the numbers of all cash purchases. Prior to 2008 20% of sales were all cash but current numbers suggest that cash sales have risen to as high as 60% of all home sales as of summer 2013 (Timiraos 2013). These cash sales seem to be coming from large investment companies buying up huge swaths of housing for investment purposes. Whether this trend will continue is questionable, and more recent numbers show that this trend is diminishing. Ultimately if the majority of all sales continue to be cash what type of home mortgage a household can get will be irrelevant as home ownership becomes out of reach for all but the highest income households.

\(^2\) The author has no personal or professional links to the banking industry. This is original work not published elsewhere.
closer inspection it also creates a dynamic that may hurt buyers in the long run. The home mortgage system in the US allows a great deal of flexibility in obtaining funds by allowing buyers to pay back a loan over an extremely long period with fixed payments and a fixed interest rate. This flexibility enables individuals to borrow much larger amounts than would be possible without such flexibility, and this flexibility is often touted as helpful to lower income buyers. Lenders argue that by making it easier to get a mortgage low income households are able to borrow more and may be able to buy homes that would not be available without that ability to borrow. However this increased individual flexibility becomes neutralized once it is realized that all household have been granted access to this increased borrowing capacity.

It is simple to think about this negative pricing dynamic within a prisoner’s dilemma framework. Consider two differing households that have identical credit scores, financial histories, and incomes. Both households are looking to buy the same house and both can afford the exact same amount in monthly payment. Now each of these households enters into the mortgaging process and they each are offered a choice of mortgages. Option one has stricter payment terms that forces more of the payment to go into paying off Principal and thus leads to a quicker payoff time and less money being paid to finance. Option two has easier payment terms wherein the borrowing household pays for a longer period, pays more in interest, but allows for a marginally higher amount to be borrowed.

From a financial perspective both households would be better off getting a strict loan thereby paying less for financing, however, if either borrowing household chooses the stricter loan, the amount they could borrow is diminished and that household will lose the bidding war for the home. Thus both households are forced to choose the easier terms resulting in both being able to borrow a marginally greater amount and both being able to bid up the price of the house. In the end the looser terms on the loan does not actually lead to any advantage in buying the house but rather simply forces both households into paying more to get the same housing product.  

It is not hard to extend this dynamic in an aggregate manner. It may seem like the looser terms would allow a household to move from buying a low priced home into being able to afford a mid or high priced home however if all households have equal access to easier credit then any gains for an individual household resulting from the looser terms are neutralized by those same terms being available to other similar households. In essence it is like taking steroids in sports. If only a single competitor takes steroids they could potentially do better than non-steroid takers, however if all competitors are taking steroids all individual advantages are neutralized. If any competitor has the option of cheating all competitors are forced to the cheating option simply in order to stay competitive.

It might be argued that this prisoner’s dynamic makes home buyers worse off but this dynamic also makes home sellers better off, yet this is only true if the home seller is not also the prime user of housing services provided by the home. Consider a person moving from location A to location B wanting to get a similar house with identical characteristics. This seller gains from the prisoner’s dynamic on the selling side of any transaction but any gain on the selling side is fully neutralized on the buying side as the house price at location B increases the same amount that the selling price increased by at location A. If a user of housing is going to use the same level of housing post transaction then the gains made on the sale of the house in terms of higher selling price will be exactly offset by the higher buying price that will be paid to get a replacement residence. So the only real gains to be made from higher home prices are being made by builders selling new homes which account for about 10% of home sales and those individuals no longer needing housing. The real gains being made from this issuance of these mortgages are being captured by the lenders. The next section will explain how the prisoner’s dilemma above finally is settled based upon

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3 This prisoner’s dilemma with respect to borrowing could be extended to the auto loan market. Since supply is much less elastic with respect to housing versus autos it may not be possible to make exactly the same case. In the US auto loans were limited to 2 years in the 1970’s and, as of today, 7 year terms are commonly available. This suggests that perhaps a similar dynamic to the housing market is occurring in the auto market. Yet exploration of this topic must happen elsewhere.

4 A person reviewing this paper brought up the issue of the capital gains acquired by housing investors as a result of the loosening of mortgage rules. Yet on closer examination it should become clear that loosened housing rules only result in a one-time capital gain as the housing price is pushed higher. The housing, investor looking for rental income, would not be better off due to loosened lending rules since what they are selling is the housing services from the home. In all relevant ways the landlord is in the same position as is the homeowner/user. Only the land speculator would be benefitted from loosened mortgage rules.
constraints set by banks upon how much can be borrowed. The upper end, or cap, on what the bidders are allowed to bid is currently being set by the banking industry and the industry is benefiting from setting a looser cap whereas homeowners are not. The paper will then explore the option of using a regulation to tighten that cap thereby diminishing the negative externalities created by the prisoner's dilemma described above.

III. The Price of Flexibility

In order to understand what is happening in the mortgage market it is best to consider the decisions being made at the time of mortgage origination. All mortgages are a stream of payments over an agreed upon time period made in exchange for a lump sum amount received immediately. Three choices are being made when taking out such a loan; how much of the Principal will be paid in each period, the interest rate, and how many payments will be made. For example, if the borrower agrees to make 360 monthly payment of $1498.88, with an agreed upon interest of 6% the present value is $250,000 and that is how much a bank will be willing to give the borrower.\(^5\) Under this agreement the borrower is implicitly agreeing to pay $248.88 in Principal on the first payment and $1,250 in interest, or instead it could be thought of in terms of the Principal interest breakdown.\(^6\) In this example the borrower is paying 16.6% Principal and 83.4% interest on the first payment. If the payment amount and interest rate are both kept constant, but term is shortened to 348 monthly payments, the amount borrowed shrinks to $246,930.48 and the first payment is $264.23 Principal and $1234.65 interest (a 17.6/82.4 Principal to interest ratio). Conversely it is equally valid to consider that what is being done here is the borrower and lender are agreeing on an interest rate, a number of payments and a starting Principal to interest ratio. By altering any of these three terms the amount of the loan is altered.

This framework makes considering prisoner's dilemma above easier. If two bidders have the same ability to make a monthly payment, and the interest rate is set by the market, then the two bidders are really only looking at changing the number of payments and the starting Principal to interest ratio, which is actually the same decision. Each bidder can change the Principal to interest ratio by increasing or decreasing the total number of monthly payments they make. The prisoner's dynamic will result in each bidder increasing the number of monthly payments until they are met with the constraint set in the system, in this case the 360 monthly payments allowed by the bank. So the amount that can be borrowed is being set by a Principal to interest cap (PIC) that is implicitly being put in place by the bank as the bank limits the length of the mortgage to a maximum of 30 years.\(^7\)

Suppose that instead the PIC were set through a regulation capping the maximum Principal to interest allowed and then allowing the number of payments to be the result of setting a PIC. The PIC could be set at any ratio (20/80; 30/70) but for sake of analysis in this paper a 50/50 ratio will be used. Depending on the interest rate this would alter the dynamics of how much a household could borrow, how long it would take to repay the loan, and alter how much interest was paid during the life of the loan.

Using a fixed payment of $1 per month the dynamic properties of a 50/50 PIC and a traditional 30 year mortgage become clear. At rates below 2.4% this PIC allows for an increase in the amount that can be borrowed however at rates above 2.4% this PIC lowers the amount that can be borrowed. Figure 1 shows the comparison. Figure 2 shows the percentage differences over interest rates and it shows that as interest rates get higher the percentage decline in the amount that is borrowable under a 50/50 PIC levels off at around 50% less than the amount that can be borrowed under a conventional 30 year mortgage.

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\(^5\) Or for a more general valuation of a mortgage value you can use the present value equation. \(PV = F \left[\frac{1}{i}\right] \left[1 – 1 / \left(1+i\right)^{n}\right]\) Where \(PV\) is the present value (the amount of the mortgage), \(i\) is the interest rate, \(F\) is the payment each period, and \(n\) is the number of periods. Thus a payment of $1498.88 (\(F = 1498.88\)) at an annual interest rate of 6% (monthly rate of \(i = .06/12\)) for 360 months (\(n=360\)) will get a loan amount of $250,000.

\(^6\) More generally the amount paid in Principal on the first payment will be \(i \cdot PV\) and the amount paid in Principal will be \(F – i \cdot PV\). So with a PV of $250,000, \(i\) of .005 (6% annual over 12 months) interest is 1250 and Principal is 248.88.

\(^7\) The choice to call this a cap instead of a floor is the idea of what is being regulated. It seems that what is being called into question is how much of the payment should go to pay interest? If the payment is going mostly to interest when the ratio is changed from 90% interest to 50% interest you are in essence capping the interest in any given payment. Subsequently you could call it a Principal payment floor but PIC is an easier acronym to use.
To make the differences more tangible consider once again the $250,000 dollar 30 year mortgage at 6% used as an example above. The payment of $1498.88 under a 50/50 PIC at 6% would only get a borrower $149,888. In order to be able to borrow $250,000 under a 50/50 PIC the borrower would have to be willing to make monthly payments of $2,500.\(^6\) By setting a more restrictive PIC the amount borrowed would be limited helping alleviate the prisoner’s dilemma. The next section will compare the costs and benefits of implementing a PIC regulation to a hypothetical buyer/seller of a house.

\(^6\) Calculating the payment using a 50/50 PIC starts by calculating the value of the first payment where the interest on the first payment would be the same as the interest paid on the first payment of a traditional mortgage \((PV^*i)\), in this case $250,000 \times .005 = $1250. Since Principal must be equal to interest, \(F\) now becomes $1250 interest + $1250 Principal or $2500. Once the first payment is determined the length of the loan can be calculated by rearranging the PV function above. Taking \(PV = F \left(\frac{1}{i}\right) \left[1 - \frac{1}{(1+i)^n}\right]\) and solving for \(n\) gets \(n = \ln \left(\frac{1}{(1-(PV/i)F))^{1/i}n(1+i)}\right)\). Thus with a $250,000 mortgage and a $2500 monthly payment at a yearly interest rate of 6% the number of payments would be 138.9. Getting the lower loan value associated with the lower payment of 1498.88 would be done in a similar manner. Starting with the first payment of 1498.88, and knowing that half of the payment goes to interest, it becomes possible to calculate the PV of the loan. \(PV^*i = F/2\); or \(PV^* .005 = 1498.88 / 2\). Thus \(PV = $149,880\) To be sure that the valuations are the same for this loan as any other present value loan it is possible to take a payment of 1498.88 with in interest rate of 6% and a period of 138.9 and calculate the PV, which works out to $149,880.
IV. Costs and Benefits of a PIC

In order to compare the costs and benefits of a PIC over current mortgage practices it is best to think about the sale of a house using the same person as both the buyer and the seller. Extending the analysis offered in section 1 consider a person moving from location A to location B wanting to get the same level of housing. Easier mortgage terms result in a higher selling price but also result in an equally higher buying price at location B. The increased housing prices only benefit new home sellers, home sellers not looking for housing services, and mortgage lenders. Easy mortgage terms increase home prices however increased home prices do not translate into captured value to the home user. Instead increased home prices serve to create economic rent opportunities to the financiers of these transactions. Larger mortgages result in higher returns to the banks with few advantages to other players in the market.

In terms of how much extra value is extracted by the mortgage lender by allowing an easier PIC consider the $250,000 mortgage given above. Under a traditional 30 year mortgage, at 6%, the borrower will pay back $250,000 in Principal and additional $289,595 in interest over the life of the loan (this can be seen in Table 1 below for an interest rate of 6%). The financer however is usually more interested in what any given mortgage can be sold for after issuance. This ‘market value’ of a loan is determined by revaluing the loan using a secondary interest rate representing the next best alternative an investor could get when investing in another instrument. For example if the best alternative is a treasury note then the comparison would be the interest rate on the note to the interest earned on the mortgage. The ‘market value’ of the mortgage is the present value of the stream of mortgage payments valued using the opportunity cost of the alternative investment as the benchmark. The amount loaned is based upon the interest rate paid by the borrower but the value of the loan is based upon that discounted interest rate. So the present value of 360 monthly payments $1498.88 at a yearly interest rate of 6% is $250,000 however the market value when using a lower interest rate of 4% is actually around $314,000. The difference between the two being the potential gains a mortgage lender could make by selling the loan after origination. The same $250,000 borrowed under a 50/50 PIC, at 6%, would generate 138.9 payments of $2500 but the market value using a 4% discount rate would only be worth $277,711.64. Table 1 shows that using a 2% differential between the borrowing rate and the discount rate a 50/50 PIC is much less profitable to a bank than is a traditional 30 year loan.

Table 1: Comparison of the Market Value of Loans

<table>
<thead>
<tr>
<th>Interest Rate</th>
<th>Loan Amount</th>
<th>Monthly PIC Payment</th>
<th>Number of PIC Payments</th>
<th>Value to Bank 30 year</th>
<th>Value to Bank PIC 50/50</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>$355,518.42</td>
<td>$1,777.59</td>
<td>277,605302</td>
<td>$466,012.38</td>
<td>$440,385.21</td>
</tr>
<tr>
<td>4</td>
<td>$313,957.26</td>
<td>$2,093.05</td>
<td>208,290536</td>
<td>$405,519.76</td>
<td>$368,079.82</td>
</tr>
<tr>
<td>5</td>
<td>$279,213.79</td>
<td>$2,326.78</td>
<td>166,701657</td>
<td>$355,518.42</td>
<td>$316,883.57</td>
</tr>
<tr>
<td>6</td>
<td>$250,000.61</td>
<td>$2,500.01</td>
<td>138,975722</td>
<td>$313,957.26</td>
<td>$277,711.64</td>
</tr>
<tr>
<td>7</td>
<td>$225,293.01</td>
<td>$2,682.42</td>
<td>119,171469</td>
<td>$279,213.79</td>
<td>$246,489.08</td>
</tr>
<tr>
<td>8</td>
<td>$204,272.60</td>
<td>$2,723.63</td>
<td>104,318267</td>
<td>$250,000.61</td>
<td>$220,970.03</td>
</tr>
<tr>
<td>9</td>
<td>$186,283.60</td>
<td>$2,794.25</td>
<td>92,7657661</td>
<td>$225,293.01</td>
<td>$199,747.39</td>
</tr>
</tbody>
</table>

Source: Author’s calculations

More importantly the home buyer is not made better off getting the 30 year mortgage over the PIC. Going back to the prisoner’s dilemma the bidders each have the ability to make the same payment, for example $1498.88, if one of the two bidders chooses the stricter terms of a 50/50 PIC they would only be able to...
borrow $149,888 but the other bidder, choosing a 30 year mortgage, could borrow up to $250,000 dollars thus winning the house. Each bidder is forced to go for the easier terms resulting in paying more for the house, paying more interest on the loan and making more payments for the exact same house.

The precise value captured by the banks is the difference between the market value of the two loans the bank would make under differing policies. A 30 year loan with a payment of $1498.88 made at 6% interest with a discount of 2% has a market value of $313,957.26 resulting in a potential profit of $63,957.27 upon origination. A 50/50 PIC under the same conditions would only originate a loan of $149,888 with a market value of $166,502.66 the difference being a bank profit of $16,614.66. Thus the bank is able to capture an extra $47,342.61 off the transaction, and the home buyer gets the exact same house either way.

**Conclusion**

The housing market traditionally has been dominated by home buyers needing a mortgage. Actions of home buyers in the market have an external cost that can be modeled using a simple prisoner's dilemma in which each home bidder chooses to bid up the price of a home until reaching some constraint imposed on their bidding. That constraint is currently being instituted by banks setting the maximum length of a mortgage thereby implicitly setting a Principal to interest cap. The current bank set constraint is very loose so this paper suggested regulating a stricter PIC to limit the costs imposed on home buyers resulting from this prisoner’s dilemma. The paper shows how much extra value lenders are able to make off of a 30 year mortgage compared to a 50/50 PIC even though the home bidders wind up getting the same home.

Two considerations of a PIC have not been discussed in this paper due to space constraints. In this paper a 50/50 PIC was explored however there is no reason the ratio needs to be set at that level. Given the current housing market instantaneously instituting a 50/50 PIC might serve as another dangerous shock to home prices. PIC framework regulation could be instituted in a gradual manner starting with a very high interest cap and slowly tightening the cap over time. In fact there are many interesting implications with respect to altering mortgages using a PIC framework as the model, however space constraints don’t allow those explorations here. Further any level PIC becomes more restrictive at higher interest rates. This characteristic would seem to be beneficial as both a macroeconomic regulator and to restrain speculative and Ponzi financing during speculative booms. Further explorations of these positive characteristics will have to occur in other papers.

**References**


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